## IN THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

Lance Boland; Mario Santellan; Reno May; Jerome Schammel; and California Rifle & Pistol Association, Incorporated, *Plaintiffs-Appellees*,

V.

ROB BONTA, ATTORNEY GENERAL OF THE STATE OF CALIFORNIA, Defendant-Appellant.

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

No. 22-cv-1421-CJC-ADS The Honorable Cormac J. Carney, Judge

DECLARATION OF CHARLES J. SAROSY
IN SUPPORT OF EMERGENCY MOTION UNDER CIRCUIT RULE 27-3
FOR A PARTIAL STAY OF THE PRELIMINARY INJUNCTION
PENDING APPEAL AND FOR AN INTERIM ADMINISTRATIVE STAY
ENTERED BEFORE APRIL 3, 2023

## IMMEDIATE RELIEF REQUESTED

ROB BONTA
Attorney General of California
THOMAS S. PATTERSON
Senior Assistant Attorney General
P. PATTY LI
Supervising Deputy Attorney General
MARK R. BECKINGTON
Supervising Deputy Attorney General

CHARLES J. SAROSY
Deputy Attorney General
State Bar No. 302439
300 South Spring Street, Suite 1702
Los Angeles, CA 90013-1230
Telephone: (213) 269-6356
Fax: (916) 731-2119

Email: Charles.Sarosy@doj.ca.gov *Attorneys for Defendant-Appellant* 

March 27, 2023

#### **DECLARATION OF CHARLES J. SAROSY**

### I, Charles J. Sarosy, declare:

- 1. I am a Deputy Attorney General with the California Department of Justice and serve as counsel to Defendant-Appellant Rob Bonta, in his official capacity as Attorney General of the State of California, in the above-captioned matter. I make this declaration in support of Defendant's Emergency Motion under Circuit Rule 27-3 for a Partial Stay of the Preliminary Injunction Pending Appeal and for an Interim Administrative Stay Entered Before April 3, 2023, for which immediate relief is requested. Except as otherwise stated herein, I have personal knowledge of the facts set forth in this declaration and, if called as a witness, could and would testify competently as to those facts.
- 2. This case is an appeal from the district court's grant of Plaintiffs' motion for a preliminary injunction and issuance of the preliminary injunction on March 20, 2023, declaring certain provisions of California's Unsafe Handgun Act (UHA) that have been in effect for at least a decade to be likely unconstitutional under the Second Amendment and enjoining their enforcement. D.Ct. Dkts. 60 (order granting motion), 61 (preliminary injunction). Attached hereto as **Exhibits** 1 and 2 are true and correct copies of the order and preliminary injunction, respectively.

- 3. On August 1, 2022, the initial complaint was filed in this action, asserting a Second Amendment challenge to the entire UHA, which among other things, requires the California Department of Justice to compile and maintain a Roster of Certified Handguns (the "Roster") that meet certain public safety requirements, sets out what those public safety requirements are for revolvers and semiautomatic pistols, and generally prohibits the manufacture or sale of handguns not on the Roster. Cal. Penal Code §§ 31900-32110. The initial complaint also asserted a claim of unconstitutional discrimination against interstate commerce. D.Ct. Dkt. 1.
- 4. The case was initially assigned to U.S. Magistrate Judge Douglas F. McCormick of the United States District Court for the Central District of California. Both parties declined consent to proceed before the assigned Magistrate Judge, and on September 15, 2022, the case was reassigned to U.S. District Judge Cormac J. Carney of the United States District Court for the Central District of California. D.Ct. Dkts. 12-14.
- 5. Shortly thereafter, on September 22, 2022, Plaintiffs Lance Boland, Mario Santellan, Reno May, Jerome Schammel, and California Rifle & Pistol Association, Incorporated (collectively, Plaintiffs) and Defendant stipulated to the dismissal, with prejudice, of Plaintiffs' discrimination against interstate commerce claim. D.Ct. Dkt. 16. The district court granted the stipulation and, on September

23, 2022, Plaintiffs filed a First Amended Complaint, limiting this action to the Second Amendment challenge to the UHA (Cal. Penal Code §§ 31900 through 32110). D.Ct. Dkts. 17, 20.

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- 6. On October 7, 2022, Defendant filed an Answer to the First Amended Complaint. D.Ct. Dkt. 21.
- 7. On November 15, 2022, nearly two months after filing the First Amended Complaint, Plaintiffs filed a motion for preliminary injunction, seeking to enjoin the Attorney General, his agents, employees, and those working in active concert with him from enforcing the entire UHA in California Penal Code sections 31900 through 32110. D.Ct. Dkts. 23, 23-1.
- 8. Defendant opposed the motion for preliminary injunction on December 5, 2022. D.Ct. Dkt. 30. Attached hereto as **Exhibit 3** is a true and correct copy of the Declaration of Salvador Gonzalez in Support of Defendant's Opposition to Motion for Preliminary Injunction, dated November 30, 2022.
- 9. Plaintiffs filed a reply brief in support of their motion for preliminary injunction on December 12, 2022, in which they clarified that they sought to enjoin only the chamber load indicator, magazine disconnect mechanism, and microstamping requirements for new semiautomatic pistols to be added to the Roster (Cal. Penal Code § 31910(b)(4)-(6)).

- 10. The district court issued a scheduling order, setting October 19, 2023 as the deadline for discovery, December 18, 2023 as the deadline for all motions, and February 27, 2024 as the date for a bench trial. D.Ct. Dkt. 32.
- 11. On December 14, 2022, the district court scheduled an evidentiary hearing on the motion for preliminary injunction to occur on January 23, 2022.

  D.Ct. Dkt. 35.
- 12. The evidentiary hearing was held on January 23 and 24, 2023. Each party presented witnesses at the hearing. D.Ct. Dkt. 47. The district court admitted exhibits from both parties. D.Ct. Dkt. 48. Attached hereto as **Exhibit 4** is a true and correct compilation of Defendant's exhibits. Attached hereto as **Exhibits 5 and 6** are true and correct copies of the transcripts for each day of the evidentiary hearing.
- 13. At the conclusion of the evidentiary hearing, the district court ordered two rounds of supplemental briefing on the motion for preliminary injunction. D.Ct. Dkt. 45.
- 14. On February 24, 2023, Plaintiffs and Defendant filed their first post-hearing supplemental briefs. D.Ct. Dkts. 56 (Defendant's brief), 57 (Plaintiffs' brief). Attached hereto as **Exhibit 7** is a true and correct copy of the Declaration of Salvador Gonzalez in Support of Defendant's First Closing Brief Following Evidentiary Hearing, dated February 24, 2023. Attached hereto as

**Exhibit 8** is a true and correct copy of the Declaration of Saul Cornell in Support of Defendant's First Closing Brief Following Evidentiary Hearing, dated February 23, 2023.

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- 15. On March 10, 2023, Plaintiffs and Defendant filed their second post-hearing supplemental briefs. D.Ct. Dkts. 58 (Defendant's brief), 59 (Plaintiffs' brief).
- 16. On March 20, 2023, the district court issued an order holding that three of the UHA's requirements for a new semiautomatic pistol to be added to the Roster (the chamber load indicator, magazine disconnect mechanism, and microstamping requirements) likely violate the Second Amendment because they restrict the ability to purchase "state-of-the-art" semiautomatic pistols; that the inability to purchase such arms constitutes irreparable harm; and that such harm outweighs any public interest in not granting injunctive relief. The district court accordingly enjoined the three UHA requirements in California Penal Code sections 31910(b)(4)-(6), and stayed the effectiveness of the preliminary injunction until April 3, 2023. Exs. 1, 2.
- 17. On March 27, 2023, I notified the Ninth Circuit's Emergency Motions Unit by email and telephone (leaving a voicemail) that Defendant would be filing the instant emergency motion, as required under the Circuit Advisory Committee Note to Circuit Rule 27-3. On the same date, I conferred with

Plaintiffs' counsel, Konstadinos Moros, by telephone to inform Plaintiffs that

Defendant was planning to appeal the preliminary injunction and seek a partial stay

pending appeal from this Court. Counsel indicated that they would likely oppose
the motion for a partial stay.

- 18. Defendant seeks a partial stay of the district court's preliminary injunction pending appeal, staying the portion of the court's order enjoining the chamber load indicator and magazine disconnect mechanism requirements (Cal. Penal Code § 31910(b)(4), (5)). Defendant does not seek a stay of the portion of the district court's order preliminarily enjoining the microstamping requirement (Cal. Penal Code § 31910(b)(6)). Defendant also moves, on an emergency basis, for an interim administrative stay of the same scope, pending this Court's resolution of the instant motion, to be entered as soon as possible, but no later than April 3, 2023, when the district court's injunction is scheduled to take effect.
- 19. Defendant's motion refers to the Massachusetts roster of approved handguns. Attached hereto as **Exhibit 9** is a true and correct copy of the Massachusetts roster. The roster, which is nearly 30 pages long and lists over 1,000 models, is publicly available here, <a href="https://www.mass.gov/doc/approved-firearms-roster-10/download">https://www.mass.gov/doc/approved-firearms-roster-10/download</a>, and is further described in *Granata v. Healey*, 603 F. Supp. 3d 8, 10-11 (D. Mass. 2022), *appeal docketed*, No. 22-1478 (1st Cir. June 22, 2022). The Massachusetts' laws relating to its roster are currently the subject

of a Second Amendment challenge before the First Circuit Court of Appeals.

Appellate briefing in that case is completed and oral argument is scheduled for April 4, 2023. *Granata v. Campbell*, No. 22-1478 (1st Cir. Feb. 21, 2023)

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on March 27, 2023, at Los Angeles, California.

s/ Charles J. Sarosy

Charles J. Sarosy

# EXHIBIT 1

С	se 8:22-cv-01421-CJC-ADS Document 60	Filed 03/20/23 Page 1 of 22 Page ID #:2041
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8	UNITED STATES DISTRICT COURT	
9	CENTRAL DISTRICT OF CALIFORNIA	
10	SOUTHERN DIVISION	
11	LANCE BOLAND, MARIO	Case No.: SACV 22-01421-CJC (ADSx)
12	SANTELLAN, RENO MAY, JEROME	· }
14	SCHAMMEL, and CALIFORNIA RIFLE & PISTOL ASSOCIATION,	ORDER GRANTING PLAINTIFFS'
15	INCORPORATED,	) MOTION FOR PRELIMINARY ) INJUNCTION [Dkt. 23]
16	Plaintiffs,	
17	v.	
18		
19	ROBERT BONTA, in his official capacity as Attorney General of the	
20	State of California, and DOES 1-10,	}
21	Defendant.	}
22	Defendant.	_}
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24	I. INTRODUCTION	
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26	The Second Amendment guarantees the right to keep and bear arms for self-	
27	defense. U.S. Const. amend. II. That right is so fundamental that to regulate conduct	
28	covered by the Second Amendment's plain text, the government must show more than	
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that the regulation promotes an important interest like reducing accidental discharges or solving crime. *New York State Rifle & Pistol Association, Inc., v. Bruen,* 142 S. Ct. 2111, 2126 (2022). Rather, to be constitutional, regulations of Second Amendment rights must be "consistent with this Nation's historical tradition of firearm regulation." *Id.* 

California's Unsafe Handgun Act (the "UHA") seeks to prevent accidental discharges by requiring handguns to have particular safety features. First, the UHA requires certain handguns to have a chamber load indicator ("CLI"), which is a device that indicates whether a handgun is loaded. Cal. Penal Code §§ 16380, 31910(b)(4). Second, the UHA requires certain handguns to have a magazine disconnect mechanism ("MDM"), which prevents a handgun from being fired if the magazine is not fully inserted. *Id.* §§ 16900, 31910(b)(5). Third, the UHA requires certain handguns to have the ability to transfer microscopic characters representing the handgun's make, model, and serial number onto shell casings when the handgun is fired, commonly referred to as microstamping capability. *Id.* § 31910(b)(6). No handgun available in the world has all three of these features.

These regulations are having a devastating impact on Californians' ability to acquire and use new, state-of-the-art handguns. Since 2007, when the CLI and MDM requirements were introduced, very few new handguns have been introduced for sale in California with those features. Since 2013, when the microstamping requirement was introduced, not a single new semiautomatic handgun has been approved for sale in California. That is because the technology effectuating microstamping on a broad scale is simply not technologically feasible and commercially practical. The result of this is that when Californians today buy a handgun at a store, they are largely restricted to models from over sixteen years ago.

In this case, Plaintiffs Lance Boland, Mario Santellan, Reno May, Jerome Schammel, and California Rifle & Pistol Association, Incorporated, allege that the UHA's CLI, MDM, and microstamping requirements are unconstitutional, contending that they violate the Second Amendment under *Bruen*. Before the Court is Plaintiffs' motion for a preliminary injunction enjoining California from enforcing those requirements. (Dkt. 23 [Motion for Preliminary Injunction, hereinafter "Mot."].) Because the plain text of the Second Amendment covers Plaintiffs' proposed course of conduct of purchasing state-of-the-art handguns, and the UHA's CLI, MDM, and microstamping requirements are not consistent with this Nation's historical tradition of firearm regulation, Plaintiffs' motion is **GRANTED**.

#### II. BACKGROUND

The California legislature enacted the UHA in 1999. The statute's goals include "reduc[ing] the number of firearm deaths in the state," *Pena v. Lindley*, 898 F.3d 969, 973 (9th Cir. 2018), and "curbing handgun crime, as well as promoting gun safety," *Fiscal v. City & Cnty. of San Francisco*, 158 Cal. App. 4th 895, 913 (2008). Under the Act, a handgun may not lawfully be manufactured or sold on the primary market if it is "unsafe." Cal. Penal Code §§ 31910, 32000. An "unsafe handgun" is defined as "any pistol, revolver, or other firearm capable of being concealed upon the person" that does not meet firing reliability requirements, satisfy drop safety requirements, or have certain safety features. *Id.* § 31910.

All handgun models that have been tested by a certified testing laboratory and have been determined not to be "unsafe handguns" are added to an official list known as the

<sup>&</sup>lt;sup>1</sup> Although their Complaint appears to challenge the entire UHA, Plaintiffs clarified that they seek to enjoin only the CLI, MDM, and microstamping requirements. (Dkt. 34 [Reply] at 7; Dkt. 50 at 96, 98.)

"Roster." Cal. Penal Code § 32015. Admission to the Roster is valid for one year and must be renewed annually with a fee. Cal. Code Regs. tit 11, §§ 4070(a)-(b) & 4072(b).

Over time, the California legislature changes what features a handgun must have to be considered not "unsafe." *See Pena*, 898 F.3d at 973. When it does so, handguns previously on the Roster that do not have the newly required features are not removed from the Roster, but rather are "grandfathered" and are still permitted to be sold even though they now would be considered "unsafe." *See* Cal. Penal Code § 31910(b)(5), (7); *Pena*, 898 F.3d at 974; (Dkt 54 [Transcript for Proceedings of Evidentiary Hearing Day 1, hereinafter "Tr."] at 173 [Testimony of Special Agent Salvador Gonzalez]).

For example, as of 2007, to be eligible for primary market sale in California, new-to-market semiautomatic pistols must have two "safety features designed to limit accidental discharges that occur when someone mistakenly believes no round is in the chamber." *Pena*, 898 F.3d at 974. First, a new-to-market centerfire semiautomatic pistol must have a chamber load indicator, which is a "device that plainly indicates that a cartridge is in the firing chamber." Cal. Penal Code §§ 16380, 31910(b)(4). Second, a new-to-market centerfire or rimfire semiautomatic pistol must have a magazine disconnect mechanism (sometimes referred to as a magazine detachment mechanism), which is "a mechanism that prevents a semiautomatic pistol that has a detachable magazine from operating to strike the primer of ammunition in the firing chamber when a detachable magazine is not inserted in the semiautomatic pistol." *Id.* §§ 16900, 31910(b)(5); *Pena*, 898 F.3d at 974.

Since these requirements were added to the UHA, only 32<sup>2</sup> semiautomatic pistols have been added to the Roster that have a CLI and MDM. (Mot. at 5; Tr. at 179 [Special

<sup>&</sup>lt;sup>2</sup> This number is misleadingly high, as the Roster treats handguns that are the same except for small details like color or coating as different handguns. (See Tr. at 224 [Special Agent Gonzalez].)

Agent Gonzalez].) But handguns on the Roster before 2007 that lack a CLI or MDM are "grandfathered" and may still be sold. *See* Cal. Penal Code §§ 31910(b)(4), (5) (defining as "unsafe handguns" only those without the required features "not already listed on the roster"). Accordingly, 800 "unsafe" handguns remain on the Roster without a CLI or MDM. (*See* Tr. at 179.)

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More problematic, as of 2013<sup>3</sup>, new-to-market semiautomatic pistols must "include a feature called 'microstamping': each such pistol must imprint . . . microscopic arrays of characters that identify the make, model, and serial number of the pistol onto the cartridge or shell casing of each fired round."<sup>4</sup> *Pena*, 898 F.3d at 974; *see* Cal. Penal Code § 31910(b)(6). "Designed to help solve crimes, microstamping provides law enforcement with identifying information about a handgun fired at a crime scene." *Pena*, 898 F.3d at 974.

The microstamping requirement has prevented any new handgun models from being added to the Roster since May 2013. Although the California Department of Justice certified on May 17, 2013 that the technology used to create the imprint is available to more than one manufacturer unencumbered by any patent restrictions, the technology still was not available. *See Nat'l Shooting Sports Found., Inc. v. State*, 420 P.3d 870, 872 (Cal. 2018) (noting the government's concession that the certification did not confirm "the availability of the technology itself"). Indeed, to this day, a decade after

<sup>&</sup>lt;sup>3</sup> The California legislature amended the definition of unsafe handguns in 2007 to include all semiautomatic pistols not already on the Roster that lacked microstamping capability. *Nat'l Shooting Sports Found., Inc. v. State*, 420 P.3d 870, 871 (2018). That definition was to take effect in 2010, but only if the Department of Justice certified that the technology used to create the imprint was available to more than one manufacturer unencumbered by any patent restrictions. *Id.* at 872. Because the Department of Justice did not so certify until 2013, the microstamping requirement did not take effect until then. *Id.* 

<sup>&</sup>lt;sup>4</sup> When the microstamping requirement was first implemented, the law required microstamping in two locations. As of September 2020, only single-location microstamping is required. (Mot. at 6; Opp. at 4; Tr. at 85 [Salam Fatohi].)

the requirement took effect, no firearm manufacturer in the world makes a firearm with this capability. (*See* Tr. at 77 [Salam Fatohi testifying that no commercial manufacturer has ever produced a handgun with microstamping technology]; *id.* at 114 [Michael Beddow testifying that he was not aware of efforts by firearm manufacturers to implement microstamping]).)

As a result, *none* of the 832<sup>5</sup> Roster listings meets the current definition of a handgun that is not "unsafe." (*See* Tr. at 180 [Special Agent Gonzalez testifying that no handgun with microstamping has been added to the Roster].) *Not one* of the handguns currently being sold in California has a CLI, MDM, and microstamping ability. (*See id.*) *Every single* handgun on the Roster is a grandfathered handgun—one the California legislature now deems "unsafe." (*See id.*)

The UHA's prohibition on sales of "unsafe" handguns is subject to exceptions as well. It does not apply to sales to law enforcement personnel, personnel from agencies including the California Highway Patrol, the Department of Justice, the Youth and Adult Correctional Agency, and the district attorney's office, or any member of the military.

See Cal. Penal Code §§ 31910(b), 32000(a)–(b). It also does not prohibit possessing Off-Roster handguns lawfully acquired on the secondary market or lawfully transferred into California. See id. § 32110. The result is that "unsafe" Off-Roster handguns may be purchased by ordinary people on the secondary market from law enforcement officials and others, often at a high markup. (See Tr. at 51 [Reno May testifying that "[b]ecause of the high demand (for Off-Roster handguns) and the very low supply, usually being supplied by law enforcement or people who move from out of state into this state with one of those firearms, it's hard to come by, and it is very expensive"].)

<sup>&</sup>lt;sup>5</sup> This number is current as of March 20, 2023. The Roster is available at https://oag.ca.gov/firearms/certified-handguns/search.

There are legitimate reasons a person might want a handgun California considers "unsafe." One reason is that it is difficult to find a handgun well-suited for a left-handed shooter on the Roster. (See Tr. at 36 [Lance Boland testifying that he advises clients to find ergonomic firearms for left-handed shooters Off-Roster].) Numerous Off-Roster semiautomatic handgun models allow fully ambidextrous configuration of critical firearm controls—including the slide stop and release, magazine release, and any manual safety—allowing left-handed shooters to handle the handgun more easily, more quickly, and more safely. (*Id.* at 35–36 [Lance Boland testifying that left-handed shooters sometimes have to "add[] steps of manipulation to the gun that, if we had an ambidextrous firearm or a left-handed firearm, we wouldn't have to do," which takes time in a situation where "seconds or micro-seconds of time can be the difference between being able to use your firearm successfully, defensively, and potentially losing your life"].) According to Plaintiffs, only one semiautomatic handgun on the Roster is completely ambidextrous, and not only is it expensive, but its sub-compact size means it is harder to grip and has a sharp recoil impulse. (Mot. at 9; see Tr. at 233 [Special Agent Gonzalez testifying that he was not familiar with "any models currently on the roster that have the ability to configure the magazine release, the safety and slide release ambidextrously"].)

#### III. DISCUSSION

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A preliminary injunction is an extraordinary and drastic remedy that may only be awarded upon a clear showing that the moving party is entitled to relief. *See Mazurek v. Armstrong*, 520 U.S. 968, 972 (1997). To obtain a preliminary injunction, Plaintiffs must establish (1) that they are likely to succeed on the merits, (2) that they are likely to suffer irreparable harm in the absence of preliminary relief, (3) that the balance of equities tips in their favor, and (4) that the public interest favors an injunction. *Winter v. Nat'l Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008); *AK Futures LLC v. Boyd Street Distro, LLC*, 35

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F.4th 682, 688 (9th Cir. 2022). "When the government is a party, the last two factors merge." *California v. Azar*, 911 F.3d 558, 575 (9th Cir. 2018). The Ninth Circuit balances these factors using a "sliding scale" approach, in which "a stronger showing of one element may offset a weaker showing of another." *All. for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1131 (9th Cir. 2011). However, Plaintiffs must "make a showing on all four prongs." *Id.* at 1135.

#### A. Likelihood of Success on the Merits

Plaintiffs are likely to succeed on the merits of their claim that the UHA's CLI, MDM, and microstamping requirements violate the Second Amendment of the United States Constitution.

In the years after the Supreme Court decided *District of Columbia v. Heller*, 554 U.S. 570 (2008) and *McDonald v. City of Chicago*, 561 U.S. 742 (2010), the Courts of Appeals "coalesced around a 'two-step' framework for analyzing Second Amendment challenges that combine[d] history with means-end scrutiny." *New York State Rifle & Pistol Association, Inc., v. Bruen*, 142 S. Ct. 2111, 2125 (2022). Courts analyzed whether there was a "reasonable fit between the government's stated objective and the regulation" considering "the legislative history of the enactment as well as studies in the record or cited in pertinent case law." *Pena*, 898 F.3d at 979. The Supreme Court recently expressly rejected that approach. *Bruen*, 142 S. Ct. at 2126. Instead, the Supreme Court in *Bruen* held "that when the Second Amendment's plain text covers an individual's conduct, the Constitution presumptively protects that conduct." *Id.* "To justify its regulation, the government may not simply posit that the regulation promotes an important interest. Rather, the government must demonstrate that the regulation is consistent with this Nation's historical tradition of firearm regulation." *Id.* 

There are two steps in the *Bruen* framework. First, courts determine whether "the Second Amendment's plain text covers an individual's conduct." *Id.* Second, the government bears the burden to show that the regulation "is consistent with the Nation's historical tradition of firearm regulation." *Id.* 

Bruen's first step asks "whether the plain text of the Second Amendment protects [the plaintiffs'] proposed course of conduct." Bruen, 142 S. Ct. at 2134; Doe v. Bonta, 2023 WL 187574, at \*6 (S.D. Cal. Jan. 12, 2023) ("[T]he first step in assessing whether a regulation violates the Second Amendment is to determine whether the plain text of the Second Amendment covers the conduct regulated by the challenged law."). The Second Amendment reads: "A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed." U.S. Const. amend. II. "The first step under Bruen, therefore, is to determine whether the law at issue 'infringe[s]' on 'the right of the people to keep and bear Arms." United States v. Kelly, 2022 WL 17336578, at \*2 (M.D. Tenn. Nov. 16, 2022).

The challenged UHA provisions unquestionably infringe on the right to keep and bear arms. Plaintiffs seek to purchase state-of-the-art handguns for self-defense. (Mot. at 16 [explaining that Plaintiffs seek to have the "full scope of choices for the quintessential self-defense weapon that the marketplace has to offer"].) The UHA prevents this. To acquire the latest model of a semiautomatic handgun, Plaintiffs must buy one secondhand if they can find one, and at a high markup. (See Tr. at 37 [Lance Boland testifying he purchased his Off-Roster firearms used and at "significant price markups"]; id. at 51 [Reno May testifying that it is "very difficult" to find Off-Roster handguns in California and "when you do find one, it is usually two, potentially three times the asking price of a brand new firearm in another state"].)

Put differently, under the UHA, Californians must rely for self-defense on handguns brought to market more than a decade ago. Since 2007, when the CLI and MDM requirements were added to the UHA, only 32 new semiautomatic firearms have been added to the Roster of over 800 handguns. (Tr. at 179 [Special Agent Gonzalez].) Not a single new semiautomatic handgun has been added to the Roster since May 2013, when the microstamping requirement was implemented. (*See id.*) Requiring Californians to purchase only outdated handguns for self-defense without question infringes their right to keep and bear arms.

Nevertheless, the government contends that the plain text of the Second Amendment does not protect Plaintiffs' proposed course of conduct because Plaintiffs are still able to purchase *some* firearms and therefore keep and bear them. (Dkt. 30 [Opposition, hereinafter "Opp."] at 13–14 ["[T]he CLI, MDM, or microstamping requirements do not prevent plaintiffs from either keeping handguns in the home or carrying them in public for self-defense."]; *see* Dkt 56 [Defendant's First Closing Brief, hereinafter "Govt. Cl. Br."] at 3 [framing the Step One inquiry as "whether the regulation at issue prevents any 'people' from 'keep[ing]' or 'bear[ing]' 'Arms' for lawful purposes"].) But a law does not have to be a complete ban on possession to meet *Bruen*'s first step. *Kelly*, 2022 WL 17336578, at \*3 (rejecting the government's argument that step one was not met because "a bar on receiving a new firearm is not a total ban on weapons possession," and noting that the law found to be unconstitutional in *Bruen* was not a total ban on possession of firearms either).

Indeed, the Constitution protects much more than the bare right to keep and bear any outdated firearm for self-defense. *Cf. Heller*, 554 U.S. at 629 ("It is no answer to say, as petitioners do, that it is permissible to ban the possession of handguns so long as the possession of other firearms (*i.e.*, long guns) is allowed."). The Second Amendment also protects attendant rights that make the underlying right to keep and bear arms

meaningful. See, e.g., Jackson v. City & Cnty. of San Francisco, 746 F.3d 953, 967 (9th Cir. 2014) (explaining that the right to possess firearms for protection implies a corresponding right to obtain the bullets necessary to use them, because "without bullets, the right to bear arms would be meaningless"); Ezell v. City of Chicago, 651 F.3d 684, 704 (7th Cir. 2011) (striking down Chicago ordinance that barred firing ranges within city limits, and stating that "[t]he right to possess firearms for protection implies a corresponding right to acquire and maintain proficiency in their use; the core right wouldn't mean much without the training and practice that make it effective"); Rigby v. Jennings, 2022 WL 4448220, at \*8 (D. Del. Sept. 23, 2022) (reasoning that "the right to keep and bear arms implies a corresponding right to manufacture arms" because "the right to keep and bear arms would be meaningless if no individual or entity could manufacture a firearm"). Those attendant rights include the right to acquire state-of-the-art handguns for self-defense.<sup>6</sup>

Contrary to the government's assertion, the fact that Californians may purchase other firearms—including long guns or single-shot guns (which are not subject to the UHA), outdated On-Roster handguns, or Off-Roster handguns on the secondary market—does not mean that the Second Amendment does not cover their proposed conduct of purchasing state-of-the-art handguns on the primary market. *Cf. Frein v. Pennsylvania State Police*, 47 F.4th 247, 250 (3d Cir. 2022) (rejecting government's argument that seizure of parents of murder convict's guns did not violate the Second Amendment because they could retain or acquire other firearms, explaining, "[w]e would never say the police may seize and keep printing presses so long as newspapers may replace them,

<sup>&</sup>lt;sup>6</sup> Indeed, before *Bruen*, it was clear in the Ninth Circuit that acquiring arms was conduct covered by the Second Amendment because people cannot keep and bear arms without acquiring them. *See*, *e.g.*, *Teixeira v. Cnty. of Alameda*, 873 F.3d 670, 678 (9th Cir. 2017) (referring to the "right to acquire arms" that a "would-be operator of a gun store. . . ha[d] derivative standing to assert . . . on behalf of his potential customers").

or that they may seize and keep synagogues so long as worshippers may pray elsewhere").

The Constitution presumptively protects Plaintiffs' proposed conduct. The burden now shifts to the government. Since the UHA provisions implicate conduct protected by the Second Amendment, they are presumptively unconstitutional unless the government can meet its burden to "demonstrat[e] that [the relevant UHA provisions are] consistent with the Nation's historical tradition of firearm regulation." *Bruen*, 142 S. Ct. at 2130.

To carry its burden, the government must provide "historical precedent from before, during, and even after the founding [that] evinces a comparable tradition of regulation." *Id.* at 2131–32 (cleaned up); *see id.* at 2127–28 (reiterating *Heller*'s statement that "the public understanding of a legal text in the period after its enactment or ratification" was "a critical tool of constitutional interpretation"). The government need only "identify a well-established and representative historical analogue, not a historical twin." *Id.* at 2133. In other words, "analogical reasoning under the Second Amendment is neither a regulatory straightjacket nor a regulatory blank check." *Id.* "The core question is whether the challenged law and proffered analogue are 'relevantly similar." *United States v. Rahimi*, 2023 WL 2317796, at \*6 (5th Cir. Mar. 2, 2023) (citing *Bruen*, 142 S. Ct. at 2132).

The government proffers two historical analogues to the UHA's CLI and MDM requirements: "proving" laws and gunpowder storage laws. Neither is sufficiently analogous. To compare the government's proffered analogues to the challenged law, courts look to "how and why the regulations burden a law-abiding citizen's right to armed self-defense." *Bruen*, 142 S. Ct. at 2133. "Therefore, whether modern and historical regulations impose a comparable burden on the right of armed self-defense and

whether that burden is comparably justified are *central* considerations when engaging in an analogical inquiry." *Id.* (cleaned up).

The first type of law the government cites as analogous to the CLI and MDM requirements are "proving" laws. (Govt. Cl. Br. at 13; Dkt. 56-3 [Declaration of Saul Cornell, hereinafter "Cornell Decl."] ¶¶ 32–33.) These laws, which Massachusetts enacted for firearms in 1805 and Maine in 1821, required the appointment of inspectors "who would 'prove,' i.e. test and inspect, all musket barrels and pistol barrels" before the firearm could be sold. (Cornell Decl. ¶¶ 32–33.) New Hampshire, Maryland, and Pennsylvania also enacted similar "proving" laws as early as 1775. (*Id.* Ex. 31 at 2.) Proving involved "testing the firearm to ensure it would not fail and that it could carry a shot over a certain distance." (*Id.* ¶ 32, Ex. 31 at 4.) Inspectors stamped passing firearms with the inspector's initials and the year onto the barrel so that the stamp could not be erased or disfigured. (*Id.*) Only firearms that passed inspection and were stamped could be sold, and the sale of firearms without a stamp was subject to a fine. (*Id.*)<sup>7</sup>

The "modern-day regulation[s]" of CLI and MDM requirements are not "analogous enough" to "historical precursors" of proving laws "to pass constitutional muster." *Bruen*, 142 S. Ct. at 2133. CLIs and MDMs are "safety features designed to limit accidental discharges that occur when someone mistakenly believes no round is in the chamber." *Pena*, 898 F.3d at 974. Their goal is to ensure that the user of the gun has appropriate expectations, understanding whether the gun is loaded or not. They do this by requiring handgun models to have additional features beyond basic handgun features, specifically a CLI, which helps users see whether a bullet is in the chamber, and an MDM, which prevents users from firing the handgun if the magazine is not fully inserted.

<sup>&</sup>lt;sup>7</sup> The government also points to similar "proving" laws that required the inspection of gunpowder in Massachusetts, Rhode Island, New Jersey, New Hampshire, and Pennsylvania. (Govt. Cl. Br. at 13; Cornell Decl. ¶ 48.)

The goal behind proving laws, on the other hand, was to ensure that a firearm was

adequately manufactured. (See Cornell Decl. ¶ 31 [explaining that proving laws

combatted "[t]he danger posed by defective arms, or poorly manufactured ones"].) They

did this by making sure that the firearm's basic features were not defective. (See id.)

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The differences between how and why these laws burden a law-abiding citizen's right to armed self-defense is evident. See Bruen, 142 S. Ct. at 2133. Whereas CLI and MDM requirements add additional required features to and alter the operation of an otherwise well-manufactured handgun, proving laws focused only on confirming the basic operating features of a firearm. Whereas CLI and MDM requirements aim to prevent harm to others resulting from the user not knowing the firearm is loaded, proving laws targeted the firearm itself and aimed to protect the safety of the person using the firearm. (Tr. at 153 [Clayton Cramer].) Whereas CLI and MDM requirements are effectuated by checking only a few examples of a particular handgun model, proving laws were effectuated by examining each firearm manufactured. Whereas proving laws supported the use of firearms for self-defense by ensuring the weapon worked properly and safely, the MDM requirement can actually work against the use of a handgun for self-defense because it will not fire without the magazine. Put simply, requiring each model of handgun to contain additional features to potentially help a user safely operate the handgun is completely different from ensuring that each firearm's basic features were adequately manufactured for safe operation.

Moreover, the CLI and MDM requirements do not impose a comparable burden as proving laws on the right of armed self-defense. *See Bruen*, 142 S. Ct. at 2133. Whereas proving laws kept out of the hands of law-abiding citizens only firearms with manufacturing defects, CLI and MDM requirements keep out of their hands virtually all new, state-of-the-art handguns. Indeed, since 2007, an exceptionally small number of handguns with CLIs and MDMs have been added to the Roster of over 800 handguns.

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(Tr. at 179 [Special Agent Gonzalez].) Despite California's law, manufacturers are simply not making handguns with these features. (*See id.* at 17 [Stephen Helsley testifying that "they're just not needed from the manufacturer's standpoint"]; *id.* at 73 [Salam Fatohi testifying "because it's not something that is desired by the market, manufacturers will not spend the time and money and resources to implement those designs into their manufacturing process for their pistols"].) This is a much greater burden on the right of armed self-defense than the proving laws presented.

The next category of laws that the government contends are analogues to CLI and MDM requirements are gunpowder storage laws. (Govt. Cl. Br. at 14.) Gunpowder is corrosive and "attract[s] moisture like a sponge." (Cornell Decl. ¶ 27.) And it has a "dangerous potential to detonate if exposed to fire or heat." (*Id.* ¶ 43.) For those reasons, numerous historical laws regulated gunpowder storage and the government's ability to conduct searches to ensure compliance with gunpowder storage laws.

For example, a 1783 Massachusetts law prohibited the storage of a weapon loaded with gunpowder in a home, and a 1792 New York City law and 1821 Maine law allowed government officials to search for gunpowder in any building. (*Id.* ¶¶ 44, 52.) An 1825 New Hampshire law penalized the sale of gunpowder "in any highway, or in any street, lane, or alley, or on any wharf, or on parade or common." (*Id.* ¶ 45.) Numerous state laws from the 1800's delegated authority to local governments to regulate the sale of gunpowder for public safety. (*Id.* ¶ 46.) And other laws limited the amount of gunpowder people could store in their homes. (Tr. at 152 [Clayton Cramer].)

But the goals of gunpowder storage laws and the means used to achieve those goals are very different from those of the UHA's CLI and MDM requirements. The main goal of the gunpowder storage laws was to prevent fire. (*See* Cornell Decl. ¶ 43 ["Every aspect of the manufacture, sale, and storage of gun powder was regulated due to the

substance's dangerous potential to detonate if exposed to fire or heat."].) The primary way they achieved this goal was to regulate where and how gunpowder could be stored and sold, and to allow searches to ensure compliance with those storage laws. (*Id.* ¶¶ 44, 45, 52.) In contrast, the CLI and MDM requirements are meant to prevent inadvertent discharge or firing of the firearm. *See Pena*, 898 F.3d at 974. They achieve this goal by requiring particular safety features in handguns. How and why these regulations burden a law-abiding citizen's right to armed self-defense are too different to pass constitutional muster. *Cf. Nat'l Ass'n for Gun Rts., Inc. v. City of San Jose*, 2022 WL 3083715, at \*10 (N.D. Cal. Aug. 3, 2022) (explaining that historical gunpowder regulations "were often specific to gunpowder and not easily translatable to firearm regulations").

Next, the government argues that since microstamping is "an extension of identification methods long used in imprinting serial numbers on guns," "historical analogues sufficient to support the federal law prohibiting the possession of a firearm with an obliterated serial number are sufficient to support the microstamping requirement." (Govt. Cl. Br. at 15.) It points to "commercial firearm regulations relating to the conditions of the firearms trade, the government's storage of guns, and the locations where individuals could sell guns." (*Id.*) The Court is not persuaded.

In analyzing possible analogues, one of the aspects of the laws the Court must consider is whether the historical "restrictions imposed a substantial burden on [the Second Amendment right] analogous to the burden created by" the current law. *Bruen*, 142 S. Ct. at 2145. Historical laws regarding serial numbers, and the historical analogues justifying serial numbers, do not impose anywhere close to the substantial burden on people's Second Amendment right that the UHA's microstamping provision does. The microstamping provision requires handguns to have a particular feature that is simply not commercially available or even feasible to implement on a mass scale.

Michael Beddow, a forensic firearms examiner for the Phoenix Police Department, testified about a study he performed regarding the feasibility of microstamping while he was a graduate student at the University of California at Davis in 2005. (Tr. at 92–93, 95–96.) Beddow published the study as his master's thesis through the University of California, and it was also published as a paper written to the California Policy Research Center and in the Association of Firearm and Toolmark Examiners Journal. (*Id.* at 93, 97.) At all three levels, it was peer reviewed. (*Id.* at 97.)

Beddow's study concluded that microstamping technology "was not suitable for mass implementation." (*Id.*) It "could not be directly implemented into every make and model of new firearms or semi-automatic handguns without additional research to determine if it would work in those firearms." (*Id.* at 98.) In other words, "because of the vast differences that exist between the mechanical design of the firearms and the differences in metallurgy of the different brands of ammunition to include finishing processes such as primer, lacquer, things of that nature in combination together," it would be very difficult to develop any technology that could work on multiple models of handguns. (*Id.* at 98–99.) According to Beddow's communications with manufacturers, the technology would have to be adapted for every make and model of handgun and design of a firing pin. (*Id.* at 104–05; *see id.* at 127 [agreeing that microstamping "is not practically, as we sit here today, a technology that is capable of being taken by a manufacturer and implemented into their handguns right now, without further development for their specific handgun"].)

More telling and in contrast to the requirement of a serial number, which has been universally and easily implemented by manufactures across the globe, not a single manufacturer has implemented microstamping technology, and indeed it is not feasible to implement such technology broadly. Because of this, not a single new model of semiautomatic handgun has been added to the Roster since the microstamping

requirement was implemented in May 2013. Californians have not had access to new semiautomatic models of handguns since that date. (*See* Tr. at 180 [Special Agent Gonzalez].) The rest of the country, on the other hand, has access to handguns that over the years have become more ergonomic, durable, reliable, affordable, and possibly even safer. (*See* Dkt. 59 [Plaintiffs' Rebuttal Brief] at 10.) This is a substantial burden on Californians' Second Amendment right to keep and bear arms. *See Bruen*, 142 S. Ct. at 2145 (rejecting historical analogues because "[n]one of these restrictions imposed a substantial burden on public carry analogous to the burden created by New York's restrictive licensing regime").

Because Plaintiffs' proposed course of conduct is covered by the plain text of the Second Amendment, and the government has failed to proffer any historical regulation analogous to the UHA's CLI, MDM, or microstamping requirements, Plaintiffs have shown that they are likely to succeed on the merits of their claim that those requirements are unconstitutional.

### B. Irreparable Harm

To obtain a preliminary injunction, a plaintiff must show that irreparable harm is likely in the absence of preliminary relief. *Winter*, 555 U.S. at 20. "The right to keep and bear arms has long been recognized as a fundamental civil right." *Rahimi*, 2023 WL 2317796, at \*12 (Ho, J., concurring) (citing *Johnson v. Eisentrager*, 339 U.S. 763, 784 (1950); *Konigsberg v. State Bar of Cal.*, 366 U.S. 36, 49–50 n.10 (1961)). It "is well established that the deprivation of constitutional rights unquestionably constitutes irreparable injury." *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012) (cleaned up); *Warsoldier v. Woodford*, 418 F.3d 989, 1001–02 (9th Cir. 2005) (explaining that a party seeking preliminary injunctive relief for violation of a constitutional right can establish irreparable injury sufficient to merit the grant of relief by demonstrating the

existence of a colorable constitutional claim); see Elrod v. Burns, 427 U.S. 347, 373 (1976) ("[I]njuries to constitutional rights are considered irreparable for even minimal periods of time.") (cleaned up); Goldie's Bookstore, Inc. v. Superior Ct. of State of Cal., 739 F.2d 466, 472 (9th Cir. 1984) ("An alleged constitutional infringement will often alone constitute irreparable harm."); Wright and Miller, 11A Fed. Prac. & Proc. Civ. § 2948.1 (3d ed. 2019) ("When an alleged deprivation of a constitutional right is involved ... most courts hold that no further showing of irreparable injury is necessary."). Because Plaintiffs have shown it is likely that the UHA's CLI, MDM, and microstamping requirements violate their Second Amendment rights, they have demonstrated that irreparable harm is likely without a preliminary injunction enjoining the enforcement of those requirements.

### C. Balance of Equities and Public Interest

Before issuing a preliminary injunction, "courts must balance the competing claims of injury and must consider the effect on each party of the granting or withholding of the requested relief." *Disney Enterprises, Inc. v. VidAngel, Inc.*, 869 F.3d 848, 866 (9th Cir. 2017); *CTIA - The Wireless Association v. City of Berkeley*, 928 F.3d 832, 852 (9th Cir. 2019). Because the government is a party, the Court considers the balance of the equities and the public interest together. *Azar*, 911 F.3d at 581.

The balance of the equities and the public interest weigh in favor of granting an injunction. Without a preliminary injunction enjoining enforcement of the UHA's CLI, MDM, and microstamping provisions, Plaintiffs will continue to suffer harm because the government will continue infringing their Second Amendment rights. "It is always in the public interest to prevent the violation of a party's constitutional rights." *Cal. Chamber of Commerce v. Council for Education and Research on Toxics*, 29 F.4th 468, 482 (9th Cir. 2022) (cleaned up). Indeed, "public interest concerns are implicated when a

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constitutional right has been violated, because all citizens have a stake in upholding the Constitution." *Preminger v. Principi*, 422 F.3d 815, 826 (9th Cir. 2005); *see Klein v. City of San Clemente*, 584 F.3d 1196, 1208 (9th Cir. 2009) (explaining that it is in the public interest to halt the "ongoing enforcement of the potentially unconstitutional regulations" because those regulations would infringe not only on the constitutional rights of the plaintiffs but also of the rest of the public subject to the same regulation). Moreover, the government "cannot suffer harm from an injunction that merely ends an unlawful practice" such as denying Californians' Second Amendment rights. *Rodriguez v. Robbins*, 715 F.3d 1127, 1145 (9th Cir. 2013). The balance of the equities therefore tips in Plaintiffs' favor.

The government argues that the balance of the equities weighs in its favor because an injunction would "permit[] unsafe handguns to be sold in California prior to trial, creating public safety risks." (Opp. at 18.) But the government's safety concern rings hollow. Every single semiautomatic handgun available for sale in California at this time is a grandfathered handgun—one the government ostensibly considers "unsafe." 800 of 832 handguns on the Roster today lack CLI and MDM features. (See Tr. at 179 [Special Agent Gonzalez].) The government cannot credibly argue that handguns without CLI, MDM, and microstamping features pose unacceptable public safety risks when virtually all of the handguns available on the Roster and sold in California today lack those features.

Similarly, if Off-Roster firearms were truly unsafe, California would not allow law enforcement to use them in the line of duty, when the stakes are highest. But the substantial majority of California's law enforcement officers use Off-Roster handguns in the line of duty. (Dkt. 57-2 [Declaration of Brian R. Marvel, President of Peace Officers Research Association of California, hereinafter "Marvel Decl."] ¶ 5 ["Most agencies issue officers the latest models of either Glock or Sig Sauer handguns, which lack

magazine safety disconnects, chamber load indicators, and of course microstamping."]; see id. ¶ 7 ["For example, many officers are issued 4th or 5th-generation Glock pistols, which are off-roster and lack magazine safety disconnects, chamber load indicators, and of course microstamping."].) Indeed, the government's own witness, Special Agent Salvador Gonzalez, testified that he uses an Off-Roster duty handgun without a CLI, MDM, or microstamping capability. (Tr. at 243–44.) If CLIs and MDMs truly increased the overall safety of a firearm, law enforcement surely would use them. (Marvel Decl. ¶ 5.) But they do not. Instead, they choose to use "newer, improved and safer generations of handguns" that are Off-Roster. (Id.  $\P$  7.)

In support of its position, the government points to studies that indicate CLIs and MDMs could have prevented accidental shooting injuries and deaths. (See, e.g., Tr. at 200–05 [discussing Exhibits 12 and 13]; see also Govt. Cl. Br. at 19.) But the idea that if firearms used for unintentional violence in the past had CLIs and MDMs, such unintentional violence could have been prevented, is unhelpful to the government here. Indeed, only 32 out of 832 firearms currently authorized for purchase in California have those features. (See Tr. at 179 [Special Agent Gonzalez].) The likelihood that a person

will purchase a handgun with a CLI and MDM and that those features will prevent

accidental shootings, injuries, or deaths is entirely speculative.<sup>8</sup>

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injuries and unintentional injuries remained relatively stable." (Dkt. 57-1 [Declaration of Alexandra A. Frank], Ex. 1 [Spitzer, et al., Incidence, Distribution, and Lethality of Firearm Injuries in California from 2005 to 2015, JAMA Network Open 1 (2020)].) This tends to indicate that CLIs and MDMs have not made a meaningful impact on injuries from accidental discharges. Admittedly, the study states that "self-inflicted injuries decreased by 13.4% and unintentional injuries decreased by 12.7%." (Id.) But there is absolutely no indication that CLI or MDM requirements, instituted in 2007, caused these decreases, when handguns with CLIs and MDMs remain exceedingly rare.

<sup>&</sup>lt;sup>8</sup> Similarly, Plaintiffs present a study concluding that between 2005 and 2015, "[s]elf-inflicted [firearm]

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#### IV. CONCLUSION

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The Second Amendment enshrines a fundamental constitutional right for law-abiding citizens to keep and bear arms for self-defense. Increasingly in modern times, with "the ubiquity of guns and our country's high level of gun violence," ordinary law-abiding people feel a need to possess handguns to protect themselves against violence. *Bruen*, 142 S. Ct. at 2158 (Alito, J., concurring). This may be because they "live in high-crime neighborhoods," or because they "must traverse dark and dangerous streets in order to reach their homes after work or other evening activities," or because they "reasonably believe that unless they can brandish or, if necessary, use a handgun in the case of attack, they may be murdered, raped, or suffer some other serious injury." *Id*.

Californians have the constitutional right to acquire and use state-of-the-art handguns to protect themselves. They should not be forced to settle for decade-old models of handguns to ensure that they remain safe inside or outside the home. But unfortunately, the UHA's CLI, MDM, and microstamping requirements do exactly that. Because enforcing those requirements implicates the plain text of the Second Amendment, and the government fails to point to any well-established historical analogues that are consistent with them, those requirements are unconstitutional and their enforcement must be preliminarily enjoined. Accordingly, Plaintiffs' motion for a preliminary injunction is **GRANTED**.

DATED: March 20, 2023

CORMAC J. CARMEY

UNITED STATES DISTRICT JUDGE

# **EXHIBIT 2**

are unconstitutional. Cal. Penal Code §§ 31910(b)(4)–(6). The Court granted a

preliminary injunction enjoining enforcement of those provisions.

NOW, THEREFORE, IT IS HEREBY ORDERED that Defendant Attorney General Robert Bonta, and his officers, agents, servants, employees, and attorneys, and those persons in active concert or participation with him, and those duly sworn state peace officers and federal law enforcement officers who gain knowledge of this injunction order or know the existence of this injunction order, ARE HEREBY PRELIMINARILY RESTRAINED AND ENJOINED from implementing or

enforcing California Penal Code sections 31910(b)(4)–(6), or from otherwise preventing

disconnect mechanism, or microstamping capability but that meet the other requirements

the retail sale of handguns that do not have a chamber load indicator, a magazine

This preliminary injunction shall not take effect until fourteen days from the date hereof to allow the government to file an appeal and seek a further stay of this preliminary injunction.

DATED: March 20, 2023

of the Unsafe Handgun Act.

CORMAC J. CARNEY

UNITED STATES DISTRICT JUDGE

# EXHIBIT 3

Case 8;22-cv-01421-CJC-ADS Document 30-2 Filed 12/05/22 Page 1 of 8 Page ID #:499

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I, Salvador Gonzalez, declare under penalty of perjury that:

- I am over the age of 18 years and competent to make this declaration, which is based on my personal knowledge.
- I am a Special Agent Supervisor for the California Department of Justice 2. ("CA DOJ"), Bureau of Firearms ("BOF").
- My curriculum vitae is attached hereto as **Exhibit A**. It contains a true and correct description of my educational background, professional achievements, and qualifications.
- 4. In May 2005, I received a Bachelor of Science degree in Criminal Justice, and a Bachelor of Arts degree in Ethnic Studies, from the California State University, Sacramento.
- 5. I have worked as a Special Agent Supervisor with CA DOJ for approximately three years. I started working at CA DOJ approximately eight years ago and approximately seven of my eight years have been at BOF. I am assigned to the Division of Law Enforcement, BOF. BOF serves the people of California through education, regulation, and enforcement actions regarding the manufacture, sale, ownership, safety training, and transfer of firearms.
- My current job responsibilities at CA DOJ BOF involve the recovery, investigation, and identification of firearms. In addition, over the past eight years, I have handled semiautomatic handguns that are compliant with California law, including, specifically, handguns that contain a chamber load indicator and a a magazine disconnect mechanism. Over the course of my career, I have become proficient in the use and disassembly of various firearms, including the various structural components of firearms, and how they work together.
- 7. For approximately the past two and a half years, I have overseen CA DOJ's Roster of Certified Handguns (the "Roster") approved for manufacture or sale in California, which involves determining whether handguns submitted by manufacturers contain the safety features required under California law. Through

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this process, I have become familiar with the components of numerous handguns currently and previously on the Roster.

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Based on my experience with firearms, education, formal trainings, and work at CA DOJ, I am knowledgeable about the requirements of California's Unsafe Handgun Act, Penal Code §§ 31900-32110 ("UHA"), among other laws. I am also able to inspect and determine whether a semiautomatic handgun complies

I am aware that, for a new semiautomatic pistol model to be approved to

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with the UHA's requirements.

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CA DOJ's Roster of UHA-compliant handguns that may be sold or made in

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California, it must undergo laboratory testing and, among other things, include a

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chamber load indicator, a magazine disconnect mechanism, and microstamping capability. Penal Code § 32010, subd. (d).

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10. A chamber load indicator's intended function is to alert the handgun user

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as to whether the handgun is loaded with a cartridge in the firing chamber. A device qualifies as a chamber load indicator under the UHA if it is readily visible

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and contains explanatory text and/or graphics, and is designed and intended to

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indicate to a user from the pistol itself whether there is a cartridge in the firing

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chamber. See Penal Code § 16380.

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11. Chamber load indicators are an important firearm feature that increases

safety. By quickly and clearly informing a firearm user whether a handgun is

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loaded, chamber load indicators help prevent accidental discharges that can result in

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serious injury and death. Accidental discharges may occur in a variety of contexts,

for example, when a user cleans their firearm or when an unfamiliar user handles a firearm.

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12. A magazine disconnect mechanism prevents the handgun from

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discharging while a detachable magazine is removed from the handgun. A

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mechanism qualifies as a magazine disconnect under the UHA if it prevents a

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semiautomatic pistol that has a detachable magazine from operating to strike the

primer of ammunition in the firing chamber when a detachable magazine is not inserted. See Penal Code § 16900. Generally, a magazine disconnect mechanism is a component of the frame that looks like a small lever, which functions to impede the operation of the firearm.

- 13. The purpose of a magazine disconnect mechanism is to prevent accidental discharges, and the resulting risk of serious injury and death, that can occur when a handgun is still loaded despite the magazine having been removed by the user. Such accidental discharges can happen in a variety of contexts, such as when a user is cleaning their handgun or when a child accesses and handles a handgun. Magazine disconnect mechanisms are designed to increase the safety of both the firearm user and people in the user's vicinity.
- 14. The absence of a chamber load indicator or a magazine disconnect mechanism in a semiautomatic pistol increases the risk of accidental discharge and injury to Californians from use of these handguns.
- 15. I am also aware that for a new semiautomatic pistol model to be approved to CA DOJ's Roster of UHA-compliant handguns that may be sold or made in California, in addition to containing a chamber load indicator, a magazine disconnect mechanism and microstamping capability, the handgun must pass "firing" and "drop safety" tests. Penal Code § 31910, subd. (b)(2) & (3). This testing must take place at a DOJ-approved lab testing facility. The firing test ensures that handguns do not malfunction upon firing. The drop safety test ensures that safety features prevent the handgun from discharging when dropped.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration was executed on November 3, 2022, in Sacramento, California.

SALVADOR GONZALEZ

# **EXHIBIT A**

### Curriculum Vitae

Special Agent Supervisor Salvador Gonzalez
California Department of Justice
Bureau of Firearms

### **EDUCATION:**

05/2005, Bachelor of Science Degree, Criminal Justice, California State University Sacramento. 05/2005, Bachelor of Arts Degree, Ethnic Studies, California State University Sacramento.

### **EMPLOYMENT:**

08/2006 to 09/2014, Investigator, California (CA) Department of Motor Vehicles (DMV). I conducted criminal and administrative investigations including consumer, & licensee fraud. I provided expertise in auto theft, counterfeit documents, identity theft & performed undercover investigations. I provided technical expertise to allied agencies.

09/2014 to 07/2018, Special Agent, California Department of Justice (DOJ), Bureau of Firearms (BOF). I conducted investigations on Armed & Prohibited Persons that resulted in the seizure of weapons & the prevention of illegal firearms trafficking. I conducted firearms dealer investigations in regards to firearm law compliance or illegal firearm transactions. I provided firearm training & expertise to allied agencies. I enforced regulations regarding the manufacture, sale, ownership & transfer of firearms and various violations occurring at California gun shows.

07/2018 to 8/2019, Special Agent, California Department of Justice (DOJ), Bureau of Gambling Control (BGC). I conducted investigations regarding gambling crimes in the state of California. I conducted investigations in California cardrooms and casinos involving money laundering, drugs, illegal bookmaking, and other illegal gambling activities.

8/2019 to present, Special Agent Supervisor, California Department of Justice (DOJ), Bureau of Firearms (BOF). In my career I have attended at least 10 gun shows and have become familiar with current laws pertaining to the sales of firearms in the State of California. The California Department of Justice, Bureau of Firearms, maintains the State Assault Weapon Registry. If a person with registered assault weapons or other firearms becomes prohibited from possessing firearms I have been assigned to recover the firearms. Special Agents within the CA DOJ BOF are frequently assigned to give assault weapons training to other law enforcement agencies and to help assist in identifying such firearms.

### **TRAINING:**

On 08/7/2006, I completed an excess of 640 hours of Peace Officer Standards and Training (POST) at a recognized Basic Specialized Investigator Academy at the Golden West College in Huntington Beach, CA.

On 09/25/2014, I attended an assault weapons familiarization training class for law enforcement and I received four (4) hours of formal training on firearms / assault weapons. I have also received formal and informal training from other experienced BOF agents regarding firearms violations.

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On 02/25/2016, I attended a firearms investigation and identification training class for law enforcement and I received ten (10) hours of formal training on firearms / assault weapons.

On 08/31/2016, I attended the California Department of Justice Advanced Training Center Submachine Gun Operator Course and I received twenty-four (24) hours of formal training on the proper use and deployment of a submachine gun.

On 11/29/2018, I attended the Glock Armorer's Course and I received eight (8) hours of formal training on how to safely use and maintain your weapon.

On 09/20/2019, I completed a 40 hour California Peace Officer Standards and Training (POST) approved Firearms Instructor/Range Master School. This class was offered by the American River College/Los Rios Community College District.

On 10/22/2019, I attended the Alcohol Tobacco and Firearms Crime Gun Seminar and I received four (4) hours of training on the successful use of the National Integrated Ballistic Information Network (NIBN).

On 12/18/2019, I attended the National Center for Biomedical Research and Training Academy of Counter-terrorist Education Course for Law Enforcement Active Shooter Emergency Response Performance Level and I received twenty-four (24) hours of training on the successful use of active shooter emergency response.

On 12/19/2019, I attended the National Center for Biomedical Research and Training Academy of Counter-terrorist Education Course for Law Enforcement Active Shooter Emergency Response Performance Level Train—the-Trainer and I received eight (8) hours of training in order to train officers on active shooter emergency response.

On 08/19/2020, I attended the California Department of Justice Advanced Training Center Less Lethal Munitions User's Course and I received four (4) hours of formal training on the proper use and deployment of a less lethal munition.

On 08/19/2020, I attended the California Department of Justice Advanced Training Center Distraction Device User's Course and I received four (4) hours of formal training on the proper use and deployment of a distraction device.

On 6/16/2021, I attended the Alcohol Tobacco and Firearms Privately Made Firearms Training and I received eight (8) hours of training on the identification of a privately made firearm (PMF).

On 11/2/2021, I attended the Law Enforcement & Military Colt M16 / AR-15 Rifle Armorer's Course and I received twenty-four (24) hours of formal training on how to safely use and maintain your weapon. This class was offered by Colt.

During the course of my career I have become semi-proficient in the use and disassembly of various revolvers, semi-automatic pistols, submachine guns, shotguns, and various rifles. I have made or assisted in the arrest of at least 100 persons for violations involving illegal weapons possession. In the course of my employment I have participated in an excess of 30 search warrants which involved the illegal possession of firearms.

# **EXHIBIT 4**

### Curriculum Vitae

Special Agent Supervisor Salvador Gonzalez
California Department of Justice
Bureau of Firearms

### **EDUCATION:**

05/2005, Bachelor of Science Degree, Criminal Justice, California State University Sacramento. 05/2005, Bachelor of Arts Degree, Ethnic Studies, California State University Sacramento.

### **EMPLOYMENT:**

08/2006 to 09/2014, Investigator, California (CA) Department of Motor Vehicles (DMV). I conducted criminal and administrative investigations including consumer, & licensee fraud. I provided expertise in auto theft, counterfeit documents, identity theft & performed undercover investigations. I provided technical expertise to allied agencies.

09/2014 to 07/2018, Special Agent, California Department of Justice (DOJ), Bureau of Firearms (BOF). I conducted investigations on Armed & Prohibited Persons that resulted in the seizure of weapons & the prevention of illegal firearms trafficking. I conducted firearms dealer investigations in regards to firearm law compliance or illegal firearm transactions. I provided firearm training & expertise to allied agencies. I enforced regulations regarding the manufacture, sale, ownership & transfer of firearms and various violations occurring at California gun shows.

07/2018 to 8/2019, Special Agent, California Department of Justice (DOJ), Bureau of Gambling Control (BGC). I conducted investigations regarding gambling crimes in the state of California. I conducted investigations in California cardrooms and casinos involving money laundering, drugs, illegal bookmaking, and other illegal gambling activities.

8/2019 to present, Special Agent Supervisor, California Department of Justice (DOJ), Bureau of Firearms (BOF). In my career I have attended at least 15 gun shows and have become familiar with current laws pertaining to the sales of firearms in the State of California. The California Department of Justice, Bureau of Firearms, maintains the State Assault Weapon Registry. If a person with registered assault weapons or other firearms becomes prohibited from possessing firearms I have been assigned to recover the firearms. Special Agents within the CA DOJ BOF are frequently assigned to give assault weapons training to other law enforcement agencies and to help assist in identifying such firearms.

### **TRAINING:**

On 08/7/2006, I completed an excess of 640 hours of Peace Officer Standards and Training (POST) at a recognized Basic Specialized Investigator Academy at the Golden West College in Huntington Beach, CA.

On 09/25/2014, I attended an assault weapons familiarization training class for law enforcement and I received four (4) hours of formal training on firearms / assault weapons. I have also received formal and informal training from other experienced BOF agents regarding firearms violations.

On 02/25/2016, I attended a firearms investigation and identification training class for law enforcement and I received ten (10) hours of formal training on firearms / assault weapons.

On 08/31/2016, I attended the California Department of Justice Advanced Training Center Submachine Gun Operator Course and I received twenty-four (24) hours of formal training on the proper use and deployment of a submachine gun.

On 11/29/2018, I attended the Glock Armorer's Course and I received eight (8) hours of formal training on how to safely use and maintain your weapon.

On 09/20/2019, I completed a 40 hour California Peace Officer Standards and Training (POST) approved Firearms Instructor/Range Master School. This class was offered by the American River College/Los Rios Community College District.

On 10/22/2019, I attended the Alcohol Tobacco and Firearms Crime Gun Seminar and I received four (4) hours of training on the successful use of the National Integrated Ballistic Information Network (NIBN).

On 12/18/2019, I attended the National Center for Biomedical Research and Training Academy of Counter-terrorist Education Course for Law Enforcement Active Shooter Emergency Response Performance Level and I received twenty-four (24) hours of training on the successful use of active shooter emergency response.

On 12/19/2019, I attended the National Center for Biomedical Research and Training Academy of Counter-terrorist Education Course for Law Enforcement Active Shooter Emergency Response Performance Level Train—the-Trainer and I received eight (8) hours of training in order to train officers on active shooter emergency response.

On 08/19/2020, I attended the California Department of Justice Advanced Training Center Less Lethal Munitions User's Course and I received four (4) hours of formal training on the proper use and deployment of a less lethal munition.

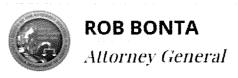
On 08/19/2020, I attended the California Department of Justice Advanced Training Center Distraction Device User's Course and I received four (4) hours of formal training on the proper use and deployment of a distraction device.

On 6/16/2021, I attended the Alcohol Tobacco and Firearms Privately Made Firearms Training and I received eight (8) hours of training on the identification of a privately made firearm (PMF).

On 11/2/2021, I attended the Law Enforcement & Military Colt M16 / AR-15 Rifle Armorer's Course and I received twenty-four (24) hours of formal training on how to safely use and maintain your weapon. This class was offered by Colt.

On 7/13/2022, I attended the Benelli M1, 2 & 4 Series Armorer's Course and I received eight (8) hours of formal training on how to safely use and maintain your weapon. This class was offered by the Team One Network.

During the course of my career I have become semi-proficient in the use and disassembly of various revolvers, semi-automatic pistols, submachine guns, shotguns, and various rifles. I have made or assisted in the arrest of at least 100 persons for violations involving illegal weapons possession. In the course of my employment I have participated in an excess of 35 search warrants which involved the illegal possession of firearms. I have conducted over 10 presentations and training courses based on privately made firearms, silencers, assault weapons and firearm familiarization, which help grasp the California Penal Code as it pertains to firearms. These presentations and trainings have been presented to several California Department of Justice Special Agents, Federal and State Allied Agencies, District Attorneys, Property Technicians and California Department of Justice Deputy Attorney Generals.



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ABOUT

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RESOURCES

**PROGRAMS** 

APPOINTMENTS

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# **Handguns Certified for Sale**

As of January 1, 2001, no handgun may be manufactured within California, imported into California for sale, lent, given, kept for sale, or offered/exposed for sale unless that handgun model has passed firing, safety, and drop tests and is certified for sale in California by the Department of Justice. Private party transfers, curio/relic handguns, certain single-action revolvers, and pawn/consignment returns are exempt from this requirement.

Additional information on the Roster of Certified Handguns can be found at California Code of Regulations, title 11, section 4070.

### IMPORTANT INFORMATION:

All handguns listed are approved with or without night sights.

Stainless Steel

- Aftermarket changes or modifications made to certain single shot pistols (i.e. changing upper receivers, connecting gas tubes) may be considered manufacturing these pistols into assault weapons. See California Penal Code section 30515, subdivision (a)(1), for a list of assault weapon characteristics. The purchaser could be in violation of Penal Code section 30600, prohibiting the manufacture of assault weapons, and Penal Code section 30605(a), prohibiting the possession of unregistered assault weapons.
- Alterations of a single shot pistol (i.e. changing upper receivers, connecting gas tubes) may
  also be considered manufacturing an unsafe handgun. See California Penal Code sections
  31900-31910 for the definition of unsafe handguns and 32000(a) for more information on
  illegal acts involving unsafe handguns.

#### 829 handguns found

#### Manufacturer: Search: - Any for Manufacturer, Model, Gun Type, Barrel Length, etc. Gun Barrel **Expired** Manufacturer Model Length Caliber Type Date Accu-Tek AT-380 II / 17-4 Pistol 2.8" .380 ACP 01/01/24

### **Bureau of Firearms**

Firearms Home

Ammunition Purchase
Authorization Program

Automated Firearms System Personal Information Update

California Firearms Laws Summary, pdf (revised 2021)

FAQ<sub>5</sub>

Forms and Publications

Becoming a Firearm Dealer and/or Ammunition Vendor in California

Firearms Shipment Verification/California Licensee Check (CFLC) System

Firearm Safety Certificate Program, DOJ Certified Instructor Information and Comparable Entities

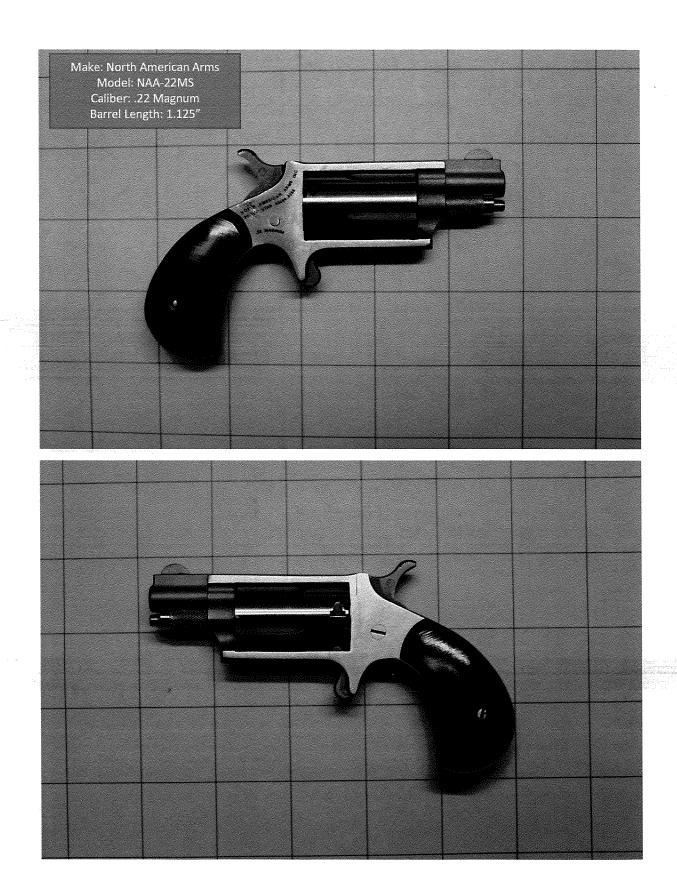
Certificate of Eligibility
Information and Application
Process

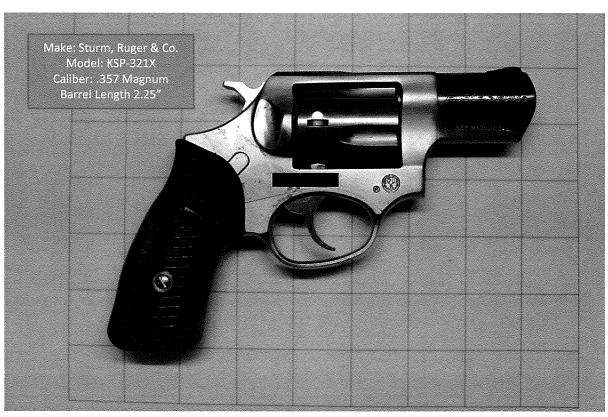
"Other" Assault Weapon Information

Bullet Button Assault Weapon Information

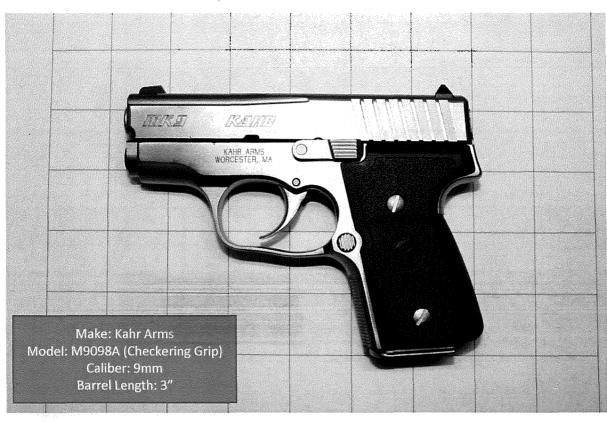
Firearms Reporting & Law

Source: California Department of Justice, https://oag.ca.gov/firearms/certified-handguns/search (last visited Jan. 18, 2023).











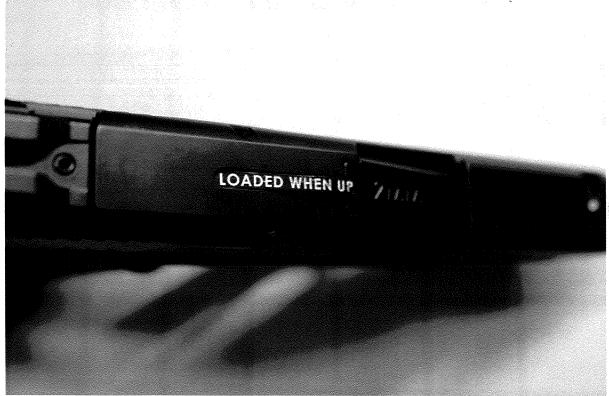


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**DEFENDANT'S EXHIBIT 6** 







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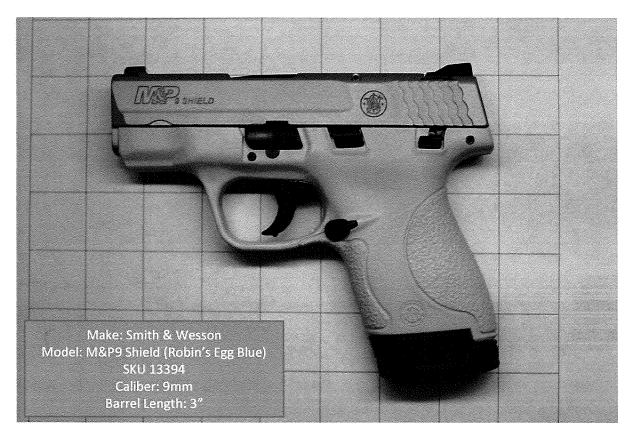












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# CALIFORNIA DEPARTMENT OF JUSTICE BUREAU OF FIREARMS

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# Compliance Test Report (Handguns)

The DOJ-Certified Laboratory identified below has completed testing required by California Penal Code sections 31900 through 32100 and is submitting this Compliance Test Report as required by the California Code of Regulations, title 11, section 4052. The laboratory reference number should refer specifically to the testing of the named handgun model, not to the laboratory in general. The number must be noted in the space provided on each page of this report.

DOJ-CERTIFIED	LABORATORY INFO	DRMATION			
Laboratory Reference			Date Submitt	ed a sacina	
DOJ-Certified Labora	tory				
Address		City		State	Zip Code
		\$			
Test Date	Test Time	Contact Name		Telepho	ne Number
Off-site location used	: Yes No				
If Yes, Address		City	County	State	Zip Code
Name of Laboratory	staff who conducted and/o	or performed the required	testing Title		
Name of Laboratory staff who conducted and/or performed the required testing			testing Title		
Name of Laboratory staff who conducted and/or performed the required testing		testing Title			
Name of Laboratory staff who conducted and/or performed the required testing		testing Title			

(

# Compliance Test Report (Handguns)

Laboratory Reference Numbe	r				
HANDGUN INFORMATI	ON				
Handgun Type (Check one)	Revolver	☐ Pistol (Rimfire)	☐ Pistol (Centerfi	re)	
Make		Model			
Caliber	Barrel Length		parrel? If yes, fail per Pena division (a)(4)(A).	I	
Material(s) (i.e., stainless stee	I, alloy, etc.)				
Serial Numbers:					
NOTE: Place an asterisk California Department of		_	that is being submitte	d to the	
Handgun submitted by					
Address	City		State	Zip Code	
Country		Contact Person		Telephone Number	
	<b>.</b>		I		
HANDGUN REQUIREME Safety Device:	ENTS				
Revolver: Has a safety devi operation in the case of a sin does not rest upon the prime	ngle-action firing mechanisr	n, causes the hammer to re	tract to the point where th		
☐ Yes ☐	No				
Pistol: Has a positive manu by the Bureau of Alcohol, To					
☐ Yes ☐	No				

# Compliance Test Report (Handguns)

Laboratory Re	referice Number			
	REQUIREMENTS - Con't.			
Firing Test:				
	ree handguns met both the following require 20 rounds without a malfunction that was no			
☐ Yes	□ No			
	00 rounds with no more than six malfunction ack or breakage of the operating part of the			
☐ Yes	□ No			
Chamber Id	oad indicator and magazine discor	nnect:		
	ts the chamber load indicator (CLI) and/or n 31910 and California Code of Regulations, t		irement (if applicabl	e) pursuant to Penal
☐ Cent	erfire (has both CLI/magazine disconnect)	Rimfire (has maga	zine disconnect)	
☐ N/A	(check this box if handgun is a revolver)			
Microstam	ping:			
	matic pistol meets the microstamping require, title 11, section 4060. MUST ATTACH Ph		al Code section 319	10 and California Code
☐ Yes		a revolver)		
TEST RESU	No. 10 Control of the			
Each of the the	ree handguns did not fire a primer during ar	ny of the following drop te	sts:	
Drop #1	Normal firing position; barrel horizontal		☐ Yes	☐ No
Drop #2	Upside down; barrel horizontal		☐ Yes	☐ No
Drop #3	On grip; barrel vertical		☐ Yes	☐ No
Drop #4	On muzzle; barrel vertical		☐ Yes	☐ No
Drop #5	On either side; barrel horizontal		☐ Yes	☐ No
Drop #6	If there is an exposed hammer or striker, device, otherwise on the rearmost point of			No No

# Compliance Test Report (Handguns)

Laboratory Reference Number	
AMMUNITION/PRIMED CASE INFORMATION	
Ammunition Used:	
Manufacturer	
Cartridge	Caliber
Bullet Weight & Type (i.e., FMJ, JHP, etc.)	Lot No.
Primed Cases Used:	
Manufacturer	
Primer	
NOTE: One handgun and two casings must be with this signed report.	sent to the California Department of Justice along
I hereby certify that:	
Standard ammunition, as defined in the California C provided and used during the firing tests that were applicable, the standard ammunition was the more manufacturer/importer.	conducted for the above stated handgun model. If
I declare under penalty of perjury under the law and correct.	s of the State of California the foregoing is true
Signature	Date
Name/Title (Printed)	

United States General Accounting Office

**GAO** 

Report to the Chairman, Subcommittee on Antitrust, Monopolies, and Business Rights, Committee on the Judiciary, U.S. Senate

March 1991

# ACCIDENTAL SHOOTINGS

Many Deaths and Injuries Caused by Firearms Could Be Prevented





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GAO/PEMD-91-94



United States General Accounting Office Washington, D.C. 20548

Program Evaluation and Methodology Division

B-240648.2

March 19, 1991

The Honorable Howard Metzenbaum Chairman, Subcommittee on Antitrust, Monopolies, and Business Rights Committee on the Judiciary United States Senate

Dear Mr. Chairman:

At your request, we examined the extent to which certain safety devices could prevent firearms-related deaths. Specifically, we examined the proportion of accidental deaths that might have been averted by two technological modifications to firearms: a child-proof safety device that automatically engages and a device that indicates whether a gun is loaded. We also looked at injuries caused by accidental firearm discharges, for which we developed new information.

This report presents the findings of our research, which shows that the two safety devices could potentially save many lives and would undoubtedly also prevent many injuries. We also present information on the likely number of individuals injured in accidental shootings and discuss a range of alternatives for dealing with this public health problem.

As we arranged with your office, unless you publicly announce the contents of this report earlier, we plan no further distribution until 30 days from its date. At that time, copies of the report will be sent to the Chairman of the Consumer Product Safety Commission, and we will make copies available to others upon request.

If you have any questions or would like additional information, please call me at (202) 275-1854 or Robert York, Acting Director of Program Evaluation in Human Services Areas, at (202) 275-5885. Other major contributors to this report are listed in appendix IV.

Sincerely yours,

Eleanor Chelimsky

Assistant Comptroller General

## **Executive Summary**

### **Purpose**

In 1988, some 1,501 people were killed in the United States by accidental discharges of firearms, and many more were injured. Among those killed were 277 children under age 15.

Concerned about these accidental shootings, the Chairman of the Sub-committee on Antitrust, Monopolies, and Business Rights of the Senate Committee on the Judiciary asked GAO to examine the extent to which certain safety devices could prevent such deaths or injuries. Specifically, GAO was asked to examine the proportion of accidental firearms fatalities that might have been prevented by two types of technological modifications to firearms: a child-proof safety device that automatically engages and a device that indicates whether a gun is loaded. GAO also examined nonfatal injuries, in an effort to establish the totality and costs of deaths and injuries from accidental firearm discharges as well as the relative size of fatal accidents vis-a-vis that totality.

### Background

The debate over firearms policy receives nationwide attention on a continuing basis, but only rarely has that debate focused on firearms as consumer products. Nonetheless, one recommendation that has been made is that guns be treated like other consumer products. Some have proposed making guns safer so as to reduce the number of accidental firearm discharges resulting in injuries and deaths. This proposal is in line with efforts aimed at improving the safety of a variety of consumer products implicated in accidental injuries and deaths. However, the Consumer Product Safety Commission, the primary federal agency with responsibility for product safety, is not allowed to take action that will restrict the manufacture or sale of firearms. No other agency is explicitly charged with monitoring firearms safety.

Firearms are the fourth leading cause of accidental deaths among children 5 to 14 years old and the third leading cause of accidental deaths among 15- to 24-year-olds. Across all age groups, accidental shootings are the sixth leading cause of potential years of life lost because of accidents.

### Results in Brief

From a nationally projectable sample, GAO estimates that 31 percent of accidental deaths caused by firearms might be prevented by the addition of two safety devices. Of the 107 accidental firearms-related fatalities GAO examined for calendar years 1988 and 1989, 8 percent could have been prevented had the firearms been equipped with a child-proof safety device. (This 8 percent represents instances in which children

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under the age of 6 accidentally shot and killed themselves or other persons.) In an additional 23 percent of the cases, people accidentally shot and killed themselves or others with firearms they thought were unloaded. These deaths could have been prevented by a loading indicator.

Although it has long been assumed that far more injuries than deaths occur from accidental discharges of firearms, no information has been available on the actual number of injuries. GAO examined data on accidental shootings in 10 cities and found that in 1988 and 1989, these areas had a ratio of 105 injuries for each death (that is, more than 100 to 1). Although this estimate, based on a judgmental sample, cannot be generalized to the country as a whole, it is nevertheless reasonable to infer from it that the number of accidental injuries from firearms nationwide is substantial and far exceeds the number of fatalities.

### GAO's Analysis

# Prevention of Accidental Deaths and Injuries

About 1 of every 3 deaths from accidental firearm discharges could be prevented by a firearms safety device. From data in autopsy and police reports, GAO determined the numbers of accidental firearm deaths in 1988 and 1989 that (1) could have been prevented and (2) could not have been prevented by either of the two safety devices studied. GAO examined 107 total deaths from accidental firearm discharges. In that sample of fatalities, 34 could have been prevented by safety devices; 52 could not have been. Not enough data were available to determine whether the other 21 were preventable.

A child-proof safety device (that is, one that prevents the trigger from accidentally being engaged) could have prevented all the accidents in which children under the age of 6 killed themselves or others (8 percent of the total). However, according to experts in pediatric injuries, including experts with research experience in firearms, a child-proof safety device on a firearm (whether based on the child's strength, cognitive skills, or both) could reliably be expected to deter only children under the age of 6.

A safety device that indicates whether a firearm is loaded could have prevented another 23 percent of the deaths. Many accidental deaths

Page 3

caused by firearms, other than those affecting children, involve uncertainty about whether the weapon is loaded. For example, one might empty a firearm but not notice that a round remains in the chamber, one might typically leave a weapon unloaded and so assume that it is always unloaded, or one might pull the trigger several times without discharge (dry-firing) and so assume the chamber to be empty even though it is not.

ALL ST

Other accidental deaths GAO examined were not considered preventable by these devices. For example, death can be caused by a gun that discharges when it is accidentally dropped or falls from its storage location or by a hunter mistakenly believing he or she is shooting at game.

From our sample, we can project that about 458 (plus or minus 89) of the 1,501 deaths in 1988 could have been prevented by either a child-proof device or a loading indicator device. In addition to the lives that could be saved, there are medical expenses and other economic costs to society that would not occur were these deaths to be prevented. Averting 458 deaths would avoid costs estimated to exceed \$170 million.

### Deaths and Injuries

According to statistics maintained by the National Center for Health Statistics, the number of deaths annually caused by accidental firearm discharges has generally been decreasing, ranging from 1,955 deaths in 1980 to 1,501 deaths in 1988. This is a decline of 23 percent over 8 years. However, no national data have been maintained on the number of injuries caused by accidental firearm discharges. In fact, few police departments maintain records on injuries caused by firearms. GAO identified 10 cities whose police departments maintain such data. These cities had populations ranging from about 93,000 to over 1 million.

The police data GAO examined showed that there were 527 injuries and 5 deaths from accidental shootings in 1988 and 1989. Thus, across these 10 cities, the ratio of nonfatalities to fatalities was about 105 to 1.

An estimate of the overall costs associated with unintentional firearm injuries and deaths can be derived by combining the incidence data with information on the cost of injuries. If there were 1,500 deaths and some 12,000 hospitalizations (less than one tenth the number of injuries estimated from our sample) from accidental shootings every year, that would translate into an estimated lifetime cost, each year, of close to \$1 billion.

### Recommendation

The number of individuals being injured and killed each year in accidental shootings is substantial. GAO has determined that two technologies—child-proof safeties and loading indicators—show promise for reducing the number of deaths and injuries. However, obstacles remain to realizing this promise and, in addition, other approaches (for example, training gun owners or limiting access to firearms) may be equally or more effective.

The human, economic, and public health costs of these shootings to the victims, their families, and society are considerable. The magnitude of the problem requires that all possible efforts be made to reduce the number of accidental shootings.

The Consumer Product Safety Commission, the primary federal agency with responsibility for product safety, is currently not allowed to take any action that might restrict the availability of firearms to the consumer. GAO recommends that the Consumer Product Safety Act be amended to clearly establish that the Consumer Product Safety Commission can regulate the risk of injury associated with firearms.

### **Agency Comments**

GAO did not request comments on a draft of this report.

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### Abbreviation

GAO General Accounting Office

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### Introduction

A 4-year-old boy shoots his 2-year-old brother with the .22-caliber pistol he finds under the seat of his father's pickup truck. A 10-year-old finds a .38-caliber revolver in a dresser drawer. He does not think it is loaded and accidentally kills his 8-year-old sister while playing with the gun.

These and similar incidents highlight an issue of concern: accidental injuries and deaths from firearms. Currently in the United States, about 1,500 people die each year from accidental shootings, and an unknown number of people are injured. Firearms are the fourth leading cause of accidental deaths among children 5 to 14 years old and the third leading cause of accidental deaths among 15- to 24-year-olds. Across all age groups, accidental shootings are the sixth leading cause of potential years of life lost from accidents. Some 277 children under age 15 were killed in accidental shootings in 1988.

The Chairman of the Subcommittee on Antitrust, Monopolies, and Business Rights of the Senate Committee on the Judiciary requested that we undertake a study to try to estimate the number of deaths and injuries that might be prevented by two possible technological modifications to firearms: child-proof safeties that would automatically engage and loading indicators that would show when a live round was in the chamber, ready to be fired.

In response to this request, we conducted a study to examine the magnitude of the problem of unintentional firearms injuries and to estimate the effect of the two proposed technological modifications in preventing such accidents.

### Background

The debate over firearms policy receives nationwide attention on a continuing basis. Most of this debate has focused on issues of gun ownership, such as waiting periods for purchase, background checks, gun licensing, and banning certain types of weapons. These issues generally focus on problems with the illegal use of firearms versus rights of gun ownership for protection and recreation.

Absent from most of the gun control debate is a discussion of firearms as consumer products. One recommendation that some researchers in public health have made is that guns be treated like other consumer products. That is, they propose that steps be taken to make guns safer

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<sup>&</sup>lt;sup>1</sup>The standard method of calculating potential years of life lost is to subtract the age at death of the accident victim from age 65.

to at least reduce the number of injuries and deaths resulting from the accidental discharge of firearms. This proposal is in line with efforts aimed at improving the safety of a variety of consumer products implicated in accidental injuries and deaths, including automobiles, toys, and poisonous substances. The federal government has increasingly played a role in mandating changes to products to improve their safety. However, the Consumer Product Safety Commission, the primary federal agency with responsibility for product safety, is not allowed to take action that will restrict the availability of firearms to the consumer. No other agency has been charged with monitoring the public health risks firearms may entail.

This report looks at the probable effects of two specific suggestions from the public health literature for improving the safety of firearms: child-proof safeties and loading indicators.

#### **Accidental Shootings**

As mentioned above, shootings are among the leading causes of accidental deaths, particularly among young people. It should be noted that accidental shooting deaths represent only a small proportion of the total number of people injured and killed by firearms each year. The majority of deaths from firearms (56 percent) are suicides, with homicides accounting for most of the remainder (39 percent). Only 5 percent of firearms-related deaths each year are caused by accidental shootings.

Nonetheless, the number accidentally injured or killed by firearms may represent a substantial number of cases. While data on the number of fatalities are available, there is little information on the number of injuries caused by accidental shootings. And, despite attention to the issue of firearm accidents by public health researchers, there is little in the way of empirical evidence on the circumstances of accidents involving firearms, so not much is known about the details of those shootings.

National data are available on the number of deaths caused by unintentional shootings. The National Center for Health Statistics annually collects national data for all causes of death. Numbers for the years 1980-88 are shown in table 1.1. No comparable information is available for nonfatal injuries.

Table 1.1: Unintentional Firearm Deaths and Injuries 1980-88									
	1980	1981	1982	1983	1984	1985	1986	1987	1988
Deaths	1,955	1,871	1,756	1,695	1,668	1,649	1,452	1,440	1,501
Nonfatal injuries	NA								

As can be seen, there was a generally downward trend in the number of deaths each year until 1987, with an increase in 1988, the most recent year for which information is available. We do not know why the number of deaths has declined, but there are several possible explanations. Education in gun safety and public awareness campaigns may be having some effect. There may be fewer deaths because gun owners are taking more precautions in storing and handling their weapons. There may also be a greater general awareness of the dangers associated with firearms, so individuals refrain from handling unfamiliar weapons. The many products entering the market for securing firearms may also be having an effect. Many devices are available for storing guns or protecting them from unauthorized users. Another possible explanation is that more shooting victims may be surviving their injuries because of better trauma care and better access to care. Any or all of these influences may be working to bring down the number of fatalities.

# Objectives, Scope, and Methodology

The central objective of this project was to provide an estimate of the proportion of firearms accidents that might be prevented by the addition of a child-proof safety or a loading indicator. This issue divides into two questions:

- What proportion of firearm accidents might have been prevented with a child-proof safety?
- What proportion of accidents might have been prevented with a loading indicator?

A second objective of our research was to add to the base of knowledge on firearm accidents, particularly by contributing information on the number of injuries. No national estimates are available on accidental injuries from firearms. As a result, there is no clear understanding of (1) the universe of accidents, both fatal and nonfatal, annually caused by firearms; (2) the relative importance of fatal accidents in terms of that universe (that is, it is not known if the deaths in any given year represent 5 percent of the accidental shootings or 50 percent); and (3) the costs represented by this unknown universe of deaths and injuries.

The scope of our work was limited to <u>unintentional</u> injuries and deaths from firearms. This eliminates the vast majority of gunshot injuries, specifically those related to any types of criminal activity or suicide attempt. Similarly, we limited the scope of "preventable" shootings to those that could have been averted by means of a child-proof safety or a loading indicator. We collected data for 1988 and 1989, the most recent years for which complete data were available at the time of our research.

For our examination of preventability, we looked at cases in which there had been a death as a result of an accidental firearm discharge. We collected data from a nationally representative sample of jurisdictions. This allowed us to develop a statistically valid estimate of the proportion of deaths preventable with a child-proof safety or loading indicator.

We determined if there were any deaths from accidental shootings in 1988 or 1989 by contacting state vital records offices and the coroners or medical examiners in the selected jurisdictions. The determination of whether a particular shooting might have been prevented by a child-proof safety or a loading indicator required detailed information about the particular incident. Generally, this meant that we needed information on the shooter, the weapon, and the circumstances of the accident.

By limiting the cases to fatalities, we could contact coroners or medical examiners in the selected jurisdictions to obtain the needed information. Information from these files for deaths was sufficiently detailed in about 80 percent of the cases to allow a determination of preventability.

We limited this examination of preventability to fatal shootings primarily because less information is maintained on accidental injuries than on deaths. In our preliminary investigation, we learned that the information we needed to make a determination of preventability was very often not available in cases in which there was only an injury and no death. In fact, in many instances, it might not be possible to locate <u>any</u> information about a nonfatal accident.

We learned that many police departments do not maintain retrievable records on accidental shootings (since these are not crimes), and even when they do, they document more completely the incidents in which a shooting victim died. Even in deaths believed from the outset to be accidental, the homicide unit is often involved in the investigation. Additionally, details of the circumstances surrounding accidental deaths are

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usually available from coroners' and medical examiners' reports. In contrast, information from the case records of injuries we examined was rarely sufficient to allow us to determine preventability. Consequently, we restricted our preventability determinations to cases involving accidental deaths.

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We did examine accidents involving nonfatal injuries in order to develop some information about the frequency of such accidents and to explore the relative proportion of injuries to deaths. Our examination of these accidents is based on data drawn from 10 cities. The lack of data in many police departments for such accidental shootings limited our study. We identified 10 urban police departments that maintained accessible records on accidental firearm injuries and were willing to provide the case file information. Police departments that were included in our study were for the following cities: Tucson, Arizona; San Jose, California; Denver, Colorado; Atlanta, Georgia; Louisville, Kentucky; St. Paul, Minnesota; Albuquerque, New Mexico; Columbia, South Carolina; Dallas, Texas; and Salt Lake City, Utah. Because this was a convenience sample of departments, the results from these 10 cities cannot be generalized to the country as a whole.

A more detailed discussion of the scope and methodology we used is provided in the chapters covering each part of the work. The sampling plan is discussed in detail in appendix I.

It should be noted that we did not investigate the specifics of design modifications to firearms to make them child-proof or to indicate whether they were loaded. We learned that various devices exist and are available on some firearms, but we did not examine the difficulty or cost associated with providing such devices on all firearms. We have examined the potential effectiveness of such devices in preventing accidental shooting deaths on the <u>assumption</u> that all firearms would be equipped with them. We comment further on this in chapter 4.

As requested by the subcommittee, we did not request comments on our report from any federal agency. Our work was performed in accordance with generally accepted government auditing standards.

## Study Strengths and Limitations

There is very little specific information currently available about the details and circumstances surrounding accidental shootings. In particular, there is little known about nonfatal shootings. One strength of this study is that it adds to the knowledge on this topic.

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A second strength is the method we used for our examination of preventability. Because we collected data from a nationally representative sample of jurisdictions, we have developed a valid estimate of the proportion of deaths preventable nationwide by means of a child-proof safety or a loading indicator. In carrying out this study, we went to great lengths to obtain information on the accidental shootings in our sample, contacting coroners and medical examiners and, when necessary, seeking additional information from police records.

We have attempted to make the most conservative choices in our assumptions. For example, in considering at what age a child-proof safety might be effective in consistently preventing a child from firing a weapon, we chose the youngest age proposed by any expert in the area. Undoubtedly, some older children would also be prevented from firing weapons equipped with such devices, but we have only counted children under 6 in our calculations of preventability.

The limitations to our investigation relate primarily to our examination of the proportion of firearm accidents resulting in injuries. Because we had to rely solely upon police department records for this information, there are potential gaps in the data. As is usual in the United States, each police department has its own recordkeeping system, with accidental shootings filed under different categories in different departments. In some instances, the department retrieved the records for us from computerized files, while in other instances we had to conduct a hand search of all records filed under some broader heading. These different recordkeeping systems may account for some variability in the number of cases identified in the different cities. But any bias must necessarily be in the conservative direction (that is, the numbers can only underreport the actual totals), because all the cases we report were of identifiable accidental shootings.

An additional limitation is that we could not evaluate all possible alternatives for reducing firearm accidents; we could evaluate only the potential effectiveness of child-proof safeties and loading indicators. We discuss other possible approaches in chapter 4.

It should be noted that most of these limitations are merely reflections of immaturity in this area of research. This is also true of other areas in which police data and uncounted or hidden populations are involved and for which no national monitoring agency responsibility exists.

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# Organization of the Report

In chapter 2, we address the question of firearm accidents that could be prevented by child-proof safeties and loading indicators. Our research on nonfatal injuries from firearm accidents is discussed in chapter 3, and we discuss the implications of our findings in chapter 4. The sampling plan and estimation methodology are provided in appendix I. Appendix II contains a discussion of the costs of firearm injuries. Suggested legislative language for implementing our recommendation is provided in appendix III. Major contributors to the report are listed in appendix IV.

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In this chapter, we report on our estimate of the proportion of all accidental firearm deaths that could be prevented by either a child-proof safety device or a device that indicates whether a gun is loaded. We first describe the methodology we used to determine which deaths could have been prevented. Next, we provide our findings on the numbers of accident cases in our sample that were preventable by a child-proof safety or loading indicator and the accidents that were not thereby preventable. We include a description of some of the characteristics of the accidents in our sample and conclude with estimates of preventable deaths nationwide.

### Methodology

To determine the percentage of accidental deaths from firearms that could have been prevented by either of the two types of devices, we examined data from medical examiners and coroners in a sample of jurisdictions from across the United States. We randomly selected 110 urban and rural jurisdictions (counties and independent cities) and determined if there had been any deaths in the jurisdictions from accidental shootings in 1988 or 1989, the most recent years for which data were available. To determine if there were any such deaths, we contacted state vital records offices and the coroners or medical examiners in the selected jurisdictions.

We requested complete case file information (investigation reports, autopsy results, and so on) from the medical examiner or coroner for every accidental death from firearms that we identified. In some cases, when medical examiners' or coroners' data were insufficient to allow a preventability determination, we sought supplemental information from police department records. In total, we reviewed 107 case files.

After our review of case files, we divided the accidental firearm deaths into four categories: (1) those that could have been prevented by a child-proof safety device, (2) those that could have been prevented by a loading indicator device, (3) those that could not have been prevented, and (4) those for which a preventability determination could not be made.

We constructed criteria for determining which cases fell into each category. For deciding which accidents could have been prevented by a child-proof safety device, we sought the advice of experts. Several types of child-proof devices are on the market. Through various means, such devices lock the trigger to prevent it from being pulled. According to pediatrics experts and experts on deaths and injuries from firearms, a

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child-proof device can be reasonably expected to prevent only children up to about age 6 from discharging a firearm. Children under that age are not considered strong enough physically or developed enough cognitively to be able to disengage a safety mechanism designed to be child-proof. Therefore, our criterion for determining the number of deaths that could have been prevented by a child-proof device was the age of the child firing the weapon.

Loading indicators allow one to determine at a glance whether a firearm is unloaded and whether a round remains in the chamber. Our criterion for determining the number of deaths that could have been prevented by a loading indicator was that there was evidence that the shooter believed the weapon was unloaded. We required that there be evidence of one of three situations in the case file. First, the shooter believed the firearm to be unloaded because either the shooter had emptied the firearm but failed to note that a round remained in the chamber or the shooter's common practice was to leave the weapon unloaded and so assumed it to be. Second, the shooter pulled the trigger several times without the firearm discharging (dry-firing) and so assumed it to be unloaded. Or third, the firearm had been stored for over a month, so the shooter did not remember whether it was loaded but assumed it was not.

We judged an accidental firearm death to be nonpreventable in cases in which there was specific evidence that the conditions above for child-proof safeties and loading indicators were not met (that is, shooter over age 6, shooter knew weapon was loaded). Examples of nonpreventable accidents (that is, not preventable by either of these two devices) included cases in which a weapon fell or was knocked to the ground and consequently discharged. Hunting accidents in which victims were mistakenly shot (for example, the 18-year-old man who was shot by a friend who mistook him for a deer) were also considered nonpreventable.

We classified as "undeterminable" any death for which the case file lacked sufficient detail to enable a determination of preventability. These included self-inflicted shootings in which there was no way of determining whether the victim had checked the gun before firing it.

For addressing the question of how many accidental shootings might have been prevented by the two safety devices, we examined accidental deaths from firearms, rather than injuries, primarily because more information is maintained on accidental deaths than on injuries. For example, police departments document more completely incidents in

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which a shooting victim died. Even in deaths believed from the outset to be accidental, the homicide unit is often involved in the investigation. Additionally, details of the circumstances surrounding accidental deaths are usually available from coroners' and medical examiners' reports. Information from such sources was often sufficiently detailed to allow a determination of preventability. In contrast, information from the case records of injuries we examined was rarely sufficient to allow us to determine preventability. Consequently, we restricted our preventability determinations to cases involving accidental deaths.

#### **Findings**

#### **Child-Proof Safety Devices**

Of the 107 deaths we reviewed, 9 (8 percent) resulted from shots fired by children under age 6. These deaths could have been prevented by a child-proof safety device. Although children under the age of 6 generally cannot disengage a child-proof device, they are quite capable of firing a handgun, as demonstrated by medical examiners' and coroners' reports. In one case, for example, a 1-1/2-year-old boy and his 3-1/2-year-old brother were playing with a .38 caliber handgun that they found under their father's pillow. The weapon discharged, striking the younger child and killing him.

#### Loading Indicator Devices

Of the 107 deaths, 25 (23 percent) could have been prevented had the firearm had a loading indicator. These deaths occurred when the shooter, typically a male between 13 and 24 years old, believed for one reason or another that the firearm was unloaded. In one case, a 15-year-old boy removed a .22 caliber handgun from his father's nightstand and pointed it playfully at his 11-year-old sister. He had already removed the clip, for he was familiar with the gun (having fired it at the range once before), and thus believed the gun was unloaded. However, he did not realize that a round remained in the firing chamber; upon discharge, it struck his sister in the head.

Other deaths occurred when the shooter dry-fired a weapon one or more times and so believed it to be unloaded. In one case, a 17-year-old boy took a large-caliber handgun he believed to be unloaded and, in the presence of two friends, put it in his mouth. He pulled the trigger and, when the weapon failed to discharge, he placed it to his head and again pulled the trigger. The weapon then discharged.

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In still other cases, the shooter habitually unloaded a firearm before storing it and so assumed it to be unloaded. For example, one man was cleaning his .44 caliber handgun that he always kept unloaded, but he had forgotten that he had placed a loose round in the chamber 2 weeks earlier. When he cocked the hammer to clean it, he inadvertently touched the trigger. The bullet struck his wife in the chest.

#### Other Accidents

In 52 (49 percent) of the 107 cases we examined, the accident involved neither a child under the age of 6 nor a firearm believed to be empty. These deaths largely include those that occurred because a weapon discharged when it fell or was knocked to the ground. For example, in one case, a hunter was jumping into the back of a pickup truck when his rifle knocked against the truck bed and discharged. The bullet entered the cab of the truck, killing a passenger.

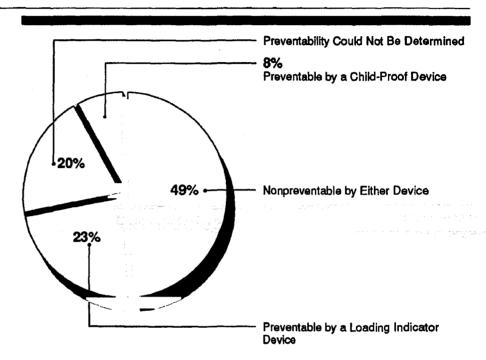
Although we classified such cases as "nonpreventable" by a loading indicator, we believe that some clearly would have been prevented had the shooter (1) been more careful in handling the weapon, (2) not been intoxicated, or (3) received training in firearm handling. We used gun safety materials published by the National Rifle Association to develop statements of basic safety practices. Among the 107 cases we examined, 90 involved clear violations of good gun-handling practices. For example, 7 cases involved intoxication or some use of alcohol and 10 cases involved Russian roulette.

In 21 (20 percent) of the 107 cases we examined, the case file information was insufficient to enable us to determine preventability. In one case, a 42-year-old male was admitted to a hospital with a gunshot wound in the abdomen. The case file indicated only that the wound was self-inflicted and occurred as the victim was reportedly putting the gun in a holster. It did not contain information on whether the victim thought the firearm was unloaded. Undoubtedly, some unknown proportion of these cases also could have been prevented by the presence of a loading indicator.

Figure 2.1 shows, for the 107 accidental deaths we reviewed, those that could have been prevented, those that could not have been prevented by either a child safety or loading indicator device, and those for which a preventability determination could not be made.

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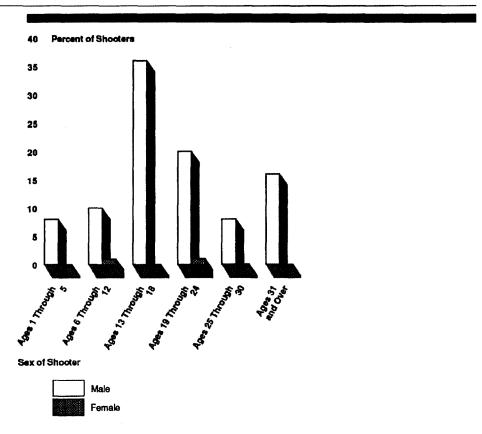
Figure 2.1: Proportion of Preventable to Other Deaths Caused by Accidental Firearm Discharges\*



<sup>a</sup>From our sample of 107 cases, calendar years 1988 and 1989.

Characteristics of Accidental Deaths From Firearms In the course of our review, we observed several interesting characteristics about accidental deaths from firearms. (Figures 2.2 through 2.6 show selected characteristics of the case files we reviewed.) As shown in figure 2.2, many more shooters were male than were female, and more shooters were between the ages of 13 and 24 than in other age groups.

Figure 2.2: Sex and Age Group of Shooters\*

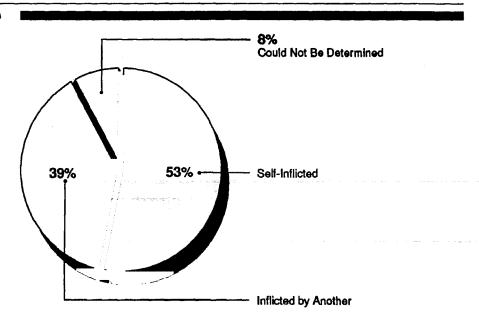


<sup>a</sup>Based on 86 case files that included both sex and age.

Slightly more than half the deaths were from self-inflicted wounds, as shown in figure 2.3.

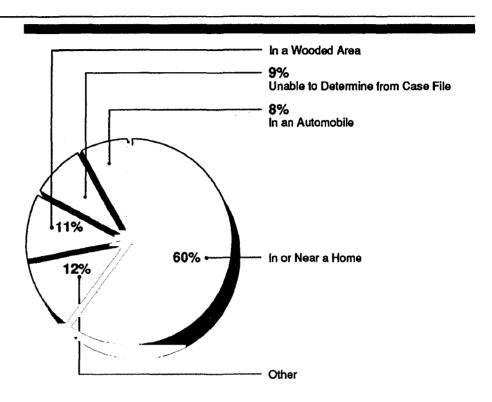
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Figure 2.3: Percent of Accidental Deaths That Were Self-Inflicted



More deaths occurred in or near a private residence than in vehicles, parks, or streets, as shown in figure 2.4.

Figure 2.4: Location of Firearm Accidents Resulting in Death\*



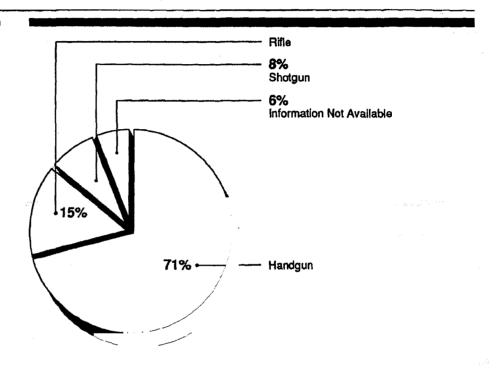
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A handgun was the weapon involved in the majority of deaths, as shown in figure 2.5.

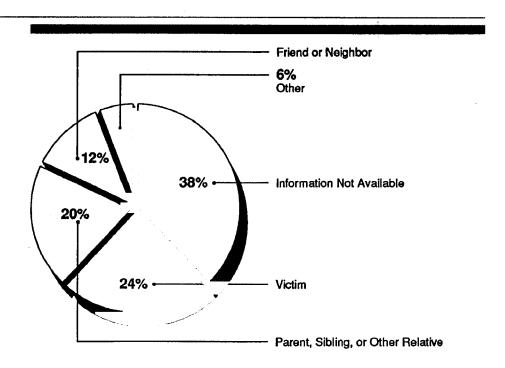
<sup>&</sup>lt;sup>a</sup>"Other" includes public streets, sidewalks, alleys, public parks, workplaces, and firing ranges.

Figure 2.5: Type of Weapon Involved in Accidents



And over 4 out of 10 victims died by their own (or their family's) firearm, as shown in figure 2.6.

Figure 2.6: Ownership of Weapons Involved in Accidents



## Estimates of Preventable Deaths

Nationwide, in 1988, according to the National Center for Health Statistics, 1,501 deaths resulted from accidental firearm discharges. From our sample, we can project that about 458 (plus or minus 89) of these deaths could have been prevented by either a child-proof device or a loading indicator device.¹ Specifically, 113 (plus or minus 64) could have been prevented with a child-proof device, and 345 (plus or minus 99) with a loading indicator device. Of the remaining deaths, 767 (plus or minus 125) could not have been prevented with these devices. Although we can project that over 400 deaths could have been prevented with these devices, it is likely that many additional deaths could have been prevented had good gun-handling practices been exercised, such as locking up and storing firearms unloaded and refraining from horseplay and the use of alcohol when handling firearms.

In addition to the lives that could be saved, there are medical expenses and other economic costs to society that could be avoided were these deaths to be prevented. The costs associated with shootings are quite

<sup>&</sup>lt;sup>1</sup>Because our sample was randomly selected, our results are projectable to the country as a whole. All samples, however, are subject to sampling errors, which define the upper and lower bounds of the estimate calculated. All sampling errors for the estimates in this chapter were calculated at the 95-percent confidence level. (See appendix I for the sampling plan and the error for each estimate.)

high. If 458 deaths were averted, this would avoid costs estimated to exceed \$170 million. (See appendix II for further discussion of the costs of firearm injuries and deaths.)

### Accidental Injuries and Deaths From Firearms

As we stated in chapter 1, data on the number of fatalities are available, but there is little information on the number of injuries caused by accidental shootings. This chapter reports on our examination of the universe of injuries and deaths caused by accidental firearm discharges. We first describe the methodology we used to determine the ratio of injuries to deaths. Next, we provide our findings on the accidental shooting cases in our sample. We conclude with a discussion of the estimates of injuries from accidental firearm discharges nationwide.

#### Methodology

We examined firearm accidents involving injuries, but no deaths, in order to develop some information about the frequency of such accidents and the relative proportion of injuries to deaths. As we noted in chapter 1, our examination of these accidents is based on a sample of 10 urban police departments. The lack of data on accidental shootings in many police departments limited our study.

As we sought data on firearm accidents from city police departments, we found that the sophistication of police department recordkeeping systems varied widely, as did the extent of data maintained on cases involving accidental firearms discharges. Because police department record systems are essentially designed to track crimes and not accidents, many police departments do not maintain records on accidental shootings unless they result in death. And those that do maintain records on accidental shootings often include these records in a large "miscellaneous" category that makes their retrieval and review very labor intensive and time consuming. In contrast, some police departments maintain records by code, with a different code for each type of event they investigate, including firearm accidents. Other departments group their reports into sufficiently narrow categories (for example, "accidents" and "assaults") that the manual retrieval and review of the reports is feasible.

We identified 10 urban area police departments that maintained accessible records on accidental shootings and were willing to provide the case file information. To identify these police departments, we began with a list of jurisdictions suggested as having good data bases by several national law enforcement organizations. We contacted every police department suggested as well as others to which those departments referred us. The 10 cities included in our study were Tucson, Arizona; San Jose, California; Denver, Colorado; Atlanta, Georgia; Louisville, Kentucky; St. Paul, Minnesota; Albuquerque, New Mexico; Columbia,

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South Carolina; Dallas, Texas; and Salt Lake City, Utah. The 1986 area populations ranged from 93,000 to over 1 million.

We obtained information from the 10 police departments on all the reported accidental shootings in their jurisdictions in 1988 and 1989. In most states (including 8 of the 10 states where cities in our study are located), hospitals and physicians are required by law to report gunshot injuries to the police. Two of the states where our cities are located, New Mexico and Kentucky, have no such statewide legal requirement. However, according to police officials in the 2 cities studied in those two states, Albuquerque and Louisville, medical professionals report cases involving gunshot injuries as a common practice. As a result, we are confident that the majority of accidental injuries from firearms in our 10 sampled cities are captured in our study.

Such reporting requirements were not the sole reason we sought data from police departments rather than from hospitals, the most common source of injury information. We learned that hospital records typically do not include information about whether a firearm injury was accidentally or intentionally inflicted, and thus we could not separate accidents from suicide or homicide attempts.

At the 10 police departments, we examined a total of 532 cases of accidental firearms discharges that resulted in either injury or death in 1988 and 1989. Whereas we could project from our sample of medical examiners and coroners the nationwide number of accidental deaths from firearms that could have been prevented, we cannot do so for injuries. Because our sample of the 10 urban police departments is not representative, we cannot generalize our results either regionwide or nationwide. Nevertheless, as there has been a dearth of data on accidental injuries from firearms, we believe that our data will contribute to the national base of knowledge on accidental injuries from firearms. Knowledge about the number of injuries that occur each year is important for understanding the size of the public health problem, a key element in any consideration of the need to find solutions to the problem.

#### **Findings**

Of the 532 accidental firearm discharge cases we examined, 527 resulted in injuries, and 5 resulted in deaths. This is a ratio of 105 to 1 of injuries

<sup>1</sup>Not included in the 532 cases were shootings involving BB pistols or pellet guns and three cases with injuries where handguns loaded with blanks were intentionally fired. We also excluded cases of accidental firearms discharges where no one was injured and cases where the victim refused to cooperate with the police in providing any information about how the shooting occurred or who was involved.

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to deaths. Table 3.1 shows the numbers of injuries and deaths from accidental firearm discharges in the 10 cities.

Table 3.1: Deaths and Injuries From Accidental Firearm Discharges, 1988 and 1989

City and state	Population*	Death	Injury	Total	
Albuquerque, N. Mex.	366,750	1	48	49	
Atlanta, Ga.	421,910	1	80	81	
Columbia, S.C.	93,020	0	12	12	
Dallas, Tex.	1,003,520	1	248	249	
Denver, Colo.	505,000	2	15	17	
Louisville, Ky.	286,470	0	34	34	
St. Paul, Minn.	263,680	0	2	2	
Salt Lake City, Utah.	158,440	0	12	12 <sup>t</sup>	
San Jose, Calif.	712,080	0	19	19	
Tucson, Ariz.	358,850	0	57	57	
Total	4,169,720	5	527	532	

a1986 population.

The reasons for the wide variation in the cities' numbers of deaths and injuries, inconsistent with their population sizes, are unknown. To some extent, the variation may stem from differences in the police departments' recordkeeping systems. As we stated above, some departments had very sophisticated computerized systems that allowed for easier (and presumably more accurate) retrieval of cases. For example, Dallas, the city in our sample with the highest number of accidental shootings, had one of the most sophisticated recordkeeping systems.

Another reason for the wide variation may be differences in patterns of gun ownership. There are higher rates of gun ownership in the South and some parts of the West than in the North, for example. This may, in part, account for the low number of accidents in St. Paul and the higher numbers in Dallas, Atlanta, and Tucson. We have no ready explanation for why San Jose, the second largest city in our sample, had many fewer instances of accidental shootings than did Dallas, the largest city we studied.

At the least, however, the numbers of injuries are conservative. According to several police officials, some cases undoubtedly are not reported, although it is impossible to know how many. If some accidental shootings go unreported and uninvestigated, this is far more likely to happen in cases involving only injuries and no deaths. This

bDoes not include first three quarters of 1988.

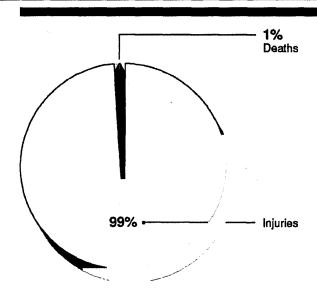
means that the reported numbers of deaths should be very accurate while the numbers of injuries may be underreported.

The characteristics of the accidental injury cases we reviewed were similar to those of the preventable and other death cases discussed in chapter 2. That is, the vast majority (90 percent) of the shooters were male, and almost half of all shooters were between the ages of 13 and 24. Most of the injuries were self-inflicted; most were caused by a handgun. In about two thirds of the cases, the accident occurred in or near a private residence.

The following case typifies the circumstances surrounding many of the accidental shootings in our sample. A 14-year-old youth was handling a .38 caliber handgun in his front yard. He assumed it to be unloaded and pulled the trigger, shooting himself in the foot.

Figure 3.1 shows, for the 532 cases we reviewed, that 99 percent of the accidental firearms discharges resulted in injuries rather than deaths. As already noted, we estimate that the ratio of injuries to fatalities is 105 to 1, based on the cases we reviewed in 10 cities.

Figure 3.1: Proportion of Injuries and Deaths Caused by Accidental Firearm Discharges



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#### **Implications**

As we stated in chapter 1, we know that the number of deaths nation-wide resulting from accidental firearm discharges was 1,501 in 1988, the most recent year for which totals are available. Given the cases we reviewed in 10 cities, we derived an estimate of the ratio of injuries to deaths of 105 to 1. Were we to apply this estimate to the nation, using the known number of deaths, we would estimate that there were approximately 157,600 injuries from accidental firearm discharges each year. However, because the sample of cities on which the ratio is based was not randomly selected, we cannot generalize to the nation as a whole.

There are a number of potential sources of bias in the data. First, the data most likely underestimate the actual number of injuries because of the general lack of reporting of accidental shootings. This source of bias would mean that the true ratio of injuries to deaths would be even higher than what we found.

There are also potential biases that would indicate the true ratio nationwide could be lower than that in our sample (that is, nationwide there could be fewer than 105 injuries for every death). Our sample of jurisdictions, driven by data availability, was entirely urban, and this could bias an estimate of the proportion of accidents that were survivable. There are at least three factors directly related to the survivability of a shooting that could vary between urban and rural settings: the caliber of the firearm (.22, .45, and so on), the type of firearm (handgun, long gun, or shotgun), and the quality of medical treatment received. The caliber of the firearm could bias the estimate, since caliber is positively associated with lethality. If lower-caliber firearms are more common in urban shootings (which we do not know), then urban victims could have a greater likelihood of surviving, thus inflating the ratio of injuries to deaths. The type of firearm could bias the estimate, since rifles, more common in rural hunting situations, are more lethal, even when caliber is held constant, because the bullet is fired with greater velocity. Thus, if rural victims are more likely to be shot with rifles, a higher proportion of rural shootings would likely result in death. Finally, the quality of medical treatment could bias the estimate, since urban dwellers are generally closer to emergency care, resulting in urban gunshot victims being more likely to survive potentially fatal injuries.

One frequent source of bias from nonrandom samples, that the locations selected were somehow "unique" or different from average, we do not believe to be a problem for this study. There is no reason to expect that the most important factor in whether an accidental shooting proves

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fatal or not—where the bullet strikes the victim—should differ in any way from one locale to the next. Since these are accidental shootings, and not intentional, having a bullet strike a vital organ should largely be a random occurrence, regardless of whether the shooting is in an urban area or a rural one, a large city or a small one.

Even though we cannot validly project the proportion of injuries to deaths resulting nationally from accidental firearm discharges, there are some indications that the data from our sample are reasonable. As mentioned above, the characteristics of the cases in this sample are very similar to those from the representative sample of deaths we described in chapter 2. In addition, the figures seem in line with the injury-to-death ratios for other types of accidents. When the 105 to 1 ratio of injuries to deaths caused by accidental firearms discharges is compared with similar data for other types of accidents, our data appear consistent. For example, according to the National Safety Council, similar proportions of injuries to deaths exist nationwide for all accidents (94 to 1), accidents occurring in the workplace (162 to 1), and accidents occurring in the home (151 to 1).

<sup>&</sup>lt;sup>2</sup>These numbers are for "disabling injuries." A disabling injury is defined as an injury causing death, permanent disability, or any degree of temporary total disability beyond the day of the accident.

### **Implications**

## The Size of the Problem

As we stated in chapter 1, the number of deaths from accidental shootings has been generally declining over the last several years. This would seem to indicate that the problem is not large and has leveled off. However, what is missing from this picture is any sense of the number of injuries resulting from accidental shootings. Without this information, we cannot judge how big a public health problem firearm accidents really are.

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From the declining number of deaths, we cannot determine if the total number of accidental shootings is declining (and declining at the same rate) or if the same number of people are accidentally shot each year but better trauma care is saving the lives of an increasing proportion of the victims.

Our report presents data on the number of injuries associated with every death. Although we cannot project to the country as a whole, were there actually to be the same ratio nationwide as in the 10 cities we studied, that would mean there are approximately 157,600 such injuries each year.

That number, because of methodological limitations discussed in chapter 3, must be viewed as a gross estimate. However, the number does give some sense of the size of the problem. It seems obvious that the total number of accidental shootings is many times the number of fatalities. This is in line with other causes of accidental death and injury. For example, as mentioned in chapter 3, the ratio of workplace injuries to deaths is 162 to 1, while accidents in the home have an injury to death ratio of 151 to 1. Thus, a ratio of tens of injuries for each death seems reasonable for accidental shootings.

Even if one excluded Dallas, the city in our sample with the largest number of injuries, there would remain 279 injuries and 4 deaths (that is, a ratio of 70 to 1), still a large relative proportion of injuries to deaths. If one were to reduce by half the ratio of injuries to deaths that we found, that would still result in a projection of approximately 78,800 injuries annually from accidental shootings in the United States. If one were to reduce it even further, to account for any possible bias, it seems likely, and reasonable, that the resulting projection would still be tens of thousands of such injuries each year. If the true ratio of injuries to deaths nationwide were only one tenth of the ratio in the cities we studied, it would mean there are over 15,000 injuries from accidental shootings each year.

In addition to the tragedy of these shootings, occurring as they primarily do among young people, there is the issue of costs. As mentioned in chapter 2, the costs associated with gunshot wounds are quite high. Thus, the economic effect of thousands of accidental shootings could be significant. Even if the true number of accidental shootings is smaller than the ratio from the 10 cities studied would indicate, the costs would still be substantial. If there were 1,500 deaths and some 12,000 hospitalizations (less than one tenth the number of injuries estimated from our sample of cities) every year, that would translate into an estimated lifetime cost, each year, of close to \$1 billion. (See appendix II for further discussion of the costs of firearms injuries and deaths.)

It seems clear that thousands of individuals and families are affected by these accidents each year. We turn now to a discussion of approaches that are available for reducing the number of such shootings.

#### Approaches to Reducing Accidental Shootings

Many of the accidental shootings each year are preventable. Of the fatal shootings we examined, we estimate that 31 percent could have been prevented by two technological modifications to firearms. Undoubtedly, additional fatalities were preventable among cases in which there was insufficient information for us to make a determination. Many nonfatal shootings are obviously also preventable.

Different approaches could be taken to try to reduce the number of accidental shootings. These include mandating modifications to firearms, requiring training in gun safety, and enacting statutes to penalize gun owners who are negligent in their handling or storage of weapons.

## Mandated Modifications to Firearms

Our research has demonstrated that lives could be saved and injuries prevented if all guns were equipped with either a child-proof safety or a loading indicator or both. There are clearly instances in which such devices would prevent tragedy. Our projections are that, at current accident rates, some 458 lives could be saved each year if all firearms had both these safety devices.

<sup>&</sup>lt;sup>1</sup>The lifetime cost of an accident is defined as the present discounted value of costs occurring in all future years. Costs include actual dollar expenditures related to illness or injury, including amounts spent for hospital and nursing home care, physician and other medical professional services, drugs and appliances, and rehabilitation. Estimates also include life years lost and the indirect cost associated with loss of earnings because of short- and long-term disability and premature death from injury. The estimated costs are derived from data for all shootings, not just unintentional shootings.

Gun manufacturers could choose to modify their firearms to include child-proof safeties or loading indicators, motivated by a desire to promote greater welfare or to avoid potential litigation or by pressure from consumers demanding firearms with such features. However, if a guarantee were needed that all firearms have these safety devices, this would have to be mandated by legislative action of the Congress. Current statutes place firearms outside the jurisdiction of the Consumer Product Safety Commission, and the Bureau of Alcohol, Tobacco, and Firearms is not empowered to control these design aspects of guns. Thus, regulatory action to require modifications could not be taken without specific new legislation.

A child-proof safety that automatically engaged and that came as a built-in part of the firearm could protect young children from adults' carelessness in storing loaded weapons where children can have access to them. Just as passive seat belts that automatically engage have been required in automobiles to protect the occupants without requiring that specific actions be taken each time the vehicle is used, child-proof safety devices on firearms could provide protection in the absence of specific behavior to secure the firearms. Child-proof safeties on firearms could prevent over 100 instances annually in which children fatally shoot someone, often themselves or another child.

Likewise, loading indicators could potentially prevent over 300 deaths resulting from accidental shootings each year among adolescents and adults. Our research demonstrates that, even more than child-proof safeties, this modification could potentially prevent many injuries and deaths. Such a device might also take the "fun" out of such games as Russian roulette.

Our projections of the number of lives saved that could be attributable to these safety devices require that two conditions be met. First, <u>all</u> firearms would have to be equipped with these devices. And second, <u>all</u> other relevant conditions would remain unchanged. That is, there would be no increase in gun safety awareness or education in safe gun-handling practices, because such changes could also save lives.

There are potential problems in implementing any requirement for firearms to be equipped with these safety devices. First, there may be technological difficulties to overcome in designing child-proof safeties and loading indicators for the myriad firearms on the market. In addition, there are possible logistical difficulties:

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- loading indicator devices would require that users (including unintended users, such as adolescents) be educated to understand their use and to recognize the indication that the firearms were loaded;
- there are possible objections to the desirability of having onlookers be able to readily judge if a firearm is loaded (for example, if a weapon is being used for protection); and
- this type of child-proof safety would only prevent very young children from firing the gun and would likely not be effective against use by older children or adolescents.

Beyond the logistics of implementing the modifications, there is the question of effectiveness. Our projections for the number of lives that could be saved each year assumes that all firearms are equipped with these safety devices. But any changes of this type would presumably be mandated only for new firearms entering the market.

While over 4 million firearms are manufactured in the United States each year, there are an estimated 200 million firearms already in the market. Approximately 50 percent of U.S. households report owning one or more firearms. This represents an enormous pool of weapons that would not be affected by design modifications. Furthermore, firearms, unlike many consumer products, have a long period of use. It is not uncommon for firearms to be passed from one generation to the next, so it cannot be expected that within a decade, for example, the majority of old-style firearms would be out of use. To affect this pool of weapons, owners would have to be required to modify all their firearms, to equip them with the two safety devices.

#### Other Approaches

Other options are available, including many devices currently on the market, designed to prevent a firearm from being used by any unauthorized person. These include locking storage cases, trigger guards, combination locks that can be built into the weapon, and a variety of other mechanisms for securing firearms of different types. In addition, there is the simple expedient of keeping firearms unloaded, with ammunition stored separately.

However, all these approaches require some positive action on the part of the user to ensure that the firearms are not accessible to children or other unauthorized users. Passive restraints in automobiles were required when data showed that many passengers were not using seat belts that required buckling. The current number of accidents with firearms is testament to the fact that gun users frequently do not take the

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available safety steps. It is not known if education in proper safety procedures would be sufficient to ensure that appropriate precautions would be taken. And requiring that all purchasers of firearms take gun safety training would necessitate some form of registration and monitoring of gun owners.

We know of no ready replacements on the market for a loading indicator. The necessary alternative is proper education in the use and handling of firearms. All users need to be trained to immediately inspect a weapon to determine if it is loaded before handling it further. As we stated in chapter 2, a majority of the accidents we examined involved some violation of safe gun-handling standards. Unfortunately, as our research has shown, many fatal accidents involve users who are not the owners of the firearms. Thus, firearm training aimed at owners will not prevent many of these accidents if others are allowed access to a loaded weapon.

Some states have adopted an approach aimed at encouraging owners to take proper precautions in storing their firearms. Both Florida and Connecticut have recently enacted statutes to hold adults guilty of criminal negligence if they allow minors to gain access to loaded firearms that are subsequently involved in accidental shootings. Penalties include fines and possible imprisonment. Other states (including Wisconsin and Virginia) have considered, but not passed, similar statutes.

## Conclusion and Recommendation

The number of individuals being injured and killed each year in accidental shootings is substantial. Whereas the problem may have been viewed as small when only the number of deaths was known, we now know that the overall problem is likely to be very large, with many thousands of individuals being injured each year.

We have demonstrated the potential effectiveness of two technologies—child-proof safeties and loading indicators—for preventing some of these accidents, thereby reducing the number of deaths and injuries. However, there remain obstacles to realizing this promise. How these mechanisms might be implemented is not immediately clear.

These mechanisms are not the only approaches available, however. There are other approaches (for example, training gun owners or limiting access to firearms) that may be equally or more effective.

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The human, economic, and public health costs of these shootings to the victims, their families, and society are considerable. The magnitude of the problem requires that all possible efforts be made to reduce the number of accidental shootings.

The Consumer Product Safety Commission, the primary federal agency with responsibility for product safety, is currently not allowed to take any action that might restrict the availability of firearms to the consumer. We recommend that the Consumer Product Safety Act be amended to clearly establish that the Consumer Product Safety Commission can regulate the risk of injury associated with firearms. Suggested legislative language for implementing our recommendation is provided in appendix III.

### Sampling and Estimation Methodology

The study design involved collecting data from two separate samples. One sample was used to examine the preventability of accidental shootings by child-proof safeties and loading indicator mechanisms. A second sample was used to examine the prevalence of nonfatal injuries from accidental shootings. We discuss each sample in turn.

## Sample for Examining Preventability

To determine the percentage of accidental deaths from firearms that could have been prevented by either of the two types of devices, we examined data from medical examiners and coroners in a random sample of jurisdictions from across the United States. In each jurisdiction, we contacted state vital records offices and the coroners or medical examiners and asked if there had been any deaths from accidental shootings in 1988 or 1989, the most recent years for which data were available at the time of our study.

We collected information only for shooting deaths classified as accidental. For jurisdictions using the ICD-9 coding system, we limited the data collection to fatalities coded under the E922 category ("accident caused by firearm missile").¹ Thus, we excluded deaths involving firearms that were classified as suicides or homicides or could not be classified.

The sampling frame was the 3,139 counties and independent cities listed by the Bureau of the Census.² We divided these jurisdictions into two strata on the basis of population: an urban stratum (population greater than or equal to 50,000) and a rural stratum (fewer than 50,000 residents). We then selected a random sample of jurisdictions within each stratum. We selected 60 urban jurisdictions and 50 rural jurisdictions, for a total of 110 counties and independent cities. Data were not obtained for either year in 3 jurisdictions. One year's data were unavailable in an additional 4 jurisdictions.

From the data we collected, we computed sampling errors for the major findings on preventability presented in chapter 2. We present our estimates in table I.1, along with the sampling error for each estimate. When added to and subtracted from the estimates, the sampling errors provide the 95-percent confidence interval for each finding.

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<sup>&</sup>lt;sup>1</sup>U.S. Department of Health and Human Services, The International Classifications of Diseases, 9th Revision, Clinical Modification, 2nd ed. (Washington, D.C.: 1980).

<sup>&</sup>lt;sup>2</sup>U.S. Department of Commerce, County and City Data Book (Washington, D.C.: 1988).

### Table I.1: Estimates and Sampling Errors for Findings on Preventability<sup>a</sup>

Variable	Estimate	Sampling error	
Preventable by a child-proof device	7.5%	4.2%	
Preventable by a loading indicator device	23.0	6.6	
Total preventable by either device	30.5	5.9	
Nonpreventable by either device	51.1	8.3	
Preventability could not be determined	16.7	7.3	

<sup>&</sup>lt;sup>a</sup>Figures represent percent of accidental deaths.

For a check on the accuracy of our sample, we used our data to generate an estimate of the expected number of accidental deaths in a year. Using these data, we estimate that 1,581 deaths from accidental shootings (plus or minus 696) would be expected in a year. This estimate compares favorably with the known number of 1,501 deaths in 1988.

We also computed estimates and sampling errors for the other variables presented in chapter 2 (sex and age of shooters, percentage of self-inflicted shootings, location of accident, type of weapon, and ownership of weapon). These estimates are available upon request.

# Sample for Examining Injuries

We employed a snowball sampling technique to identify police jurisdictions where the needed information was retrievable. We began by asking experts on police departments (from the National Institute of Justice, the National Criminal Justice Reference Service, the Police Executive Research Forum, and the Police Management Association) to list any departments with records systems that might contain information on accidental shootings in an accessible form. We contacted every police department suggested in order to determine the feasibility of obtaining the needed case records. In addition, at each department, we asked for referrals to other departments where the needed information might be obtained. This process of contacting departments and asking for referrals was continued until the list of new department names was exhausted.

We identified 10 urban area police departments that maintained accessible records on accidental shootings and that were willing to provide the case file information. The 10 cities included in our study were Tucson, Arizona; San Jose, California; Denver, Colorado; Atlanta, Georgia; Louisville, Kentucky; St. Paul, Minnesota; Albuquerque, New Mexico; Columbia, South Carolina; Dallas, Texas; and Salt Lake City, Utah. Because this was a convenience sample of departments, the results from these 10 cities cannot be generalized to the country as a whole.

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### Costs of Firearm Injuries

The specific information needed to develop a precise estimate of the costs of unintentional firearm injuries and deaths is not available. However, the information that is available shows that the total costs associated with gunshot wounds are likely to be quite high.

One recent study estimates the average lifetime cost of different types of injuries, defined as the present discounted value of costs occurring in all future years.¹ Costs are enumerated as actual dollar expenditures related to illness or injury, including amounts spent for hospital and nursing home care, physician and other medical professional services, drugs and appliances, and rehabilitation. The cost estimates also include life years lost and the indirect cost associated with loss of earnings from short- and long-term disability and premature death from injury.

Using this approach, the average lifetime cost of a firearm injury (including both fatal and nonfatal injuries) is estimated to be \$53,831.2 This can be broken down into estimated costs for firearm injuries of different levels of severity. For those that do not require hospitalization, the estimated per person cost is \$458, while injuries requiring hospitalization are estimated to cost \$33,159 per person. And the average lifetime cost of a firearm fatality is \$373,520, the highest of any cause of injury.

We know from national mortality data that about 1,500 people die each year in the United States from accidental shootings. Based on data from the National Hospital Discharge Survey, it is estimated that in excess of 65,000 persons are hospitalized every year with injuries resulting from firearms. However, it is not known how many of these firearm injuries are unintentional. One study of hospitalizations over the course of a year at one regional trauma center found that 18.8 percent of the firearm-related injuries were unintentional.<sup>3</sup> Applying this 18.8-percent figure to the 65,129 firearm-related hospitalizations nationwide yields an estimate of 12,244 annual hospitalizations from unintentional

<sup>&</sup>lt;sup>1</sup>Dorothy P. Rice et al., Cost of Injury in the United States: A Report to Congress (San Francisco, Calif.: Institute for Health and Aging, University of California, and Injury Prevention Center, The Johns Hopkins University, 1989).

<sup>&</sup>lt;sup>2</sup>Rice's cost estimates are in 1985 dollars.

<sup>&</sup>lt;sup>3</sup>Michael J. Martin et al., "The Cost of Hospitalization for Firearm Injuries," <u>Journal of the American Medical Association</u>, 260:20 (November 25, 1988), 3048-50. The 18.8-percent figure was computed omitting cases that could not be categorized as either intentional or unintentional.

Appendix II Costs of Firearm Injuries

firearm injuries. There are no reliable estimates of the number of persons each year who suffer firearm-related injuries that do not require hospitalization.

The estimates from the study on costs can be combined with the incidence data to derive a rough estimate of the overall costs associated with the unintentional firearm injuries and deaths occurring in a single year. The average lifetime costs associated with 1,500 deaths would be over \$500 million (that is, 1,500 times \$373,520 equals \$560,280,000). For 12,244 hospitalizations, the average lifetime cost would be over \$400 million (that is, 12,244 times \$33,159 equals \$405,998,796). So, omitting any costs associated with injuries not requiring hospitalization, the estimated lifetime costs for accidental shootings is close to \$1 billion (\$966,278,796) every year.

The estimated costs associated with shootings can also be used to value the savings that would be associated with specific types of prevention. In chapter 2, we estimated that some 458 deaths might be prevented each year if all firearms were equipped with child-proof safeties and loading indicators. If 458 deaths were averted, this would avoid lifetime costs estimated to exceed \$170 million.

The estimates above are based on one approach to estimating the costs of firearm injuries and deaths. Different federal agencies have used different dollar amounts for the value of life, ranging from several hundred thousand dollars to several million dollars. If higher figures are considered in the calculations, the estimated costs of accidental shootings can increase dramatically. For example, one frequently used value is \$2 million.<sup>4</sup> Applying the \$2 million figure to the 1,500 deaths that occur each year yields an estimated annual value of life lost through accidental shootings of \$3 billion. Applying this value to our projection of 458 deaths that might be averted would yield estimated annual savings of over \$900 million. Higher assigned values for each life would result in higher estimated savings.

<sup>&</sup>lt;sup>4</sup>Clayton P. Gillette and Thomas D. Hopkins, <u>Federal Agency Valuations of Human Life</u> (Washington, D.C.: Administrative Conference of the United States, 1988).

## Suggested Legislative Language

This appendix suggests legislative language that would implement the revisions we recommend to clearly establish that the Consumer Product Safety Commission can regulate the risk of injury associated with firearms. The legislative language should read as follows:

Section 3(a) of the Consumer Product Safety Act (15 USC 2052) is amended by striking out subparagraph (a)(1)(E) and redesignating subparagraphs (F) through (I) as subparagraphs (E) through (H), respectively.

Section 8 of the Consumer Product Safety Act (15 USC 2057) is amended by adding at the end thereof the following sentence:

This section shall not apply in the Commission's regulation of the risk of injury associated with firearms.

Section 3 of the Consumer Product Safety Commission Improvements Act of 1976 (15 USC 2080 note) is amended by striking out subparagraph (d)(2) and subparagraph (e) and inserting in lieu thereof:

(e) the Consumer Product Safety Commission has authority to regulate the risk of injury associated with firearms.

Section 3 of the Consumer Product Safety Commission Improvements Act of 1976 (15 USC 2080) is further amended by striking out "(1)" in subparagraph (d).

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## Major Contributors to This Report

Program Evaluation and Methodology Division George Silberman, Assistant Director Marcia Crosse, Senior Evaluator

Denver Regional Office

Arlene Alleman, Regional Management Representative James Espinoza, Evaluator

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# Unintended Shootings in a Large Metropolitan Area: An Incident-Based Analysis

Richard B. Ismach, MD, MPH Avid Reza, MD, MPH Roy Ary, MD Tomoko Rie Sampson, MPH Kidist Bartolomeos, MPH Arthur L. Kellermann, MD, MPH

From the Center for Injury Control, Rollins School of Public Health of Emory University, Atlanta, GA (Ismach, Sampson, Bartolomeos, Kellermann), and the Department of Emergency Medicine, School of Medicine, Emory University, Atlanta, GA (Ismach, Reza, Ary, Kellermann).

# See related article, p. 1, and editorial, p. 32.

**Study objective:** We determine the proportion of unintended shootings that might be prevented by promoting safe storage, safe handling, and/or safer firearm designs.

**Methods:** A regional firearm injury surveillance system was used to identify fatal and nonfatal unintentional shootings in a 5-county metropolitan area. Case reports were reviewed, and the causes of each shooting were independently classified by 4 members of the research team. A consensus conference was held to resolve disagreements.

**Results:** Between May 1, 1996, and June 30, 2000, 216 cases of unintentional firearm injury were identified, 3.8% of the shootings documented during the study period. Six (2.8%) were fatal. The majority of victims were between 15 and 34 years of age. One fourth (54) of the shootings involved victims younger than 18 years. Handguns were involved in 87% of the incidents. Enough information was available to characterize the incident in 122 (57%) cases. All but 6 fell into 1 or more of 3 broad categories of causation: child access (14%), mishandling (74%), and/or deficiencies in firearm design (32%).

**Conclusion:** Many unintentional shootings could be prevented by promoting safe storage of guns in the home, promoting safe handling of firearms, and requiring that all new handguns incorporate basic safety features.

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#### INTRODUCTION

In 1999, firearms were implicated in 28,874 fatalities in the United States. Although the vast majority of these deaths were suicides (16,599) or homicides (10,828), approximately 3% were unintentional (824), comprising 30,467 potential years of life lost. One hundred fifty-eight of these unintended deaths were pediatric (<18 years old). A disproportionate number of unintentional firearm injuries involve children. 2-4

The case/fatality ratio for unintentional shootings is estimated to be between 13:1 and 100:1.<sup>2,3,5</sup> Although some of these injuries are relatively minor, others are severe.<sup>3-5</sup> The costs of acute care, rehabilitation, and long-term disability caused by firearm injury are substantial, as much as \$2.3 billion in 1994.<sup>5,6</sup> Total costs, including lost productivity resulting from injury-related death and disability, might be 15-fold greater.<sup>7</sup>

Despite the magnitude of the problem, little is known about the factors that contribute to unintentional shootings. <sup>5,8,9</sup> To determine the proportion that might be prevented by various strategies, we identified unintentional shootings in a major metropolitan area and classified them by causation.

# METHODS

An electronic firearm injury surveillance system was used to identify fatal and nonfatal shootings in a 5-county area of metropolitan Atlanta, GA. The strengths and limitations of this system have been described in detail in an earlier report. <sup>10</sup> Five medical examiner's offices, 22 area emergency departments, and 33 law enforcement agencies submitted case reports to the system. Records were linked to generate as complete a picture as possible of each event. This study was exempted by our institutional review board.

A case was defined as an injury caused by the unintentional discharge of a projectile from a powder firearm. Powder firearms included all kinds of pistols, rifles, and shotguns but excluded air rifles and BB guns. Incidents of unintended discharge that did not result in injury and incidents of injury resulting from blunt trauma (eg,

gun dropped on a victim's foot) were excluded. Bystanders inadvertently shot during an attempted assault or drive-by shooting were considered victims of intentional injury and were excluded as well. The initial classification was made by the reporting agency. Our study interval was limited to shootings that occurred between May 1, 1996, and June 30, 2000.

Four members of our team (RBI, AR, RA, and ALK) independently studied each report to determine the circumstances of the shooting. Both the ED data collection form and, if available, the written law enforcement narrative were reviewed. In most instances, the police report was the only source that contained information about the circumstances of the shooting. In no case did the ED report or medical examiner's report conflict with a police report regarding injury circumstances. Cases were classified into 1 or more of 3 predefined categories: preventable by safe storage, preventable by safer handling, and preventable by safer design. When the shooter was a minor who gained access to an adult's gun without the adult's permission, we considered the incident preventable by safer storage. Preventable by safer handling was selected when the narrative indicated that the firearm discharged (1) during cleaning, (2) while clearing a jammed round or attempting to unload, (3) while playing with or showing off the firearm, or (4) while moving, handling, or catching the firearm. Preventable by safer design was selected when the narrative specifically noted any of the following: (1) the shooter did not realize the firearm was loaded; (2) the magazine was out of the firearm or removed by the shooter before the trigger was pulled; or (3) the firearm discharged when dropped or placed on a hard surface. Some cases fell into more than one of these categories and were coded as such. After initial coding, our team met to review cases that were coded differently and to seek a consensus.

Confidence intervals (CIs) were estimated by using a z statistic for 1-sample proportions. Interrater reliability was measured by using the proportion of cases in which investigators agreed, with cases weighted by the percentage of investigators who agreed. For example, if 3 of the 4 raters judged a case to be preventable by safer

design, that case would receive a weight of 0.75. A sensitivity analysis was performed by assuming that all cases with missing information would not have been preventable by any of the methods described. Statistical analyses were done with SAS for Windows statistical software package (version 8.02, SAS Institute, Inc., Chicago, IL).

#### RESULTS

During the 49-month study period, 5,735 cases of firearm injury were reported in our 5-county metropolitan area. A total of 247 (4.3%) of these were initially classified as unintentional. After a review of these case reports, 31 of these shootings were reclassified as either intentional or of uncertain intent, leaving 216 cases (3.8% of all shootings during the study period) in our analysis. Six (2.8%) of these unintentional shootings resulted in a fatality.

A matching police offense report was linked to the ED report for 145 (67%) cases. For most of the remaining cases, the only documentation available was the 1-page reporting form that lists victim age, sex, and race, as well as the manner and severity of injury. The form does not provide enough information to classify the specific circumstances of the event.<sup>10</sup>

Eighty-seven percent (187) of the 216 victims were male, 65% (141) were black, 24% (51) were white/non-Hispanic, and 8% (18) were members of other racial or ethnic groups. The age distribution of victims is similar to the national mortality profile for unintentional firearm-related deaths; one fourth involved victims younger than 18 years (Table 1).

Nearly 40% (85) of the victims shot themselves. Sixteen percent (34) were shot by a friend or acquaintance and 5% (10) by a family member. One percent (3) were unintentionally shot by their spouse or intimate partner. Thirty-eight percent of unintended shootings (n=81; nearly two thirds of those in which the incident location was specified) occurred in a home. Seven percent (16) occurred in an automobile. Only 3 cases involved hunting. The vast majority of unintentional shootings (188 [87%]) involved a handgun (Table 2).

**Table 1.**Unintentional firearm injuries in metropolitan Atlanta, GA, May 1996 through June 2000 (N=247).

Variable	Included in Analysis, No. (%)	Insufficient Information, No. (%)	Excluded (Not Unintentional), No. (%)
Age distribution, y			
0-4	1 (1)	2 (2)	0 (0)
5–14	17 (14)	6 (6)	2 (6)
15-24	51 (42)	41 (44)	13 (42)
25-34	19 (16)	23 (24)	7 (23)
35-44	18 (15)	9 (10)	5 (16)
45-54	7 (6)	4 (4)	2 (6)
55-64	5 (4)	2 (2)	1 (3)
≥65	0 (0)	1 (1)	0 (0)
Not specified	4 (3)	6 (6)	1 (3)
Race distribution			ESECUTION
Black	79 (65)	62 (66)	17 (55)
White	33 (27)	18 (19)	
Other	9 (7)	9 (10)	1 (3)
Not specified		5 (5)	
Sex distribution			. ,
Female	14 (11)	14 (15)	9 (29)
Male	107 (88)	80 (85)	21 (68)
Not specified	1 (1)	0 (0)	1 (3)

**Table 2.**Unintentional firearm injuries in metropolitan Atlanta, GA: Incident details.

Variable	No.	%
Type of firearm		
Handgun	188	87
Shotgun	6	3
Rifle	11	5
Unknown	11	5
Victim-shooter relationship		
0 1/	85	39
Self Family	10	- 5
Friend	34	16
Spouse/intimate partner	3	1
Stranger	7	3
Not specified	77	36
Incident location		
Residence	81	38
Street or sidewalk	20	9
Woods or field	. , 4	2
Bar or tavern	· 3	1
Retail establishment	3	1
Automobile	16	7
Parking lot	9	4
Other	3	1
Not specified	77	36

Among the 204 shootings in which information about the nature of the wounds was available, 17 were to the head or face, 21 to the chest or abdomen, 5 to the back, 53 to an arm, and 104 to a leg. Most victims had only a single wound. Of those for whom the ED disposition was recorded, 48 were admitted, 1 was transferred to another hospital, and 52 were discharged home. Three were pronounced dead in the ED.

Enough information was available to characterize incident circumstances in 122 cases (57% of the total). All but 6 of these fell into 1 or more of 3 broad categories of causation: preventable by safe storage, preventable by safer handling, or preventable by safer design (Table 3). Seventeen shootings (14% of those analyzed) occurred when one or more children younger than 18 years of age gained unsupervised access to a gun. Almost all of the firearms involved in these incidents were stored unlocked and loaded. The parents of one victim kept their gun in a combination safe, but the child discovered the combination on a slip of paper.

Ninety shootings (74% of those analyzed) were attributed to mishandling of the firearm. Eighteen occurred while the owner was cleaning the gun or clearing a jammed round, 42 occurred while the user was playing with or showing off the gun, and 30 occurred when the user moved, fumbled, or dropped (but then caught) the gun.

Thirty-nine shootings (32% of those analyzed) were attributed to potential deficiencies in the firearm's

**Table 3.**Unintentional firearm injuries in metropolitan Atlanta, GA: Analysis of incidents and their causes.\*\*

Category	No.	%	95% CI, %	Lower Limit (Sensitivity Analysis),† %
Preventable by safer storage Preventable by safer handling	17 90	14 74	8–20 66–82	4 35
Preventable by safer design	39	32	24-40	13

<sup>\*</sup>The total number of cases is 122. Categories are not mutually exclusive, and therefore, the total exceeds 100%.

design. In 17 cases, the investigating officer specifically noted that the shooter was unaware that the weapon was loaded. A loaded chamber indicator is designed to alert the user that a round is in the chamber. Six shootings occurred while the pistol's magazine was removed, possibly giving the handler the mistaken impression that the weapon was unloaded. A magazine safety is designed to block the trigger when the magazine is removed to prevent discharge of a round retained in the chamber. Nineteen shootings occurred when the gun was dropped or struck a hard surface. A firing pin block, also known as a "drop safety device," is designed to prevent a gun's firing pin from contacting the cartridge if the weapon is dropped or struck against a hard surface.

Reviewers independently agreed on 98.2% of cases regarding exclusion because of lack of sufficient information. Complete agreement was reached on 94% of cases that were judged to be potentially preventable by safer storage, 78% of cases that were judged potentially preventable by safer handling, and 85% of cases that were judged to be potentially preventable by basic mechanical safety features. When disagreement occurred, there was a clear majority view in all but a handful of cases (2%, 6%, and 2%, respectively). Almost all of these initial disagreements were the result of a reviewer inadvertently overlooking a relevant fact or term in the police narrative. Once these were identified, complete agreement was reached on better than 99% of cases in each category.

#### DISCUSSION

Unintentional firearm injuries accounted for a small fraction of firearm-related fatalities in our community during the study interval but caused a somewhat larger percentage of nonfatal injuries (0.2% and 3.9%, respectively). Most of the victims were male patients between 15 and 34 years of age. An incident-based analysis revealed several options for prevention, including promoting safer storage of guns in the home, teaching safe handling of firearms, and incorporating basic safety features into new gun designs. 4,5,11-13

<sup>&</sup>lt;sup>1</sup>The sensitivity analysis assumed that the lower CI was correct and that none of the cases for which there was insufficient information were preventable in any way.

Approximately 40% of US households contain 1 or more firearms. <sup>14</sup> The average gun-owning household contains 4. <sup>15</sup> Between one fourth and one third of gunowning households contain at least 1 handgun. <sup>14-16</sup> Rates of firearm ownership are greater in rural areas and small towns, but households in urban areas are more likely to contain handguns. <sup>16</sup> The rate of gun ownership in metropolitan Atlanta is similar to that noted in other metropolitan areas of the south and west. <sup>17</sup>

Persons who keep a firearm for protection are much more likely to store the weapon loaded and readily available than people who own firearms for other reasons. <sup>8,14,16,18,19</sup> However, keeping an unlocked and loaded gun in the home violates a central tenet of firearm safety. The National Rifle Association's "A Parent's Guide to Gun Safety" advises owners to "always keep the gun unloaded until ready to use" and to "store guns so that they are inaccessible to children and other unauthorized users." <sup>11</sup> The Clinician's Handbook of Preventive Services echoes this admonition. <sup>12</sup> There is evidence that few gun dealers share this advice with customers, even those with young children. <sup>20</sup> In any case, many gun-owning parents store their firearms in an unsafe manner. <sup>19,21-24</sup>

When children find a gun, they often play with it. Jackman et al<sup>25</sup> placed pairs and trios of 8- to 12-yearold boys in a room with a 1-way mirror and observed them for 15 minutes. An actual .38 caliber pistol, altered so it could not be fired, was concealed in a drawer. Instead of a magazine of bullets, the pistol contained a radio transmitter that activated a light whenever the trigger was pressed with enough force to discharge the weapon. Of the 29 groups tested, 21 discovered the gun within 15 minutes of being placed in the room. Members of 16 (76%) groups handled the gun, and 1 or more members of 10 (48%) groups pulled the trigger. During subsequent questioning, nearly half of the boys said that they were unsure whether the gun was real or a toy. More than 90% reported having prior gun safety instruction. Hardy et al<sup>26</sup> observed a group of young children and noted that when they were left unsupervised around guns, they touched and played with them, despite clear instructions not to do so.

When children gain unsupervised access to a gun, the consequences can be tragic. Wintemute et al<sup>27</sup> studied fatal shootings of children by children in California and noted that more than half occurred when children played with a loaded gun they found in the home. Grossman et al<sup>28</sup> studied unintentional and self-inflicted firearm injuries of children in Seattle and noted that many involved a gun found in the victim's home or the home of a relative or friend.

In hopes of teaching young children to avoid touching a gun if they find one, the National Rifle Association developed the Eddie Eagle program. <sup>29</sup> Although the curriculum has reportedly been taught to more than 12 million children in 10,000 schools, it has not been objectively evaluated to confirm that it is effective. <sup>30</sup>

Adult training programs are not very effective at encouraging safe storage of guns in the home. Weil and Hemenway<sup>16</sup> surveyed 605 adult gun owners and found that those who had received firearms training were no more likely to store their guns safely than those who did not. Cook and Ludwig<sup>14</sup> analyzed responses to an independent survey of more than 1,600 gun owners and obtained similar findings. They did note, however, that gun owners trained by the National Safety Council were somewhat more likely to report storing their gun safely than those trained by other organizations.

Several states enacted laws that hold the owner responsible if a child gains access to the gun and is injured to promote safe storage of guns. An evaluation of these child access prevention laws concluded that enactment was associated with a 23% decrease in the rate of unintentional firearm-related deaths of children younger than 15 years of age. <sup>31</sup> However, another group studied the effect of child access prevention laws in the 15 states in which they were in effect and found evidence of effect in only one, Florida. <sup>32</sup>

Safe handling might have prevented 66% to 82% of the unintentional shootings in our study. Firearm safety training programs emphasize several worthwhile concepts, including "always keep the gun pointed in a safe direction" and "always keep your finger off the trigger until ready to shoot." <sup>33</sup> Trainees are taught to assume

that every firearm is loaded unless they can personally verify that it is unloaded by inspecting the chamber.

Despite the intuitive appeal of firearm safety training, researchers have found that education alone is often ineffective at promoting safe behavior, particularly when it involves a complex series of actions. <sup>3+,35</sup> Not surprisingly, the demographic group at greatest risk of unintentional injury (ie, young men) is also the group that is least receptive to safety training. <sup>35</sup> First-time applicants for a driver's license are required to demonstrate their ability to safely operate a motor vehicle, but first-time purchasers of a firearm are not required to learn or demonstrate safe handling skills. <sup>36</sup>

Little thought has been given to the idea of making safer guns. <sup>37</sup> In 1988, the US General Accounting Office studied the extent to which child-proof safety devices or a loaded chamber indicator could prevent firearm-related deaths. <sup>5</sup> Researchers randomly selected 107 fatal unintentional shootings from urban and rural jurisdictions across the United States and reviewed the case files to characterize each event. On the basis of the incident narratives, they concluded that a loaded chamber indicator might have prevented 23% of the deaths and that a child-proof safety device might have prevented another 8%. The remaining deaths were either judged to be nonpreventable by these 2 strategies, or the data were insufficient to make a determination. Other safety devices were not considered.

We found evidence that loaded chamber indicators, magazine safeties, and firing pin blocks might have prevented as many as one third of the unintended shootings in our series. Widespread adoption of these safety features, plus routine use of devices that prevent unauthorized child access, might have prevented as many as 46% of the unintended shootings in our series.

It is possible that other safety devices might have prevented additional shootings. For example, a grip safety device automatically locks the pistol's trigger mechanism unless the weapon's grip is properly grasped. A positive safety device is designed to prevent the firearm from being discharged unless it is purposefully disengaged. These devices might have prevented some of the shootings attributed to mishandling.

Emerging technologies could produce even safer guns.<sup>37</sup> It should be possible, for example, to design a firearm that can be easily fired by adults but not by young children. Widespread adoption of child-resistant aspirin bottles prevented many unintentional poisonings; widespread adoption of child-resistant firearms might prevent many unintentional shootings.<sup>37,38</sup>

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The technology exists to manufacture personalized handguns that can only be fired by their owners. 37-39 Personalized guns would be particularly useful for law enforcement because a surprising number of officers are shot and killed each year by an offender who grabs their service weapons. 40

Despite the potential benefits of safer gun designs, there is no impetus for the gun industry to adopt them. Federal law specifically exempts domestic handgun manufacturers from consumer product safety regulations. The public is largely unaware of this fact. Half of the respondents in 2 recent polls by the National Opinion Research Center expressed the belief that all or some guns are regulated for safety. 18 Sixty-eight percent of respondents, including 64% of gun-owning respondents, supported the idea of "government safety regulations for the design of guns." Remarkably, 94% of respondents (including fully 93% of those who own guns) agreed that "handguns made in the United States should be required to meet the same federal safety and quality standards as imported handguns." Eighty-eight percent of respondents to the National Opinion Research Center surveys, including 80% of gun-owning respondents, endorsed the idea that new handguns should be legally required to be child-resistant. Seventy-one percent of respondents (including 59% of gun owners) agreed with the statement, "All new handguns should be personalized."18

There are several limitations in our study. First, the system we used to identify cases relied on voluntary reporting. Three sources of data were used to maximize rates of detection: a 1-page incident report faxed from area hospital EDs, county medical examiner's case files, and police offense reports from local law enforcement agencies. <sup>10</sup> Between May 1996 and December 1998, an audit revealed that 13% of ED reports submitted to our

system could not be matched with a corresponding police report. <sup>10</sup> This strategy minimized the potential for missed cases, but it could not eliminate it entirely. <sup>41</sup> Individuals who did not disclose their injury to the police or seek care in an ED, as well as those who were treated in an ED but not reported, would not be detected by using our system.

Misclassification can occur in any retrospective study. Our data on causation are only as good as the police reports on which they are based. <sup>3,41</sup> To minimize misclassification, we manually reviewed each case before including it in our series. Twenty-one shootings initially classified as unintentional were subsequently reclassified as intentional or indeterminate and excluded from our analysis.

Missing data complicated our efforts to categorize the circumstances involved in these shootings. No police report was available for 95 of the cases reported by ED personnel. Even when a police report was secured, the documentation was sometimes too sketchy to accurately characterize the event. At the outset of the study, we had hoped to identify the specific make and model of firearm involved in these shootings to confirm whether it lacked specific safety features. Unfortunately, investigating officers rarely documented the specific make and model in their offense reports.

Finally, our findings are limited to a single 5-county metropolitan area of a major southern city and might not be applicable to major cities in other parts of the country, much less to smaller communities or rural areas. For example, only 3 of our incidents were linked to hunting. Nationwide, as many of one fifth of all unintentional shootings are related to hunting.

Nonetheless, our results support 2 important conclusions. First, almost all of the unintended shootings we studied could be attributed to 1 or more of 3 factors: child access, mishandling of the firearm, and deficiencies in design. All 3 causes might be amenable to intervention. Nearly half the shootings might have been prevented if the gun involved had incorporated 3 simple mechanical safety features—a loaded chamber indicator, a grip safety, and a firing pin block—and had been kept inaccessible to children. Most of the remaining

incidents might have been prevented if the handler had followed the most basic safety rules. Identifying which strategy or which combination of strategies is most effective will require further research.

This study would not have been possible without access to data from a regional firearm injury reporting system. A nationwide system of this sort, with attention paid to prospective collection of high-quality data, could generate invaluable information about the circumstances, location, and contributing factors involved in thousands of shootings each year. <sup>42</sup> The reports produced would not only be useful to local and state law enforcement, they would also be useful to firearm safety instructors, gun enthusiasts, gun industry executives, and others interested in preventing deaths and injuries caused by firearms.

Author contributions: The study was initially conceived, designed, and piloted by ALK, TRS, and KB. Revision of the study design was made by RBI, AR, and ALK. Final data collection and abstraction was performed by RBI and AR. Analysis and coding of each case was performed by RBI, AR, RA, and ALK. Data entry and verification was carried out by RBI and AR. Statistical analysis was carried out by RBI, with assistance from AR. All of the authors had input into the final manuscript, which was largely written by RBI, AR, RA, and ALK. RBI and ALK take responsibility for the paper as a whole.

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Address for reprints: Arthur L. Kellermann, MD, MPH, Center for Injury Control, Rollins School of Public Health, Emory University, 1518 Clifton Road, NE, Atlanta, GA 30322; E-mail akell01@emory.edu.

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# **ORIGINAL ARTICLE**

# Unintentional and undetermined firearm related deaths: a preventable death analysis for three safety devices

J S Vernick, M O'Brien, L M Hepburn, S B Johnson, D W Webster, S W Hargarten

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**Objective:** To determine the proportion of unintentional and undetermined firearm related deaths preventable by three safety devices: personalization devices, loaded chamber indicators (LCIs), and magazine safeties. A personalized gun will operate only for an authorized user, a LCI indicates when the gun contains ammunition, and a magazine safety prevents the gun from firing when the ammunition magazine is removed.

**Design:** Information about all unintentional and undetermined firearm deaths from 1991–98 was obtained from the Office of the Chief Medical Examiner for Maryland, and from the Wisconsin Firearm Injury Reporting System for Milwaukee. Data regarding the victim, shooter, weapon, and circumstances were abstracted. Coding rules to classify each death as preventable, possibly preventable, or not preventable by

each of the three safety devices were also applied.

Results: There were a total of 117 firearm related deaths in our sample, 95 (81%) involving handguns. Forty three deaths (37%) were classified as preventable by a personalized gun, 23 (20%) by a LCI, and five (4%) by a magazine safety. Overall, 52 deaths (44%) were preventable by at least one safety device. Deaths involving children 0–17 (relative risk (RR) 3.3, 95% confidence interval (Cl) 2.1 to 5.1) and handguns (RR 8.1, 95% CI 1.2 to 53.5) were more likely to be preventable. Projecting the findings to the entire United States, an estimated 442 deaths might have been prevented in 2000 had all guns been equipped with these safety devices.

**Conclusion:** Incorporating safety devices into firearms is an important injury intervention, with the potential to save hundreds of lives each year.

See end of article for authors' affiliations

Correspondence to: Jon S Vernick, Johns Hopkins Bloomberg School of Public Health, Center for Gun Policy and Research, 624 N Broadway, Baltimore, MD 21205, USA; JVernick@jhsph.edu

Rather than relying exclusively on changing the behavior of the users of dangerous products, injury prevention efforts have also focused on changing the design of the product itself to make it safer. Of consumer products in the United States, firearms are among the most deadly. From 1990 to 1999, there were more than 12 000 unintentional firearm related deaths in the United States, with an additional 4000 deaths in the "undetermined" category. Yet firearms can be designed with built-in safety features that may prevent at least some of these deaths.

Injury prevention efforts to improve the safe design and manufacture of guns have concentrated primarily on three safety technologies: (1) personalization devices, (2) loaded chamber indicators (LCIs), and (3) magazine safeties. A personalized gun is a firearm that will fire only for an authorized user. This can be accomplished through a variety of user-recognition technologies—for example, fingerprint readers—that can be built into the design of the gun. Unless the firearm recognizes its authorized user, it is unable to fire.<sup>4,5</sup>

A LCI is a device designed to indicate that the gun's firing chamber contains ammunition. LCIs are intended to prevent firearm related deaths where the gun's operator did not know the gun was loaded. At present, loaded chamber indicators are included on about 10%–20% of new pistol models. However, existing loaded chamber indicators generally consist of a small raised lever or button on the gun, with no additional markings to convey its meaning. Patents exist, however, for LCIs that would be far easier for operators to understand. A magazine safety (sometimes also called a magazine disconnect safety) blocks a semiautomatic pistol from firing when its ammunition magazine is removed, even if there is still a round in the chamber.

Although all three of these safety devices have been widely discussed and promoted in both the public health and

popular literature, there have been few attempts to quantify their potential benefits. The United States General Accounting Office estimated that 23% of a sample of unintentional deaths were preventable by a loaded chamber indicator and 8% by a childproofing device.9 The childproofing device considered in the General Accounting Office study was intended to prevent discharge by young children only (age <6), and therefore was not a personalized gun. Similarly, Ismach and colleagues concluded that in 14% of the incidents in their sample of mostly non-fatal firearm injuries the shooter was unaware that the gun was loaded; in 5% the handgun's ammunition magazine had been removed just before the shooting.10 From a North Carolina sample, Cherry and colleagues determined that the shooter believed the gun was unloaded in 39 of 187 (21%) unintentional firearm related deaths.11

Using data from Maryland and Milwaukee, Wisconsin, this study examines the proportion of certain firearm related deaths that might be preventable by each of the three major safety devices. By including personalization technology, our analysis allows for a comparison of the relative benefits of the different devices.

#### **METHODS**

#### Data sources

Information about firearm related deaths was obtained from two primary sources: the Maryland Office of the Chief Medical Examiner, and the Wisconsin Firearm Injury Reporting System (FIRS). We reviewed the case files for all

Abbreviations: Cl, confidence interval; FIRS, Firearm Injury Reporting System; LCl, loaded chamber indicator; RR, relative risk

unintentional and undetermined firearm related deaths in Maryland and Milwaukee County for 1991-98. These files include information obtained from medical examiner investigations, police files, and crime laboratory reports. For each firearm related death, we abstracted a variety of information about the victim, shooter, weapon, and circumstances of the death. Deaths associated with non-powder firearms (for example, airguns and bb guns) were excluded. The combined dataset represents a convenience sample based on the ease of obtaining the data, their relative quality and completeness, and the value of increasing the overall sample size.

Medical examiners sometimes code certain, seemingly unintentional, deaths as homicides (rather than "accidents") where the gun's trigger is intentionally pulled, even if the shooter did not intend to cause the death of the victim. 12 13 This may be based on a technical, rather than intent based, definition of a homicide as one where the actions of one person result in the death of another. Therefore, using the Wisconsin surveillance system (FIRS), we separately identified those "homicides" in Milwaukee County where (1) the circumstances of the death indicated an accidental firingsuch as playing with or cleaning a firearm and (2) the Federal Bureau of Investigation's Supplemental Homicide Reports data similarly coded the death as a "negligent manslaughter". 14 In the absence of a comparable surveillance system, it would have been much more difficult to conduct a similar analysis of Maryland homicides.

Preliminary analyses of these negligent homicides in Milwaukee indicated that, as expected, their circumstances were very similar to both the accidental and undetermined deaths in Milwaukee County. Similarly, unintentional and undetermined deaths, as well as the combined data for Maryland and Milwaukee shared comparable age, sex, and type of gun characteristics. Our assessment of the circumstances of these deaths also suggested that the events surrounding unintentional and undetermined deaths were very similar. For these reasons, and to increase the precision of our point estimates, subsequent analyses combine the data from Maryland and Milwaukee.

Suicides and non-negligent homicides are not included in this analysis. Medical examiner and police records rarely contained detailed information about the circumstances of the death (for the suicides), or whether the shooter was the owner or an authorized user of the gun (for homicides). In addition, the factors associated with preventability may have been different for these intentional deaths.

### Definition of a "preventable" death

Our primary goal was to estimate the proportion of the firearm related deaths in our sample that might have been prevented by one or more of the three safety devices. For each case, two reviewers (JV, MO) applied a set of rules to code the death as (1) "preventable", (2) "possibly preventable", or (3) "not preventable". The very small number of cases where reviewers disagreed were resolved by a third reviewer (SJ) or by consensus.

For LCIs, a death was coded as preventable only if the case file indicated *clear* evidence that the shooter did not realize the gun was loaded at the time of the shooting. Usually this was based on unambiguous statements of witnesses interviewed by the police. In addition, the shooter must be old enough to understand the message to be conveyed by a LCI; to be conservative in this regard, we established a minimum age of 10. We coded the death as possibly preventable if there was only some evidence that the shooter thought the gun was unloaded. We assume (based on patent information) that such devices could be applied to any firearm, and can be designed so that even an untrained user would understand that the gun was loaded.

For personalized guns, a death was considered preventable if there was clear evidence in the case file that the shooter was not the owner or authorized user of the gun. For example, personalized guns can prevent deaths where the shooter is below the legal age for gun ownership-by definition an unauthorized user. We recognize that this assumes that adult owners of personalized handguns will not provide them to children, an assumption that might not always be correct. We coded deaths as "possibly" preventable by personalized guns when the case file indicated some evidence that the shooter was not an authorized user.

For magazine safeties, our preventability criteria required clear evidence that the shooter removed the ammunition magazine from a semiautomatic pistol immediately before the shooting. Where there was less clear evidence, the deaths were coded as possibly preventable.

For all of the devices, we conservatively coded the death as "not preventable by safety devices" if it did not meet any of the above criteria. It is important to recognize that characterizing a death as "preventable" does not mean that it would certainly have been prevented by the relevant safety device—only that, applying our rules, we determine that the death could have been prevented.

#### Analyses

Applying our criteria, for each of the safety devices we calculate the proportion of the deaths in our sample that fit the three categories of preventability. We also conducted bivariate analyses of deaths coded as preventable, compared with those coded as not preventable, to examine factors associated with differences between these two groups. To test the statistical significance of these bivariate analyses,  $\chi^2$  tests of independence, calculation of relative risks, and confidence intervals were used. Finally, extrapolating from our data, we calculate the number of lives that might be saved in the United States by these devices.

#### **RESULTS**

There were a total of 117 unintentional, undetermined, and negligent homicide deaths in our data set for 1991 to 1998, 66 in Maryland and 51 in Milwaukee (see table 1). Males (91%) and persons aged 0-20 (53%) represent the majority of the decedents. Handguns were involved in 81% of the deaths, with roughly equal proportions of pistols and revolvers. Among the circumstances of the incident, "playing with or showing the gun to others" (51%), and "handling or transporting the gun" (21%) represented nearly three quarters of all deaths.

Among all deaths, 43 (37%) met our criteria for being "preventable" by a personalized gun, 23 (20%) by a loaded chamber indicator, and five (4%) by a magazine safety. A smaller proportion of deaths for each device were classified as "possibly preventable" (see table 2).

Overall, 52 of the deaths (44%, 95% confidence interval (CI) 35% to 53%) fit our criteria as preventable by at least one of the devices. Some were preventable by more than one device. Importantly, there was no statistically significant difference in overall preventability by site ( $\chi^2 = 0.74$ , p = 0.39), reinforcing our decision to combine the Maryland and Milwaukee data for analysis. Also, no type of death was significantly more likely to be preventable than any other, whether unintentional, undetermined, or negligent homicide  $(\chi^2 = 0.14, p = 0.93)$ . Again, this suggests that the relevant characteristics of these deaths are similar enough to justify combining the data for our purposes.

In the bivariate analyses, we compared preventable with non-preventable deaths, excluding those that were only "possibly" preventable. In these analyses, several characteristics of the deaths were associated with higher proportions

Table 1 Selected characteristics of unintentional, undetermined, and negligent homicide firearm related deaths in Maryland

/ariable*	No (%)
Age (years)	
0–17	46 (39)
18-20	16 (14)
21-40	37 (32)
41+	18 (15)
bex	
Male	107 (91)
Female	10 (9)
Race	
White	60 (51)
Black	54 (46)
Other	3 (3)
Site/type of death	
Maryland (n = 66)	00 (00)
Unintentional	20 (30)
Undetermined	46 (70)
Milwaukee (n = 51) Unintentional	13 (25)
Undetermined	12 (24)
Negligent homicide	26 (51)
Circumstance	20 (01)
Cleaning	3 (3)
Handling/transporting/loading/	25 (21)
unloading	,,
Hunting	6 (5)
Miscellaneous/other	5 (4)
Playing with/showing gun to others	60 (51)
Thought safety was on/problem with	4 (3)
safety	
Unknown	14 (12)
Type of gun	
Handgun (n = 95)	
Pistol	42 (36)
Revolver	45 (38)
Unknown/other	8 (7)
long gun (n = 19)	
Rifle	9 (8)
Shotgun	10 (9)
Missing (n = 3)	

not the decedent is also the shooter. Circumstance and type of aun refer to characteristics of the event.

of preventability (see table 3). Incidents where the decedent was aged 0-17 were three times as likely to be preventable (relative risk (RR) 3.3, 95% CI 2.1 to 5.1) as those involving all older persons. Deaths involving handguns were eight times as likely to be preventable (RR 8.1, 95% CI 1.2 to 53.5) as those involving long guns. Among the circumstances of the incident, deaths that involved "playing with or showing the gun to others" were most likely to be preventable (RR 3.2, 95% CI 1.9 to 65.3).

Based on our estimates of the proportion of deaths preventable by any safety device (44%, 95% CI 35% to 53%), we can calculate the number of lives that might be saved if all firearms had all three devices. In 2000, there were 776 unintentional firearm deaths in the United States. Applying our results yields an estimate of 341 unintentional deaths (95% CI 272 to 411) that might have been prevented. There were also 230 firearm deaths of undetermined intent in 2000, producing an estimate of 101 preventable deaths (95% CI 81 to 122) in this category. Combining these data, 442 lives might have been saved in 2000 if all firearms had all three safety devices (95% CI 353 to 533).

## DISCUSSION

Overall, more than 40% of the firearm related deaths in our sample were preventable by at least one of the three safety devices. Providing all three of these devices in all firearms

Table 2 Number (%) of preventable firearm deaths by various safety devices in Maryland and Milwaukee, 1991-98

	Personalized gun	LCI	Magazine safety	Any of three safety devices
Preventable	43 (37)	23 (20)	5 (4)	52 (44)
Possibly preventable†	13 (11)	15 (13)	3 (3)	19 (16)
Not preventable by safety devices	61 (52)	79 (68)	109 (93)	46 (39)
Total	117 (100)	117 (100)	117 (100)	117 (100)

\*Because the same death may be preventable by more than one device, figures in this column are not the sum of the other three columns. †For personalized guns, this category includes deaths where the shooter was not in immediate control of the firearm when it discharged (for example, a firearm that discharged when dropped from a tree stand while hunting). For loaded chamber indicators (LCIs), this category includes so-called Russian roulette shootings (a LCI might eliminate the element of chance from this activity).

 
 Table 3
 Proportion of deaths preventable by at
 least one safety device, by selected variable categories, and results of  $\chi^2$  tests of independence for each category

Variable	Percent preventable	p Value for χ²*
Age (years)		<0.001
0-17	88	
18-20	62	
21-40	19	
41+	13	
Type of gun		< 0.001
Handgun	62	
Long gun	8	
Circumstance		< 0.001
Hunting	33	
Handling/transporting/loading	27	
Playing with/showing gun to others	80	
Thought safety was on/problem with safety	50	
Unknown (	23	

\*For each of the variables (age, type of gun, circumstance), the  $\chi^2$  tests the null hypothesis that the proportion of preventable firearm related deaths across the appropriate subcategories (that is, the different age, type of gun, and circumstance groupings) is the same.

could save more than 400 lives each year. Other research suggests that there would also be significant cost savings associated with preventing firearm related deaths, both for the victims' families and for the community as a whole.15 16 Of course, any assessment of the desirability of the devices should weigh the benefits in lives saved (and injuries averted) against the costs to consumers of providing or requiring the devices.

Our conclusion that 20% of the deaths were preventable by a LCI is convincingly close to prior research, falling between the General Accounting Office's 23% figure, and Ismach et al's 14%. No prior research has examined the proportion of deaths preventable by a personalized gun. Yet our results suggest that personalized guns may be among the most beneficial firearm safety design changes for the future.

However, personalized guns are not uniformly supported by gun control advocates. In fact, some have argued that increased availability of these guns may even be counterproductive.17 Our research can help clarify the risk-benefit equation for these guns by providing better information about how many lives might be directly saved by personalized guns. For loaded chamber indicators and magazine safeties, these concerns are minimized because potential gun buyers already have the option to purchase guns with these features.

Just 4% of the deaths in our sample were preventable by a magazine safety. The action of removing the ammunition magazine from a pistol prior to the shooting is apparently less common than other circumstances surrounding firearm related deaths, or at least is less frequently noted in medical examiner and police reports. However, the passive or automatic nature of magazine safeties, coupled with their relatively low price and mechanical simplicity, suggests that these devices remain a useful injury intervention.

Although safer handling or storage of firearms might also have prevented some of the deaths in our sample, this was not the focus of our research. In addition, there is some evidence that it may be quite difficult to alter the firearm handling, ownership, or storage practices of children 18 19 and adults.20-23

For the present study we did not examine the safety devices' effects on suicides and non-negligent homicides. Personalized guns, in particular, might prevent youth suicides, and even some homicides where the gun was recently stolen from its owner. Future research, based on newly developed surveillance systems, might therefore yield greater estimates of the number of lives saved by these devices when all deaths are included.

#### Limitations

Our study has several limitations. There is inherent uncertainty in any determination of whether some safety device might have prevented any given death. We have tried to minimize some of this uncertainty by establishing reasonably specific rules and by using multiple coders. With data from Maryland and Milwaukee, the generalizability of our findings to other areas or to the United States as a whole is uncertain. However, the comparability of our findings regarding preventability among the two regions, and with other research, suggests that regional variation in preventability within the United States may not be especially great. The age distribution of our sample is somewhat younger than the nation as a whole, though the gender distribution is similar to national data.

As described, we did not include negligent homicides in Maryland. However, the purpose of our analysis was not to determine the raw number of preventable deaths, but the proportion of deaths that might be prevented by the various safety devices. Only if the proportion of negligent homicides in Maryland that were preventable was very different from the rest of the deaths in our sample would their absence affect our results. The similarity in preventability of Milwaukee's negligent homicides with the rest of the deaths suggests that this is probably not the case.

For several reasons, our estimate of the number of lives that might be saved by the three safety devices may be conservative. First, the reported number of unintentional deaths in the United States is likely to be an underestimate since many of these deaths, as in our Milwaukee data, are coded as negligent homicides. Inclusion of these negligent homicides substantially increased the number of Milwaukee cases in our sample. Also, in our calculations of lives potentially saved, we use only those deaths we classified as preventable, not those classified as possibly preventable.

On the other hand, we understand the uncertainties inherent in this or any calculation of possible lives saved under various assumptions. For example, this calculation assumes that the proportion of deaths preventable in our sample would be the same for the United States as a whole. In addition, our lives saved calculations assume that all firearms would have the safety devices. Of course, even if new firearms were required to contain the devices, many older guns without the devices would remain in circulation. Therefore, it might be some years before the maximum benefit of the technologies would be felt. We also assume that LCIs can be designed, as a new California law requires, to be understood even by untrained users.24

Some might even argue that the inclusion of new safety devices into firearms could result in the loss of lives, for example if the firearm did not function as intended during a defensive gun use, or if the increased cost forced some to forgo the purchase of a gun. Designers of personalized guns attempt to minimize or eliminate any interference with the normal operation of the firearm. LCIs and magazine safeties should result in little change to the operation or cost of a gun. The increased cost of personalized guns, and the impact this might have on purchasing decisions, is not known. In addition, despite the arguments of some researchers,23 the best available evidence suggests that there are relatively few defensive uses of guns compared with gun related deaths and crimes.26 27

#### CONCLUSION

Despite the potentially lifesaving benefits of firearm safety technologies, most firearm manufacturers have not provided these devices voluntarily.6 7 In the United States, the public would support legislation requiring these devices. In one national poll, legislation requiring all new handguns to contain a LCI (73% in favor) or personalization technology (71% in favor) were each supported by a large majority of the respondents.28

Certainly, incorporating safety devices into firearms is not the only appropriate strategy for responding to the many different causes of firearm violence. However, examples of successful design changes for other products (such as motor vehicles and prescription drug containers), 29 30 coupled with the results of our study, suggest that product modification should remain an important intervention for firearms as well.

#### **ACKNOWLEDGEMENTS**

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#### Key points

- Changing the design of products to make them safer is a proven injury prevention strategy, but for firearms this strategy has not yet been widely adopted.
- For firearms, loaded chamber indicators and magazine safeties are designed to prevent some deaths where the shooter did not know the gun was loaded; personalization devices prevent the gun from being fired by an unauthorized user.
- In this study of the lifesaving potential of these three firearm safety devices, 44% of the deaths in the sample were preventable by at least one of the devices.
- Design changes to firearms have the potential to save hundreds of lives each year in the United States.

#### Authors' affiliations

J S Vernick, S B Johnson, D W Webster, Johns Hopkins School of Public Health, Center for Gun Policy and Research, Baltimore, Maryland M O'Brien, L M Hepburn, Harvard School of Public Health, Injury Control Research Center, Cambridge, Massachusetts S W Hargarten, Medical College of Wisconsin, Firearm Injury Center,

Milwaukee, Wisconsin

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# ECHO...

## Lighter balls for younger children



Please visit the Injury Prevention website (www. injuryprevention.com] for a link to the full text of this article

■he incidence of hand and wrist injuries from balls used by children in sporting activities may be reduced by increasing awareness of parents and coaches, using lighter balls, and introducing weight categories for players.

The case notes of all children aged 6-13 years attending the accident and emergency department of the Royal Aberdeen Children's Hospital from January to December 2001 as a result of a wrist, hand, or finger injury sustained from a blow by a ball were reviewed and the cause, type, and severity of the injury noted.

Altogether 187 children (125 boys, 69%) were seen over the study period. Football (soccer) resulted in 120 (64%) of the injuries, with 93 (78%) sustained by boys. Serious injuries were noted in 69 cases-67 fractures and two dislocations (37% of the total presentations). The fracture rate was higher in the injuries sustained outside school.

All injuries in this study were caused by a blow from a ball. Most football injuries in youngsters are mild, but their severity increases with age as children become heavier and achieve higher skill levels. The study concluded with the following recommendations. Firstly, using lighter balls for younger children would reduce the force of a blow. Secondly, weight categories would ensure that heavier players were not kicking or throwing balls at lighter players. Thirdly, awareness of the risk of hand and wrist injuries among parents and coaches should be increased.

Wider implementation of these modifications should be considered, and a register of injuries kept by sporting bodies would be of benefit in monitoring such injuries.

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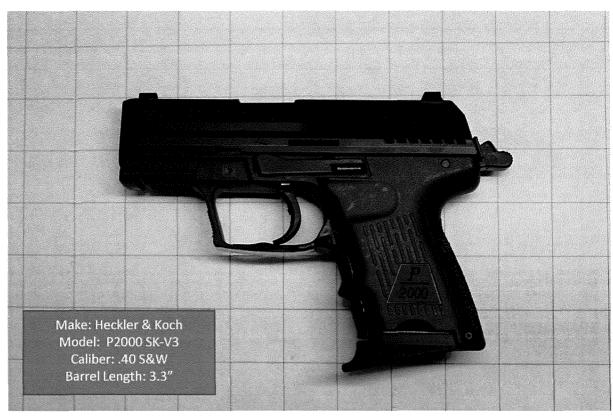
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# **DEFENDANT'S EXHIBIT 15**







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# **DEFENDANT'S EXHIBIT 17**







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# **DEFENDANT'S EXHIBIT 19**







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**DEFENDANT'S EXHIBIT 21** 





# Saul Cornell

# Paul and Diane Guenther Chair in American History Department of History

Fordham University

441 East Fordham Road \* Bronx, NY 10458 \* 203 826-6608 (c) \* scornell1@fordham.edu

Education				
1989	University of Pennsylvania	Ph.D.	Dissertation: "The Political Thought and Culture of the Anti-Federalists"	
1985	University of Pennsylvania	MA	History	
1982	Amherst College	BA	History - Magna Cum Laude	
1980-81	University of Sussex, Brighton, England			

Teaching Experience				
2009-2020	Guenther Chair in American History	Fordham University		
2011-2022	1-2022 Adjunct Professor of Law Fordham Law School			
2005-2008	Professor of History	The Ohio State University		
1997-2005	Associate Professor, History	The Ohio State University		
1995	Thomas Jefferson Chair	University of Leiden, The Netherlands		
1991-1997	Assistant Professor, History	The Ohio State University		
1989-1991	Assistant Professor, History	College of William and Mary		

# Fellowships and Grants

- 2019-2020 The Gilder Lehrman Center for the Study of Slavery, Resistance, and Abolition, Yale University
- 2018-2019 Senior Research Scholar in Residence, Floersheimer Center for Constitutional Democracy, Cardozo Law School
- 2014 Senior Research Scholar in Residence, University of Connecticut Law School
- 2011 Senior Research Scholar in Residence, Yale Law School
- 2003-2008 Joyce Foundation, Second Amendment Center Grant, \$575,000
- 2003-2004 NEH Fellowship
- 2002-2005 Department of Education, Teaching American History Grant, Historyworks, \$2,000,000
- 2002 Gilder-Lehrman Fellowship
- 2001-2002 Joyce Foundation Planning Grant, \$40,000
- 2001 American Council of Learned Societies (ACLS)
- 1999-2000 Betha Grant, Batelle Memorial Endowment, Ohio Teaching Institute, \$100,000
- 1998 Thomas Jefferson Memorial Foundation, Research Fellowship
- 1995 Thomas Jefferson Chair in American Studies, Fulbright Lecturing Award
- 1994 Ohio State University Seed Grant
- 1993 Ohio State University Special Research Assignment
- 1992 Ohio State University Grant-In-Aid
- 1989-1991 NEH Post-Doctoral Fellow, Institute of Early American History and Culture

1|Saul Cornell

# **Prizes and Awards**

- 2006 Langum Prize in Legal History 2006
- 2006 History News Network, Book of the Month
- 2006 History News Network, Top Young Historian
- 2001 Society of the Cincinnati, History Book Prize, a Triennial Award for the Best Book on the American Revolutionary Era
- 2000 Choice Outstanding Academic Book

# **Book Publications**

The Partisan Republic: Democracy, Exclusion, and the Fall of the Founders Constitution

New Histories of American Law, series eds., Michael Grossberg and Christopher Tomlins (Cambridge University Press, 2019) [With Gerald Leonard]

The Second Amendment On Trial: Critical Essays on District of Columbia v. Heller (University of Massachusetts Press, 2013) [with Nathan Kozuskanich]

<u>Visions of America: A History of the United States</u> [co-authored with Jennifer Keene and Ed O'Donnell] (First edition, 2009), (second edition 2013) (third edition, 2016)

"A Well Regulated Militia": The Founding Fathers and the Origins of Gun Control (Oxford University Press, 2006) (paperback edition 2008)

Whose Right to Bear Arms Did the Second Amendment Protect? (Bedford/St. Martins Press, 2000) (Paperback 2000)

The Other Founders: Anti-Federalism and the Dissenting Tradition in America, 1788-1828 (Institute of Early American History and Culture, University of North Carolina Press, 1999) (paperback edition 2001)

Editor, <u>Retrieving the American Past: Documents and Essays on American History</u>, (Pearson, 1994-2008)

## Scholarly Articles, Book Chapters, and Essays:

- "History and Tradition or Fantasy and Fiction: Which Version of the Past Will the Supreme Court Choose in NYSRPA v. Bruen?," 49 Hastings Constitutional Law Quarterly (2022): 145-177.
- "The Long Arc of Arms Regulation in Public: From Surety to Permitting,1328–1928," 55 <u>University of California, Davis Law Review</u> (2022): 2545-2602
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- "Heller, New Originalism, and Law Office History: 'Meet the New Boss, Same as the Old Boss'" <u>UCLA</u>
  <u>Law Journal</u> 56 (2009): 1095 -1125
- "Originalism on Trial: The Use and Abuse of History in District of Columbia v. Heller" Ohio-State Law Journal 69 (2008): 625-640
- "Consolidation of the Early Federal System," Chapter 10 of the <u>Cambridge History of A merican Law</u> (Cambridge University Press, 2008) [With Gerry Leonard]
- "The Ironic Second Amendment" Albany Government Law Review 2 (2008): 292-311.
- "The Original Meaning of Original Understanding: A Neo-Blackstonian Critique," <u>Maryland Law</u> Review (2008): 101-115
- "Mobs, Militias, and Magistrates: Popular Constitutionalism During the Whiskey Rebellion," <u>Chicago-Kent Law Review</u> (2007): 883-903
- "The Second Amendment and Early American Gun Regulation: a Closer Look at the Evidence," <u>Law and History Review</u> (2007): 197-204
- "St. George Tucker and the Second Amendment: Original Understandings and Modern Misunderstandings," William and Mary Law Review 47 (2006): 1123-55
- "The Early American Origins of the Modern Gun Control Debate: The Right to Bear Arms, Firearms Regulation, the Lessons of History," <u>Stanford Law and Policy Review</u> (2006): 571-596
- "Well Regulated: The Early American Origins of Gun Control," <u>Fordham Law Review</u> 73 (2004): 487-528 [With Nathan DeDino]
- "Beyond the Myth of Consensus: The Struggle to Define the Right to Bear Arms in the Early Republic," in <u>Beyond the Founders: New Essays on the Political History of the Early Republic</u> (UNC Press, 2005)
- "A New Paradigm for the Second Amendment," Law and History Review 22 (2004): 161-7
- "Gun Laws and Policies: A Dialogue," Focus on Law Studies: Teaching about Law in the Liberal Arts (American Bar Association, 2003)
- "The Militia Movement," Oxford Companion to American Law (Oxford University Press, 2002)
- "Don't Know Much About History: The Current Crisis in Second Amendment Scholarship," Northern Kentucky Law Review (2003)
- "A Right to Bear Quills or Kill Bears? A Critical Commentary on the Linkage between the 1<sup>st</sup> and 2<sup>nd</sup> Amendment in Recent Constitutional Theory," in <u>The Limits of Freedom in A Democratic Society</u> (Kent State University Press, 2001)
- "The Irony of Progressive Historiography: The Revival of Anti-Federalism in Contemporary Constitutional History," in <u>American Law Ways and Folkways</u> (Odense University Press, Denmark 2001)
- "Commonplace or Anachronism: The Standard Model, The Second Amendment, and the Problem of History in Contemporary Constitutional Theory," <u>Constitutional Commentary</u> (1999): 221-246
- "Mere Parchment Barriers? Anti-Federalists, the Bill of Rights, and the Question of Rights Consciousness," in <u>Government Proscribed: The Bill of Rights</u> (University of Virginia Press, 1998): 175-208

- "Moving Beyond the Great Story: Post-Modern Prospects, Post-Modern Problems, A Forum on Robert Berkhofer, Jr. <u>Beyond the Great Story</u>" <u>American Quarterly</u> (1998): 349-357
- "The Anti-Federalists," in <u>The Blackwell Companion to American Thought</u>, eds., James Kloppenberg (London, 1995)
- "The Bill of Rights," in <u>The Blackwell Companion to American Thought</u>, eds., James Kloppenberg (London, 1995)
- "Splitting the Difference: Textualism, Contexualism, and Post-Modern History," <u>American Studies</u> (1995): 57-80
- "Canon Wars II: The Return of the Founders," Reviews in American History 22 (1994): 413-417
- "Moving Beyond the Canon of Traditional Constitutional History: Anti-Federalists, the Bill of Rights and the Promise of Post-Modern Historiography," <u>Law and History Review</u> (1994): 1-28
- "Early American History in a Post-Modern Age," William and Mary Quarterly 50 (1993): 329-341
- "Liberal Republicans, Republican Liberals?: The Political Thought of the Founders Reconsidered," Reviews in American History 21 (1993): 26-30
- "Politics of the Middling Sort: The Bourgeois Radicalism of Abraham Yates, Melancton Smith, and the New York Anti-Federalists," in New York in the Age of the Constitution (New York Historical Society, 1992): 151-175
- "Aristocracy Assailed: Back-Country Opposition to the Constitution and the Problem of Anti-Federalist Ideology," <u>Journal of American History</u> (1990): 1148-1172
- "The Changing Historical Fortunes of the Anti-Federalists," Northwestern University Law Review (1989): 39-73
- "Reflections on the `Late Remarkable Revolution in Government,' Aedanus Burke and Samuel Bryan's Unpublished History of the Ratification of the Federal Constitution," <u>The Pennsylvania Magazine of</u> History and Biography (1988): 103-130

#### **Book Reviews:**

- Journal of American History
- William and Mary Quarterly
- American Studies Journal of the Early Republic
- Pennsylvania Magazine of History and Biography
- American Quarterly
- American Journal of Legal History
- Law and History Review

# Journal Manuscript Referee:

- Journal of American History
- William and Mary Quarterly
- Diplomatic History
- Pennsylvania Magazine of History and Biography
- Law and History Review
- Harvard Law Review

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- Stanford Law Review
- Yale Law Journal

## **Book Manuscript Reviewer:**

- University Press of Virginia
- University of North Carolina Press
- Stanford University Press
- University of Massachusetts Press
- Oxford University Press
- Cambridge University Press
- University of Michigan Press
- Harvard University Press

# **Invited Lectures:**

- "Race, Regulation, and Guns: The Battleground in the Debate Over the Second Amendment," Haber/Edelman Lecture: University of Vermont, Fall 2021
- "Second Amendment Myths and Realities," University of Tampa, Honors College Symposium, November 30, 2018.
- "The Common Law and Gun Regulation: Neglected Aspects of the Second Amendment Debate," Guns in Law, Amherst College, Law Justice and Society (2016)
- "The New Movement to End Gun Violence." UCLA Hammer Museum (2016)
- "No Person May Go Armed": A Forgotten Chapter in the History of Gun Regulation" The Elizabeth Battelle Clark Legal History Series, Boston University College of Law, 2016
- Legacy Speaker Series: "Guns in the United States," University of Connecticut (2016) "How does the Second Amendment Apply to Today?"
- American Constitution Society/ Federalist Society Debate, Tulane Law School, New Orleans (2016)
- "The Second Amendment and The Future of Gun Regulation: Forgotten Lessons From U.S. History," Constitution Day Lecture, Goucher College, (2015)
- Keynote Lecture: "The Second Amendment and American Cultural Anxieties: From Standing Armies to the Zombie Apocalypse" Firearms and Freedom: The Relevance of the Second Amendment in the Twenty First Century, Eccles Center, British Library (Spring 2015)
- "Narratives of Fear and Narratives of Freedom: A Short Cultural History of the Second Amendment," Comparing Civil Gun Cultures: Do Emotions Make a Difference? Max Plank Institute, Berlin (2014)
- "History and Mythology in the Second Amendment Debate," Kollman Memorial Lecture, Cornell College, Iowa (Spring, 2013)
- "Will the Real Founding Fathers Please Stand Up or Why are so few Historians Originalists" Constitution Day Lecture, Lehman College, Fall 2011
- "Lawyers, Guns, and Historians: The Second Amendment Goes to Court," SHEAR/HSP Public Lecture, Philadelphia, July, 2008

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- The Robert H. and Alma J. Wade Endowment Lecture, Kentucky Wesleyan University, "The Early American Origins of Gun Control" (2006)
- "Jefferson, Mason, and Beccaria: Three Visions of the Right to Bear Arms in the Founding Era," Bill of Rights Lecture, Gunston Hall Plantation, Fairfax, VA (2003)
- "A New Paradigm for the Second Amendment," Finlay Memorial Lecture, George Mason University, (2001)
- "Academic Gunsmoke: The Use and Abuse of History in the Second Amendment Debate," Cadenhead Memorial Lecture, University of Tulsa, (2000)
- "Why the Losers Won: The Rediscovery of Anti-Federalism in the Reagan Years," Thomas Jefferson Inaugural Lecture, University of Leiden, Netherlands, (1995)

# **Presentations:**

- "From Ideology to Empiricism: Second Amendment Scholarship After Heller, "Hastings Constitutional Law Quarterly Symposium, Heller at Ten, January 18, 2019
- "Firearms and the Common Law Tradition," Aspen Institute, Washington, DC (2016)
- "The Original Debate over Original Meaning Revisited," British Group in EarlyAmerican History, Annual Meeting, Cambridge, England (2016)
- "Second Amendment Historicism and Philosophy" The Second Generation of Second Amendment Scholarship" Brennan Center, NYU 2016
- "The Reception of the Statute of Northampton in Early America: Regionalism and the Evolution of Common Law Constitutionalism" OIEAHC and the USC/Huntington Library Early Modern Studies Institute May 29–30, 2015
- "The Right to Travel Armed in Early America: From English Restrictions to Southern Rights," British Group in Early American History, Annual Conference Edinburgh, Scotland (2014)
- "Progressives, Originalists, and Pragmatists: The New Constitutional Historicism and the Enduring Legacy of Charles Beard," Charles Beard, Economic Interpretation and History, Rothmere Center, Oxford University (2012)
- CUNY Early American Seminar, "The People's Constitution v. the Lawyer's Constitution," 2011
- Roundtable: "The Work of J.R. Pole," SHEAR, Philadelphia, Pennsylvania 2011)
- "The Right to Bear Arms in the Era of the Fourteenth Amendment: Gun Rights or Gun Regulation?" Bearing Arms, Policy, Policing, and Incorporation After Heller, Santa Clara Law School (2010)
- "Re-envisioning Early American History," American Historical Association Annual Meeting, San Diego (2010)
- "The Ironic Second Amendment" Firearms, the Militia, and Safe Cities: Merging History, Constitutional Law and Public Policy, Albany Law School (2007)
- "District of Columbia v. Heller and the Problem of Originalism," University of Pennsylvania Constitutional Law Workshop, Philadelphia (2007)

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- "Progressives and the Gun Control Debate," American Constitution Society, Harvard Law School, (2006)
- "The Problem of Popular Constitutionalism in Early American Constitutional Theory," American Association of Law Schools, Annual Conference (2006)
- "Popular Constitutionalism and the Whiskey Rebellion," Symposium on Larry Kramer's <u>The People Themselves</u>, Chicago-Kent Law School (2005)
- Roundtable Discussion on the Second Amendment and Gun Regulation, NRA/ GMU Student's For the Second Amendment Symposium (2005)
- "The Early American Origins of the Modern Gun Control Debate: The Right to Bear Arms, Firearms Regulation, and the Lessons of History," Gun Control: Old Problems, New Problems, Joint Conference Sponsored by the John Glenn Institute and Stanford Law School (2005)
- "Original Rules for Originalists?" University of Minnesota Law School (2005)
- "The Fourteenth Amendment and the Origins of the Modern Gun Debate," UCLA, Legal History Workshop (2004)
- "Beyond Consensus, Beyond Embarrassment: The Use and Abuse of History in the Second Amendment Debate," American Society of Legal History, Austin, TX (2004)
- "Armed in the Holy Cause of Liberty: Guns and the American Constitution," NYU Legal History Colloquium (2004)
- "Digital Searches and Early American History," SHEAR Brown University (2004)
- "Well Regulated: The Early American Origins of Gun Control," The Second Amendment and the Future of Gun Regulation," Joint Conference Sponsored by the John Glenn Institute and Fordham Law School, New York (2004)
- "Minuteman, Mobs, and Murder: Forgotten Contexts of the Second Amendment," Department of History, University of California Berkeley (2003)
- "History vs. Originalism in the Second Amendment Debate," Federalist Society/ American Constitution Society, George Washington University Law School, Washington D.C. (2003)
- "Self-defense, Public Defense, and the Politics of Honor in the Early Republic," Lake Champlain Early American Seminar, Montreal (2003)
- "The Ironic Second Amendment" "Gun Control: Controversy, Social Values, and Policy," University of Delaware Legal Studies Conference, Newark, Delaware (2003)
- "Individuals, Militias, and the Right to Bear Arms: The Antebellum Debate Over Guns," Institute for Legal Studies, University of Wisconsin School of Law (2004)
- "Guns in the British Atlantic World: New Research, New Directions" Society for the Historians of the Early American Republic, Ohio State University (2003)
- "Neither Individual nor Collective: A New Paradigm for the Second Amendment," American Bar Foundation, Chicago (2003)
- "The Changing Meaning of the Armed Citizen in American History," "Americanism Conference," Georgetown University (2003)

- "A New Paradigm for the Second Amendment?" Supreme Court Historical Society, Washington, D.C. (2002)
- "Constitutional History as Cultural History: The Case of the Second Amendment" European American Studies Association, Bordeaux, France (2002)
- "Don't Know Much About History: The Current Crises in Second Amendment Scholarship," Salmon P. Chase College of Law, Symposium, "The Second Amendment Today," (2002)
- "History, Public Policy, and the Cyber-Age: Gun Control Policy after the Emerson Decision," Sanford Institute of Public Policy, Duke University (2002)
- "Constitutional History After the New Cultural History: The Curious Case of the Second Amendment," Society of the Historians of the Early American Republic, Baltimore (2001)
- Roundtable Discussion, "The State of Second Amendment Scholarship," American Historical Association (2001)
- "Armed in the Holy Cause of Liberty: Critical Reflections on the Second Amendment Debate," Vanderbilt University Law School (2001)
- "Neither Individual nor Collective: A New Paradigm for the Second Amendment," Boston University Law School, (2000)
- "The Current State of Second Amendment Scholarship," National Press Club Washington, D.C. American Bar Association, (2000)
- "Taking the Hype out of Hyper-Text, Or What Should Textbook Companies Being Doing for us on the Web," OAH St. Louis, Missouri (1999)
- "The Ironies of Progressive Historiography: The Revival of Anti-Federalism in Contemporary Constitutional Theory," European American Studies Association, Lisbon, Portugal (1998)
- "Deconstructing the Canon of American Constitutional History" American Society of Legal History, Seattle, Washington (1998)
- "Beyond Meta-narrative: The Promise of Hypertext," American Studies Association, Seattle, Washington (1998)
- "Text, Context, Hypertext," American Historical Association, Washington D.C. (1998)
- "Jefferson and Enlightenment," International Center for Jefferson Studies, Charlottesville, VA, (1998)
- "Copley's Watson and the Shark: Interpreting Visual Texts with Multi-media Technology," American Studies Association, Washington, D.C. (1997)
- "Multi-Media and Post-Modernism," H-Net Conference, Technology and the Future of History, East Lansing, Michigan (1997)
- Comment on Jack Rakove's <u>Original Meanings</u>, Society of the Historians of the Early Republic, State College, PA (1997)
- "Teaching with Multi-Media Technology," Indiana University, spring 1997 "Constitutional History from the Bottom Up: The Second Amendment as a Test Case," McGill University, Montreal, Canada (1996)

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- "Just Because You Are Paranoid, Does Not Mean the Federalists Are Not Out to Get You: Freedom of the Press in Pennsylvania," University of Pennsylvania (1995)
- "Multi-Media and Post-Modernism: The Future of American Studies?" Lecture, Erasmus University, Rotterdam, Netherlands (1995)
- "Post-Modern American History? Ratification as a Test Case," St. Cross College, Oxford University, Oxford, England (1994)
- "The Other Founders," NYU Legal History Seminar," NYU Law School (1994)
- "Reading the Rhetoric of Ratification," paper presented at "Possible Pasts: Critical Encounters in Early America," Philadelphia Center for Early American Studies, Philadelphia, PA (1994)
- "American Historiography and Post-Modernism," Organization of American Historians, Atlanta, GA (1994)
- "The Anti-Federalist Origins of Jeffersonianism," Columbia Seminar on Early American History (1994)
- "American History in a Post-Modern Age?" American Historical Association, San Francisco, CA (1994)
- "Post-Modern Constitutional History?" Indiana University School of Law, Bloomington, IN (1993)
- Participant, Institute of Early American History and Culture, planning conference, "New Approaches to Early American History," Williamsburg, VA (1992)
- "Mere Parchment Barriers? Federalists, Anti-Federalists and the Problem of Rights Consciousness," American Studies Association, Baltimore, MD (1991)
- "James Madison and the Bill of Rights: a comment on papers by Jack Rakove, Ralph Ketcham and Max Mintz," Organization of American Historians and Center for the Study of the Presidency Conference, "America's Bill of Rights at 200 Years," Richmond, VA, (1991)
- Symposium participant, "Algernon Sidney and John Locke: Brothers in Liberty?" Liberty Fund Conference, Houston, TX (1991)
- "Mere Parchment Barriers? Antifederalists, the Bill of Rights and the Question of Rights Consciousness," Capitol Historical Society, Washington, D.C. (1991)
- "Anti-Federalism and the American Political Tradition," Institute of Early American History and Culture Symposium, Williamsburg, VA (1989)

#### Interviews, Editorials, Essays, Podcasts:

 "Clarence Thomas' Latest Guns Decision Is Ahistorical and Anti-Originalist" SLATE June 24, 2022

- Cherry-picked history and ideology-driven outcomes: Bruen's originalist distortions, "SCOTUSblog (Jun. 27, 2022, 5:05 PM),
- "The Right Found a New Way to Not Talk About a School Shooting," SLATE May 25, 2022
- "The Horror in New York Shows the Madness of the Supreme Court's Looming Gun Decision," Slate May 19, 2022
- "Guns, Guns Everywhere: Last week's subway Shooting was Horrifying. If the Supreme Court Creates a National Right to Carry, the Future will be Worse," New York Daily News Apr 17, 2022
- "The Supreme Court's Latest Gun Case Made a Mockery of Originalism" *Slate* November 10, 2021
- "'Originalism' Only Gives the Conservative Justices One Option On a Key Gun Case," *Washington Post*, November 3, 2021
- "Neither British Nor Early American History Support the Nearly Unfettered Right to Carry Arms," *Slate* November 02, 2021
- "Will the Supreme Court Create Universal Concealed Carry Based on Fantasy Originalism?" Slate November 1, 2021
- "Biden was Wrong About Cannons, but Right About the Second Amendment," *Slate* June 29, 2021
- "Barrett and Gorsuch Have to Choose Between Originalism and Expanding Gun Rights," *Slate* April 29, 2021 Slate
- "What Today's Second Amendment Gun Activists Forget: The Right Not to Bear Arms," *Washington Post*, January 18, 2021
- "Could America's Founders Have Imagined This?" The New Republic, December 20, 2019
- "Don't Embrace Originalism to Defend Trump's Impeachment" *The New Republic*, December 5, 2019
- "The Second-Amendment Case for Gun Control" The New Republic, August 4, 2019
- "The Lessons of a School Shooting—in 1853" *Politico*, March 24, 2018.
- "Originalism and the Second Amendment in *District of Columbia v. Heller*," *University of Chicago Law Review*, Podcast, Briefly 1.9, Wed, 04/11/2018
- "Sandy Hook and the Original Meaning of the Second Amendment," *Time* December, 2017
- "The State of the Second Amendment," National Constitution Center, Podcast October, 2017
- "Gun Anarchy and the Unfree State: The Real History of the Second Amendment," *The Baffler On-line* October 2017
- "Five Types of Gun Laws the Founding Fathers Loved" Salon October 22, 2017
- "Half Cocked," Book Forum April 2016
- "Let's Make an Honest Man of Ted Cruz. Here's how we Resolve his "Birther" Dilemma with Integrity" *Salon* January 23, 2016
- "Guns Have Always Been Regulated," The Atlantic Online December 17, 2015
- "The Slave-State Origins of Modern Gun Rights" *The Atlantic Online* 30, 2015 [with Eric Ruben]
- PBS, "Need to Know: 'Debating the Second Amendment: Roundtable'" April 26, 2013
- "All Guns are not Created Equal" Jan 28, 2013 *Chronicle of Higher Education* [with Kevin Sweeney]

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- "What the 'Right to Bear Arms' Really Means" *Salon* January 15, 2011 "Elena Kagan and the Case for an Elitist Supreme Court," *Christian Science Monitor* May 20, 2010
- "Gun Points," Slate, March 8, 2010 (With Justin Florence, and Matt Shors)
- "What's Happening to Gun Control," To the Point, NPR. March 11, 2010
- "Getting History Right," National Law Journal, March 1, 2010
- "History and the Second Amendment," The Kojo Nnamdi Show, WAMU (NPR) March 17, 2008
- "The Court and the Second Amendment," *On Point* with Tom Ashbrook, WBUR (NPR) March 17, 2008
- "Aim for Sensible Improvements to Gun Regulations," Detroit Free Press, April 29, 2007
- "A Well Regulated Militia," The Diane Rehm Show, WAMU (NPR) Broadcast on Book TV (2006)
- "Taking a Bite out of the Second Amendment," History News Network, January 30, 2005
- "Gun Control," Odyssey, Chicago NPR September 8, 2004
- "Loaded Questions," Washington Post Book World February 2, 2003
- "The Right to Bear Arms," Interview *The Newshour*, PBS May 8, 2002
- "Real and Imagined," New York Times, June 24, 1999

#### Other Professional Activities

- Editorial Board, Constitutional Study, University of Wisconsin Press (2014-present)
- Advisory Council, Society of Historians of the Early American Republic (SHEAR) (2007-2009)
- Program Committee, Annual Conference, Society of the Historians of the Early American Republic, Philadelphia, PA 2008
- Editorial Board, American Quarterly (2004-2007)
- Director, Second Amendment Research Center, John Glenn Institute for Public Service and Public Policy, 2002-2007
- Fellow, Center for Law, Policy, and Social Science, Moritz College of Law, Ohio State University 2001 - 2004
- Local Arrangements Committee, Annual Conference, Society of the Historians of the Early American Republic, Columbus, OH 2003
- Project Gutenberg Prize Committee, American Historical Association, 2004, 2002
- Program Committee, Annual Conference, Society of the Historians of the Early Republic, 2001
- Co-Founder Ohio Early American Studies Seminar
- NEH Fellowship Evaluator, New Media Projects, Television Projects
- Multi-media Consultant and Evaluator, National Endowment for the Humanities, Special, Projects, Division of Public Programs, Grants Review Committee (1999)

#### Court Citations, Amicus Briefs and Expert Witness Reports

#### **US Supreme Court:**

N.Y. State Rifle & Pistol Ass'n v. Bruen, 597 U.S. , 50 2022 U.S. Lexis 3055 (2022)

N.Y. State Rifle & Pistol Ass'n v. Bruen, 597 U.S. \_\_, 26, 28, 45, 47 2022 U.S. Lexis 3055 (2022) (Breyer, J. dissenting)

McDonald v. City of Chicago, Ill., 561 U.S. 742, 900, 901 n.44 (2010) (Stevens, J., dissenting).

McDonald v. City of Chicago, Ill., 561 U.S. 742, 914, 933 (2010) (Breyer, J., dissenting).

D.C. v. Heller, 554 U.S. 570, 666 n.32, 671, 685 (2008) (Stevens, J., dissenting).

#### **Federal Courts:**

Jones v. Bonta, United States Court of Appeals, Ninth Circuit. May 11, 2022 --- F.4th ---- 2022 WL 1485187.

<u>Duncan v. Bonta</u>, United States Court of Appeals, Ninth Circuit. November 30, 2021 19 F.4th 1087 2021

Young v. Hawaii, 992 F.3d 765, 785-86 (9th Cir. 2021) (en banc).

Kanter v. Barr, 919 F.3d 437, 446 n.6, 457, 462, 464 (7th Cir. 2019) (Barrett, J., dissenting).

Medina v. Whitaker, 913 F.3d 152, 159 (D.C. Cir.), cert. denied sub nom. Medina v. Barr, 140 S. Ct. 645 (2019).

Young v. Hawaii, 896 F.3d 1044, 1066 (9th Cir. 2018), reh'g en banc granted, 915 F.3d 681 (9th Cir. 2019).

Young v. Hawaii, 896 F.3d 1044, 1077 (9th Cir. 2018) (Clifton, J., dissenting), reh'g en banc granted, 915 F.3d 681 (9th Cir. 2019).

Teixeira v. Cty. of Alameda, 873 F.3d 670, 684-85 (9th Cir. 2017).

Kolbe v. Hogan, 813 F.3d 160, 175 (4th Cir. 2016), on reh'g en banc, 849 F.3d 114 (4th Cir. 2017).

Binderup v. Attorney Gen. United States of Am., 836 F.3d 336, 348 (3d Cir. 2016).

Binderup v. Attorney Gen. United States of Am., 836 F.3d 336, 370–71, 371 n.17, 372 n.19 (3d Cir. 2016) (Hardiman, J., concurring).

Binderup v. Attorney Gen. United States of Am., 836 F.3d 336, 389 n.85, 405 n.187 (3d Cir. 2016) (Fuentes, J., concurring).

Peruta v. Cty. of San Diego, 824 F.3d 919, 935 (9th Cir. 2016).

Peruta v. Cty. of San Diego, 742 F.3d 1144, 1185, 1188 (9th Cir. 2014) (Thomas, J., dissenting).

Nat'l Rifle Ass'n, Inc. v. Bureau of Alcohol, Tobacco, Firearms, & Explosives, 714 F.3d 334, 342 n.19, 343 n.23 (5th Cir. 2013) (Jones, J., dissenting).

Kachalsky v. Cty. of Westchester, 701 F.3d 81, 95 & n.21 (2d Cir. 2012).

Moore v. Madigan, 702 F.3d 933, 935 (7th Cir. 2012).

Nat'l Rifle Ass'n of Am., Inc. v. Bureau of Alcohol, Tobacco, Firearms, & Explosives, 700 F.3d 185, 200, 202–03 (5th Cir. 2012).

United States v. Carpio-Leon, 701 F.3d 974, 980 (4th Cir. 2012).

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United States v. Greeno, 679 F.3d 510, 519 (6th Cir. 2012).

<u>United States v. Yancey</u>, 621 F.3d 681, 684 (7th Cir. 2010).

<u>United States v. Rene E.</u>, 583 F.3d 8, 12, 15–16 (1st Cir. 2009).

Miller v. Sessions, 356 F. Supp. 3d 472, 481 (E.D. Pa. 2019).

Grace v. D.C., 187 F. Supp. 3d 124, 138 n.11 (D.D.C. 2016).

Powell v. Tompkins, 926 F. Supp. 2d 367, 386 (D. Mass. 2013), affd, 783 F.3d 332 (1st Cir. 2015).

<u>United States v. Tooley</u>, 717 F. Supp. 2d 580, 589–591 (S.D.W. Va. 2010), <u>aff'd</u>, 468 F. App'x 357 (4th Cir. 2012).

<u>United States v. Boffil-Rivera</u>, No. 08-20437-CR, 2008 WL 8853354, 6 (S.D. Fla. Aug. 12, 2008), report and recommendation adopted sub nom.

<u>United States v. Gonzales-Rodriguez</u>, No. 08-20437-CR, 2008 WL 11409410 (S.D. Fla. Sept. 22, 2008), aff'd sub nom.

United States v. Boffil-Rivera, 607 F.3d 736 (11th Cir. 2010).

#### **State Courts:**

Norman v. State, 215 So. 3d 18, 30 & nn.11-12 (Fla. 2017).

Posey v. Com., 185 S.W.3d 170, 179-180 (Ky. 2006).

Posey v. Com., 185 S.W.3d 170, 185 n.3 (Ky. 2006) (Scott, J., concurring).

State v. Craig, 826 N.W.2d 789, 796 (Minn. 2013).

People v. Handsome, 846 N.Y.S.2d 852, 858 (N.Y. Crim. Ct. 2007).

Zaatari v. City of Austin, No. 03-17-00812-CV, 2019 WL 6336186, 22 (Tex. App. Nov. 27, 2019) (Kelly, J., dissenting).

State v. Roundtree, 2021 WI 1, 395 Wis. 2d 94, 952 N.W.2d 765

State v. Christen, 2021 WI 39, 958 N.W.2d 746

#### Amicus Briefs:

Amicus Brief, Harper v. Moore, No. 21-1271 (U.S. Supreme Court, 2022) [ISLT and Gerrymandering]

Amicus Brief KOX V. STATE OF GEORGIA, SUPREME COURT STATE OF GEORGIA Case No. S23A0167 [Second Amendment and Campus Carry]

Amicus Brief, NYSRPA v. Bruen, No. 20-843 (U.S. Supreme Court, 2021) [2<sup>nd</sup> Amendment]

Amicus Brief, Young v. State of Hawaii NO. 12-17808 (9th Cir. 2020) [2nd Amendment]

Amicus Brief, Gould v. Morgan, No. 17-2202 (1st Cir. 2018) [2<sup>nd</sup> Amendment]

Amicus Brief, Flanagan vs. Becerra, Central District of California Case (2018) [2<sup>nd</sup> Amendment]

Amicus Brief, Gill v. Whitford (US Supreme Court, 2017) [Partisan Gerrymandering]

Amicus Brief, Woollard v Gallagher, (4th Cir. 2013) [Second Amendment]

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Amicus Brief *Heller v. District of Columbia* [Heller II] (US Court of Appeals for D.C.) (2010) [2<sup>nd</sup> Amendment]

Amicus Brief, McDonald v. City of Chicago (US Supreme Court,2010) [14th Amendment] Amicus Brief, District of Columbia v. Heller (US Supreme Court 2008) [2nd Amendment]

Amicus Brief, Silvera v. Lockyer, case on appeal (9th Circuit 2003) [2nd Amendment]

Amicus Brief, *Emerson* v. *U.S.* case on appeal (5 Circuit 1999) [2nd Amendment]
Pro-bono Historical Consultant State of Ohio, *McIntyre* v. *Ohio*, (U.S. Supreme Court, 1995) [1st Amendment]

#### **Expert Witness Reports**

Rocky Mountain Gun Owners, Nonprofit Corp. v. Hickenlooper, 14-cv-02850 (D. Colo.). Chambers, et al., v. City of Boulder, 2018 CV 30581 (Colo. D. Ct. City of Boulder, filed June 14, 2018). Zeleny v. Newsom, 14-cv-02850 (N.D. Cal.).

Miller, et al v. Smith, et al., 2018 cv 3085 (C.D. III.).

Jones v. Bonta United States Court of Appeals, --- F.4th ---- , 2022 WL 1485187 (9th Cir., May 11, 2022).

*Baird v. Bonta*, No. 2:19-cv-00617 (E.D. Cal.). *Worth v. Harrington*, 21-cv-1348 (D. Minn.).

#### Law Review Symposia Organized

#### **Second Amendment:**

- "The Second Amendment and the Future of Gun Regulation: Historical, Legal, Policy, and Cultural Perspectives," 73 Fordham L. Rev. 487 (2004).
- "Gun Control: Old Problems, New Paradigms" 17 Stan. L. & Pol'y Rev. 671 (2006).
- "A Symposium on Firearms, the Militia and Safe Cities: Merging History, Constitutional Law and Public Policy," 1 Alb. Gov't L. Rev. 292 (2008).
- "The 2nd Amendment at the Supreme Court: "700 Years of History" and the Modern Effects of Guns in Public," 55 U.C. Davis L. Rev. 2545 (2022).

#### **New Originalism:**

- "The New Originalism" 82 Fordham L. Rev. 721 (2013).
- "Historians and the New Originalism: Contextualism, Historicism, and Constitutional Meaning"84 Fordham L. Rev. 915 (2015).

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ARTIN SERVICE

## DICTIONARY

OFTHE

## ENGLISH LANGUAGE:

IN WHICH

The WORDS are deduced from their ORIGINALS,

AND

ILLUSTRATED in their DIFFERENT SIGNIFICATIONS

BY

EXAMPLES from the best WRITERS.

TO WHICH ARE PREFIXED,

AHISTORY of the LANGUAGE,

AND

## AN ENGLISH GRAMMAR.

BY SAMUEL JOHNSON, A.M.

IN TWO VOLUMES:

VOL. I.

THE SECOND EDITION.

Cum tabulis animum cenforis fumet honefii:
Audebit quescunque parum fplendoris habebunt,
Et fine pondere erunt, et bonore indigna ferentur.
Verba movere loco; quanvis invita recedant,
Et versentur adhue intra penetralia recedant,
Et versentur adhue intra penetralia recedant,
Et versentur adhue intra penetralia recedant,
Proferet in lucem speciosa vocabula rerun,
Que priscis memorata Catonibus atque Cethegis,
Nunc situs informis premit et deserta vetustas.

Hor.

LONDON,

Printed by W. STRAHAN,

For J. and P. Knapton; T. and T. Longman; C. Hitch and L. Hawes;
A. Millar; and R. and J. Dodsley.

MDCCLV.

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## AR EUGLISH GRAMMAR.

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DEFENDANT'S EXHIBIT 24

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#### ABR

6. Relating to the person, as a servant. Relating to the person, as a servant.

Liking very well the young gentleman, such I took him to be, admitted this Deiphantes about me, who well shewed there is no service like his that serves because he loves. Sidney, b. ii. Good master, corporal, captain, for my old dame's sake, fland my friend: she hath no body to do any thing about her when I am gone, and she is old and cannot help herself.

Shakesheare's Harm W.

Ano'UT. ado.

The weyward fifters, hand in hand,

Posters of the fea and land,

Thus do go about, about, Thrice to thine, and thrice to mine,

Shakefp. Macbeth. And thrice again to make up nine.

My honest lads, I'll tell you what I am about .and more.—No quips now Piftol: indeed I am in the waste two yards about; but I am about no waste, I am about thrist. Shakefreare's Merry Wives of Windfor.

A tun about was ev'ry pillar there, A polish'd mirrour shone not half so clear. Dryd. Fables.

3. Nearly.

Nearly.

When the boats were come within about fixty yards of the pillar, they found themselves all bound, and could go no farther; yet so as they might move to go about, but might not measure the properties of the manual matter.

Basen's New Atalantis. approach nearer.

Here and there; every way.

Up rofe the gentle virgin from her place,

Up rose the gentle virgin from her place,
And looked all about, if the might spy
Her lovely knight to move his manly pace.
Fairy Queen, b. i. cant. 2. stanz. 33.

A wolf that was past labour, had the wit in his old age, yet
to make the best of a bad game; he borrows a habit, and so
sists he goes, begging charity, from door to door, under the
dignite of a pilgrim.

With to before a verb; as, about to fy; upon the point, within a small distance of. in a finall distance of.

in a small distance of.

These dying lovers, and their floating sons,
Suspend the fight, and silence all our guns:
Beauty and youth, about to perish, finds
Such nebte pity in brave English minds.

6. The longest way, in opposition to the short straight way.
Gold hath these natures; greatness of weight; closeness of
parts; fixation; pliantness, or fostness; immunity from rust;
colour, or tincture of yellow: Therefore the sure way (though
most about) to make gold, is to know the causes of the several
natures before rehearsed.

Spies of the Volscians
Held me in chase, that I was fore'd to wheel
Three or four miles about; else had I, Sir,

Three or four miles about; else had I, Sir, Half an hour fince brought my report. Shake p. Corislanus.

7. To bring about; to bring to the point or state desired; as, be has brought about his purposes.

Whether this will be brought about, by breaking his head,

I very much question.

Spetta

To come about; to come to some certain state or point.

Wherefore it came to pass, when the time was come about, after Hannah had conceived, that the bare a son. 1 Sam. 1. 20.

One evening it befel, that looking out, The wind they long had wish'd was come about; Well pleas'd they went to reft; and if the gale

Till more continued, both refolved to fail. Dryd. Fables.

To go about a thing; to prepare to do it.

Did not Moses give you the law, and yet none of you keepeth the law? Why go ye about to kill me? John vii. 19.
In common language, they say, to come about a man, to cirrescent him.

Some of these phrases seem to derive their original from the French à best; venir à beut d'une chofe; venir bout de quel-

48'as. A. Ba. for Archbishop; which see.

A. Ba. for Archbishop; which see.

ARACIDA BRA. A superfittious charm against agues.

To ABRA'DE. v. a. [abrada, Lat.] To rub off; to wear a
the other parts; to waste by degrees.

By this means there may be a continued supply of what is faccessively abraded from them by decursion of waters.

Hale's Origin of Mankind.

ABRAHAM'S BALM. The name of an hesb.

ABAMOS. See ABRADE.]

1. The aft of abrading; a rubbing off.

2. [In medicine.] The wearing away of the natural mucus, which covers the membranes, particularly those of the ftomach

which covers the membranes, particularly those of the stomach and gute, by corroste or sharp medicines, or humours. Quincy. The matter worn off by the attrition of bodies.

Absar'Ast. ado. [See Breast.] Side by side; in such a position that the breasts may bear against the same line.

Aly cousin Suffolk,

My foul shall think keep company to heaven:

Tarry, sweet soul, for mine, then sy abreast. Shak, Henry V. For honour travels in a streight so narrow,

Where one but goes abreast. Shake'p. Trailus and Crossida.

ABR

The riders rode abreaft, and one his shield,

The riders rode abreast, and one his shield,
His lance of cornel-wood another held;
The third his bow, and glorious to behold!
The costly quiver, all of burnish'd gold. Dryden's Fables.
ARRICOT. See APRICOT.
To ABRIDGE. w. a. [abreger, Fr. abbrevia, Lat.]
1. To make shorter in words, keeping still the same substance.
All these sayings, being declared by Jason of Cyrene in five books, we will essay to abridge in one volume. 2 Macc. ii. 23.
2. To contract, to diminish, to cut short.

The determination of the will, upon enquiry, is following the direction of that guide; and he, that has a power to act or not to act, according as such determination directs, is free. Such determination abridges not that power wherein liberty consists.

3. To deprive of; in which fense it is followed by the particle from or of, preceding the thing taken away.

I have disabled mine estate,

I have disabled mine estate,

By shewing something a more swelling port,

Than my saint means would grant continuance;

Nor do I now make moan to be abridg'd

From such a noble rate. Sbakepear's Merchant of Venice.

They were formerly, by the common law, discharged from pontage and murage; but this privilege has been abridged them since by several statues.

Assistage of part. Deprived of, debarred from, cut short.

An Abstidge.

An ABRIDGER.

1. He that abridges; a shortener.

2. A writer of compendiums or abridgments.

ABRI DGMENT. n. f. [abregement, Fr.]

1. The contraction of a larger work into a small compass. Surely this commandment containeth the law and the prophets; and, in this one word, is the abridgment of all volumes Hooker, b. ii. § 5. of scripture.

Myself have play'd The int'rim, by remembring you 'tis past;

Then form, by rememoring you us pair;
Then brook abridgment, and your eyes advance
After your thought, straight back again to France?

Shakepeare's Henry V.

Idolatry is certainly the fift-born of folly, the great and leading paradox; nay, the very abridgment and fum total of all abfurdities.

South's Sermons.

2. A diminution in general. All trying, by a love of littleness, To make abridgments, and to draw to less,

Even that nothing which at first we were.

Even that nothing which at first we were.

Restraint, or abridgment of liberty.

The constant desire of happines, and the constraint it puts upon us, no body, I think, accounts an abridgment of liberty, or at least an abridgment of liberty, to be complained of.

ABRO'ACH. adv. [See To BROACH.]

ABRO'ACH. adv. [See To BROACH.]

1. In a posture to run out; to yield the liquor contained; properly spoken of vessels.

The Templer spruce, while ev'ry spout's abroach,
Stays 'till 'tis sair, yet seems to call a coach. Suift's Mis.

The jarrs of gen rous wine (Acesses) gift,
When his Trinacrian shores the navy lett)
He set abroach, and sor the feast prepar'd,
In equal portions with the ven'son shar'd.

Drydn's Viruit's Fried and is

Dryden's Virgil's Æneid, vol. ii.

2. In a figurative sense: in a state to be distused or advanced; in a state of such beginning as promises a progress.

That man, that his within a monarch's heart,

And ripens in the funfhine of his favour,
Would he abuse the count nance of the king,

Alack! what michicis might be fet abroach,
In fladow of fuch greatners? Shotelpeare: Henry IV. p. ii.
ABRO'AD. aav. [compounded of a and broad. See BROAD.] 1. Without confinement; widely; at large.

Intermit no watch Against a wakeful foe, while I abroad,
Thro' all the coasts of dark destruction, feek
Deliverance. Milton's Paradi, e Loss, b. ii. 1. 463.
Again, the lonely fox roams far abroad,
On secret range here, and midnish found.

Prisr.

On secret rapine bent, and midnight fraud; Now haunts the cliff, now traveries the lawn, And flies the hated neighbourhood of man-

2. Out of the house.

Welcome, fir, This cell's my court; here have I few attendants,
And subjects none abread.

Statespeare's Tempest. And subjects none abraad.

Statespeare's Tempes.

Lady—walked a whole hour abraad, witnout dying after it; at least in the time I staid; though she seemed to be fainting, and had convulfive motions several times in her head.

3. In another country.

They thought it better to be fomewhat hardly yoked at home, than for ever abroad, and discredited. Hoster. Perf.
Whosoever offers at verbal transfarion, thall have the milfortune of that young traveller, who lost his own language

abroad, and brought home no other inflead of it. Sir. J. Denham.

D

What

	1 11 0
He should regard the propriety of his words, and get some	1. To pour in; to inftil.
information in the subject he intends to handle. Swift.	I hou almost mak'ft me waver in my faith,
These men have had longer opportunities of information, and are equally concerned with ourselves.  Ragers.	1 0 hold opinion with Pythagoras.
are equally concerned with ourteives. Ragers.  Charge or accufation exhibited.	That fouls of animals infuse themselves Into the trunks of men. Sbakes. Merchant of Venice.
The act of informing or actuating.	My early militels, now my ancient mule,
NFO'RMER. n. f. [from inform.]	I hat firong Circean liquor ceafe r' infut
r. One who gives intelligence.	vy nerewith thou didit intoxicate my youth. Denham.
This writer is either by affed by an inclination to believe the	vv ny inouid ne defire to have qualities infuled into his fon-
worst, or a want of judgment to chuse his informers. Swift.	which nimiest never possessed ! Swift.
2. One who discovers offenders to the magistrate.	Meat must be with money bought;
There were spies and informers set at work to watch the company.  L'Estrange.	She therefore, upon fecond thought,
Let no court sycophant pervert my sense,	Infui'd, yet as it were by flealth, Some finall regard for flate and wealth. Swift,
Nor fly infermer watch these words to draw	5. To pour into the mind; to infpire into.
Within the reach of treason. Pape.	For when God's hand had written in the hearts
Informers are a detestable race of people, although some-	Of our first parents all the rules of good,
times necellary. Swift.	So that their skill infus'd surpass'd all arts
INFO'RMIDABLE. adj. [in and formidabilis, Latin.] Not to be	That ever were before, or fince the flood. Davies:
feared; not to be dreaded Of firength, of courage haughty, and of limb	Sublime ideas, and apt words infuse;
Heroick built, though of terreltrial mold;	The muse instruct my voice, and thou inspire the muse. Rose.  He insu'd
Foe not informidable, exempt from wound. Milton.	Bad influence into th' unwary breaft. Milton.
INFO'RMITY. n. f. [from informit, Latin.] Shapeleffices.	Infuse into their young breasts such a noble ardour as will
From this narrow time of gestation may ensue a smalness in	make them renowned. Million.
the exclusion; but this inferreth no informity. Brown.	3. To steep in any liquor with a gentle heat; to macerate so as
INFO'RMOUS. adj. [informe, French; informis, Latin.] Shapeless;	to extract the virtues of any thing.
of no regular figure.  That a bear brings forth her young info mous and unshapen,	Take violets, and infuse a good pugil of them in a quart of
which the fathioneth after by licking them over, is an opinion	vinegar.  Bacon's Natural History.  4. To make an infusion with any ingredient; to supply, to tinc-
not only common with us at prefent, but hath been delivered	ture, to faturate with any thing infused.
by ancient writers. Brown's Vulgar Errours.	Drink, infused with flesh, will nourish faster and easier than
INFO'RTUNATE. adj. [infartune, Fr. infertuna:us, Latin.] Un-	meat and drink together, Bacon's Natural History.
happy. See Unfortunate, which is commonly used.	5. To inspire with.
Perkin, feeing himfelf prifoner, and destitute of all hopes,	Thou didft finiles
having found all either falfe, faint, or infortunate, did gladly accept of the condition.  Bacon's Henry VII.	Infused with a fortitude from heav'n.  Shakesp. Tempest.  Insuse his breast with magnanimity,
To INFRA'CT. v a. [infradus, Latin.] To break.	And make him, naked, foil a man at arms. Shakespeare.
Falling faft, from gradual flope to flope,	INFU'STBLE. adj. [from infufe.]
With wild in/ra led course and lessen'd roar,	1. Possible to be insused.
It gains a fafer bed. Thomfan's Summer.	From whom the doctrines being infufible into all, it will be
INFRACTION. n.f. [infraction, French; infractio, Latin.] The	more necessary to forewarn all of the danger of them. Hamm.
act of breaking; breach; violation.  By the fame gods, the justice of whose wrath	<ol> <li>Incapable of diffolution; not fulible.</li> <li>Vitrification is the last work of fire, and a fusion of the falt</li> </ol>
Punish'd the inf action of my former faith. Waller.	and earth, wherein the fulible falt draws the earth and infulible
The wolves, pretending an infraction in the abuse of their	part into one continuum. Brown's Vulgar Errours.
hostages, fell upon the sheep immediately without their dogs.	INFU'SION. n. f. [infusion, French; infusio, Latin.]
L'Estrange's Fables.	1. The act of pouring in; instillation.
INFRA'NGIBLE. adi. [in and frangible.] Not to be broken.	Our language has received innumerable elegancies and im-
These aroms are supposed inf angible, extremely compacted	provements from that infusion of Hebraisms, which are derived
and hard, which compactedness and hardness is a demonstra- tion that nothing could be produced by them, fince they could	to it out of the poetical pallages in holy writ.  Addism.  a. The act of pouring into the mine; inspiration.
never cohere. Cheyne's Phil. Princ.	We participate Christ partly by imputation, as when those
INFRE QUENCY. n. f. [infrequentia, Latin.] Uncommonnels;	things which he did and fuffered for us are imputed to us for
rarity.	righteousness; partly by habitual and real infusion, as when grace
The absence of the gods, and the infrequency of objects,	is inwardly bestowed on earth, and afterwards more fully both
made her yield. Brome's Notes on P-pe's Odyffes. INFREQUEST. adj. [infrequent, Latin.] Rare; uncommon.	our fouls and hodies in glory.  Hooker.  They found it would be matter of great debate, and spend
To Infrigidate. v. a. [in and frigidus, Latin.] To chill;	much time; during which they did not defire their company,
to make cold.	nor to be troubled with their infusions. Clarendon.
I he drops reached little further than the furface of the li-	Here his folly and his wildom are of his own growth, not the
quor, whose coldness did not infrigidate those upper parts of the	echo or infusion of other men. Swift.
glafs. Boyle.	
To INFRI'NGE. v. a. [infringe, Latin]	Repeat the intuition of the body oftener.  Bucon.  4. The liquor made by infusion.
I. To violate; to break laws or contracts.  Those many had not dar'd to do that evil,	To have the infusion strong, in those bodies which have finer
If the first man that did th' edict i fringe,	fpirits, repeat the infusion of the body oftener. Bacon.
Had answer'd for his deed Shakefreare	
Having infring'd the law, I wave my right	or being infused. A word not authorifed.
As king, and thus tubmit mytell to hight. Watter	Still let my fong a nobler note affume,  And fing th' infufive force of Spring on man. Thomson.
2. To destroy; to hinder.  Homilies, being plain and popular instructions, do not in	INGATE. n. f. [in and gate.] Entrance; passage in.
fringe the efficacy, although but read.  Harker	One noble person stoppeth the ingute of all that evil which
Bright as the deathless gods and happy, the	is looked for, and holdeth in all those which are at his back.
From all that may infinge delight is free. Waller	
INFRI'NGEMENT, n. f. [from infringe.] Breach; violation.	INGANNA'TION. n. f. [ingannare, Italian.] Cheat; fraud; de-
The punishing of this infringement is proper to that jurisdic	
tion against which the contempt is. Clurend in	<ul> <li>neither used nor necessary.</li> <li>Whoever shall resign their reasons, either from the root of</li> </ul>
INFRI'NGER. n. f. [from infeinge.] A breaker; a violator. A clergyman's habit ought to be without any lace, under	
fevere penalty to be inflicted on the i-fringers of the provincis	
conflitution. Attiffes Parergn	i. INGA' i HERING, n. J. [in and gathering.] The act of getting
INFO'N DIBULIFORM. n. f. [infundibu'um and formu, Lat.] C	f in the harvest.
the flage of a funnel or tundish.	I nou that keep the least of irgatoring, when thou hair ga-
INFU'RIATE. adj. [in and furia, Latin.] Enraged; raging.	thered in thy labours out of the field. Ex. XXIII. 16.  INGE, in the names of places, fignifies a meadow, from the Saxon
At th' other bore, with touch of fire Dilated and infuriote.  Milto	
Dilated and injuriale.  Fir'd by the torch of moon to tenfold rage,	To INGE'MINATE. v. a. [ingemino, Latin.] To double; to
Th' infuriate hill torth fluots the pillar'd flame. Y hamis	n. repeat.
INFUSCA'TION. n. f. [infufcatus, Latin.] I he act of darker	He would often ingeminate the word peace, peace. Clarin lon.
El agir marinery	INGEMINA'TION. n. f. [in and geminatio, Latin.] Repetition;
ing or blackening. To INFU'sE. v. u. [inf fix, French; infufus, Latin.]	reduplication.

Inge'nderer.

than twice the amount of gold and filver actually in their vaults," Not to iffue be, and the same is hereby repealed; and hereafter the said bills for more Corporation shall not iffue and have in circulation, at any one than twice the time, bills, notes, or obligations, to a greater amount than capital. twice the capital stock actually paid in.

SECT. 2. And be it further enacted, That instead of fix, not less than five Directors of the aforesaid Corporation shall con-Director flitute a board for the transaction of business, of whom the Prefident shall always be one, except in case of sickness or neceffary absence, in which case the Directors present may choose a Chairman in his stead.

[This Act passed March 8, 1805.7

An Act making a temporary Alteration in the Toll to be received by The Proprietors of the Locks and Canals on Connecticut River.

[This Act paffed March 8, 1805.]

An Act to incorporate the north-westerly Part of the Town of Otisfield, and the easterly Part of the Town of Bridgeton, in the County of Cumberland, into a separate Town by the Name of Harrijon.

[This Act passed March 8, 1805.]

An Act to provide for the Proof of Fire Arms manufactured within this Commonwealth.

HEREAS no provision hath been made by law for the proof of fire arms manufactured in this Common-Preamble. wealth, by which it is apprehended that many may be introduced into use which are unsafe, and thereby the lives of the

citizens be exposed: To prevent which,

SECT. 1. Be it enacted by the Senate and House of Representatives, in General Court assembled, and by the authority of the same, Provers of That the Governor, by and with the advice and consent of the appointed. Council, be, and he hereby is empowered to appoint, in any part of this Commonwealth where the manufacture of fire arms is carried on, fuitable persons to be provers of fire arms, not exceeding two in any county, who shall be sworn to the faithful discharge of their trust, whose duty it shall be to prove all musket barrels and pistol barrels, which being sufficiently ground, bored and breeched, shall be offered to him to be. proved; who shall prove the musket barrels twice in manner following, viz. first with a charge consisting of one eighteenth How arms are part of a pound of powder, one ounce of which, in a five and to be proved.

# Perpetual Laws

OF THE

## Commonwealth of Massachusetts,

PAOM

THE ESTABLISHMENT OF ITS CONSTITUTION IN THE YEAR 1780, TO FEBRUARY, 1807.

WITH THE

CONSTITUTIONS OF THE UNITED STATES OF AMERICA, AND OF THE COMMONWEALTH, PREFIXED.

IN FOUR VOLUMES.

000-

TO WHICH IS ADDED, IN THE THIRD TOLUME,

## AN APPENDIX,

OF THE LATE COLONY, PROVINCE AND STATE OF MASSACHUSETTS, WHICH EITHER AREUNREVISED OR RESPECT THE TITLE OF REAL ESTATE.

## VOLUME IV.

Containing the Laws from January, 1801, to February, 1807, Inclusive.

The land in the behinds decrease.

The land in the behinds but listhed by.

#### Boston.

PUMLISHED BY THOMAS & ANDREWS, AND SOLD AT THEIR SOCIETORS, NO. 45, NEWBURY-STREET...JUNE, 1807.

J. T. BYCKINGHAM, PRINTER.

(

an half inch howitz, at an elevation of forty five degrees, will carry a twenty-four pound fliot eighty yards, with a ball fuited to the bore of the barrel; the second proof to be with a charge confifting of one twenty-fecond part of the same powder, with a ball fuited to the bore of the barrel; and Chall prove the pittol barrels once with a charge confilting of one twenty-fecond part of a pound of powder, one ounce of which, in a five and half inch howitz at an elevation of forty-five degraes, will carry a twenty-four pound that feventy yards, with a ball fuited to the bore of the barrel; which faid powder and ball it shall be the duty of the prover to provide; and if the said musket and pissol barrels shall stand the proof aforefaid, and shall in no respect fail, then it shall be the duty of the faid prover to stamp the same on the upper side, and within one and an half inches of the breech of faid barrels, with a ed arms are stamp consisting of the initial letters of the prover's name, and . to be marked over those letters the letter P. also, in the line of the said initial letters, and further up faid barrel the figures defignating the year of our Lord in which the proof is made, and over the faid figures the letter M. which faid letters and figures shall be so deeply impressed on said barrel, as that the same cannot be erased or disfigured, and shall be in the form follow-

Fees

srms proved

ing AB 1809. And when any barrels shall burst or shall in any manner fail in the proving as aforefaid, so that in the opinion of the proyer they are unfit for use, they shall not be stamped, but the said prover shall suffer the owner to take them away; and any prover so proving musket or pistel barrels as aforefaid, faall be entitled to receive from the owner, for each musket barrel thirty three cents, and for each pistol barrel twenty five cents, whether the same stand proof and are stamped or not.

SECT. 2. And be it further enacted, That if any person, after for the first day of June next, shall manufacture within this Commonwealth, any musket or pirtol, without having the barrels proved and stamped as aforefaid, except such as are or may be manufactured in the armory of the United States, or in fulfilment of some contract made and entered into, or that may hereafter be made and entered into, for the manufacturing of fire-arms for the United States, shall forfeit and pay for every fuch musket or pistol the sum of ten dollars, to be recovered in an action of debt, before any Court proper to try the fame, by any person who shall sue for and recover the same, to his own use.

SECT. 3. And he it further enacted, That if any person, after the said first day of June next, shall sell and deliver, or shall knowingly purchase, any musket or pistol, which shall have been manufactured within this Commonwealth after the

faid

said first day of June next, which shall not have the marks of Penalty proof above required, the person so selling and the person so selling or buypurchasing shall each forseit the sum of ten dollars, to be recov- proved ered by action of debt, before any Court proper to try the same, to the use of any person who shall sue for and recover the fame.

SECT. 4. And be it further enacted. That if any person shall Penalty fallely forge or alter the stamp of any prover of fire-arms, to forging stamp. appointed as aforefaid, impressed on any mustet or pistol barrel, pursuant to this Act, and be convicted thereof before the Supreme Judicial Court, he shall be punished by fine not exceeding fifty dollars, nor less than twenty dollars, according to the nature and aggravation of the offence.

[This Act palled March 8, 1804.]

An Act to incorporate a Number of the Inhabitants in the Town of Limington, in the County of York, into a separate Religious Society by the Name of The First Baptist Society in Limington. [This Act passed March 8, 1805.]

An Act directing the Mode of attaching on Mesne Process, and selling by Execution Shares of Debtors in incorporated Companies.

BE it enacted by the Senate and House of Represent-atives, in General Court assembled, and by the authority of the same, That the share or shares or interest of any Shares may be person, in any turnpike, bridge, canal or other company, which method process, heretofore has been or hereafter may be incorporated by the caken in exe-Legislature of this Commonwealth, with all the rights and cution, privileges appertaining to fuch shares, may be attached on foldmeline process and taken on execution; and when any such shares or interest shall be attached on mesne process, or taken on execution without fuch previous attachment, an attested copy or copies of such writ of attachment or execution, shall, by the officer holding the same, be left with the Clerk and Treasurer or Cashier of such company; and so many of said shares or so much of faid interest may be fold on faid execution at public vendue, to the highest bidder, as shall be sufficient to satisfy the same, and the charges of the sale, after notice shall have been given of the time and place of fale in manner as hereinafter provided; and in case the officer making the sale, or the purchaser or purchasers of any such shares or interest, do cause an attested copy or copies, of such execution, and the officer's return thereon, to be left with fuch Clerk and Treasurer or Cashier, within fourteen days after the sale is completed, and

1814 Mass. Acts 464, An Act In Addition To An Act, Entitled "An Act To Provide For The Proof Of Fire Arms, Manufactured Within This Commonwealth," ch. 192, § 1

...from and after the passing of this act, all musket barrels and pistol barrels, manufactured within this Commonwealth, shall, before the same shall be sold, and before the same shall be stocked, be proved by the person appointed according to the provisions of an act . . . with a charge of powder equal in weight to the ball which fits the bore of the barrel to be proved . . . § 2. That if any person of persons, from and after the passing of this act, shall manufacture, within this Commonwealth, any musket or pistol, or shall sell and deliver, or shall knowingly purchase any musket or pistol, without having the barrels first proved according to the provisions of the first section of this act, marked and stamped according the provisions of the first section of the act to which this is an addition . . .



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1821 Me. Laws 98-99, An Act for the Prevention of Damage by Fire, and the Safe Keeping of Gun Powder, ch. 25, § 5

#### Subject(s):

Storage (https://firearmslaw.duke.edu/subjects/storage/)

#### Jurisdiction(s):

Maine (https://firearmslaw.duke.edu/jurisdictions/maine/)

#### Year(s):

1821 (https://firearmslaw.duke.edu/years/1821/)

Be it further enacted, That it shall, and may be lawful for any one or more of the Selectmen of any town to enter any building, or other place, in such town, to search for gun powder, which they may have reason to suppose to be concealed or kept, contrary to the rules and regulations which shall be established in such town, according to the provisions of this Act, first having obtained a search warrant therefor according to law.

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1821 Me. Laws 98-99, An Act for the Prevention of Damage by Fire, and the Safe Keeping of Gun Powder, ch. 25, § 5 | Duke Ce...



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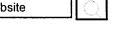


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1783 Mass. Acts 37, An Act in Addition to the Several Acts Already Made for the Prudent Storage of Gun Powder within the Town of Boston, § 2

#### Subject(s):

Storage (https://firearmslaw.duke.edu/subjects/storage/)

#### Jurisdiction(s):

Massachusetts (https://firearmslaw.duke.edu/jurisdictions/massachusetts/)

#### Year(s):

1783 (https://firearmslaw.duke.edu/years/1783/)

"That all cannon, swivels, mortars, howitzers, cohorns, fire arms, bombs, grenades, and iron shells of any kind, that shall be found in any dwelling-house, out-house, stable, barn, store, ware-house, shop, or other building, charged with, or having in them any gun-powder, shall be liable to be seized by either of the Firewards of the said Town: And upon complaint made by the said Firewards to the Court of Common Pleas, of such cannon, swivels, mortar, or howitzers, being so found, the Court shall proceed to try the merits of such complaint by a jury; and if the jury shall find such complaint supported, such cannon, swivel, mortar, or howitzer, shall be adjudged forfeit, and be sold at public auction.

1783 Mass. Acts 37, An Act in Addition to the Several Acts Already Made for the Prudent Storage of Gun Powder within the Tow...



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Town incer. county of Essex, by the name of Lynnfield," be, and the same hereby is incorporated into a town, by the name of porated. Lynnfield, with all the powers, privileges, and immunities, and liable to all the duties and requisitions of other towns in this Commonwealth.

[Approved by the Governor, February 28, 1814.]

#### CHAP. CXCII.

An Act in addition to an act, entitled "An act to provide for the proof of Fire Arms, manufactured within this Commonwealth."

Sec. 1. BE it enacted by the Senate and House of Representatives, in General Court assembled, and by the authority of the same, That from and after the passing of this act, all musket barrels and pistol barrels, manufactured within this Commonwealth, shall, before the same shall be sold, and before the same shall be stocked, be proved by the person appointed according to the provisions of an act, entitled "An act to provide for the proof of Fire Arms, manufactured within this Commonwealth," to which this is an addition, in manner following, viz: with a charge of powder equal in weight to the ball which fits the bore of the barrel to be proved; and the powder used in such proof one ounce thereof in a howitzer of four and a half inch caliber, at an elevation of forty-five degrees, shall be of sufficient power to carry a twelve pound shot one hundred and thirty yards; or one ounce thereof in a howitzer of five and a half inch caliber, at an elevation of forty-five degrees, shall be sufficient to carry a twenty-four pound shot eighty yards, and the ball used in such proof shall be suited to the bore of the barrel to be proved as aforesaid.

Manner of proving.

Sec. 2. Be it further enacted, That if any person or persons, from and after the passing of this act, shall manusacture, within this Commonwealth, any musket or pis-Restrictions, tol, or shall sell and deliver, or shall knowingly purchase any musket or pistol, without having the barrels first proveu according to the provisions of the first section of this act, marked and stamped according the provisions of the first section of the act to which this is an addition; or if any person or persons shall sell, stock or finish, or shall knowingly purchase any musket barrel or pistol barrel manufactured within this Commonwealth, which shall not have been first proved, marked and stamped according to the provisions aforesaid, the person or persons who shall so manufacture, sell and deliver, or knowingly purchase any musket or pistol without causing the same to be first proved, marked and stamped as aforesaid, and the person or persons who shall sell, stock or finish, or shall knowingly purchase any musket barrel or pistol barrel, which shall not have been proved, marked and stamped as afore. Forfeitures. said, shall severally forfeit the sum of ten dollars, to be recovered by an action of debt before any court proper to try the same, by any person who shall sue for and recover the same, to his own use: Provided however, That the Proviso. foregoing provisions and penalties shall not extend to any muskets or pistols, or musket or pistol barrels, manufactured in any armoury of the United States, for their use, or in execution of any contract made or to be made with the United States, for the manufacture of fire arms.

Sec. 3. Be it further enacted, That the second and third sections of the act to which this is in addition, and Sections realso so much of the first section thereof as prescribes the mode of proving musket barrels and pistol barrels, and the power of the powder to be used in such proof, be, and the same are hereby repealed.

[Approved by the Governor, February 28, 1814.]

#### CHAP. CXCIII.

An Act to incorporate The President, Directors and Company of the Lynn Mechanicks Bank.

SEC. 1. BE it enacted by the Senate and House of Representatives, in General Court assembled, and by the authority of the same, That Daniel Silsbe, Joseph Fuller the third, John D. Atwell, Thomas Rich, Samuel Brimble. Persons incum, Micajah Burrill, Parker Mudge, Oliver Fuller, Jon-corporated. athan Conner, John Alley, jr. Stephen Oliver, John Mudge, and Jonathan Bachellor, their associates, successors, and assigns shall be, and hereby are created a Cor-

# L A W S

STATE OF NEW-YORK,

COMPRISING THE

CONSTITUTION,

AND THE

ACTS OF THE LEGISLATURE,

SINCE THE REVOLUTION, FROM THE

FIRST TO THE FIFTEENTH BESSION, INCLUSIVE.



IN TWO VOLUMES.

VOLUME I.

Quan leges alias fuper alias accumulatas, eas de integro retraftare, et in Corpus fanum et habile religere, ex Uflu fie.

BACON.

Milers Servitus oft ubi Jus oft vagum aut incompletum.

4 Infl. 245.

HEW.YOR E-PRINTED BY THOMAS GREENLEAF-M, DCC, XC, 11.

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#### GEORGE CLINTON, Efq. Governor.

point, out of the citizens and inhabitants of the faid city of Hudson, one fit and different person to be mayor of the said city, and one fit and different person to be recorder of the faid city; which faid mayor and recorder, after fuch appointments respectively, shall continue in their said respective offices. to do and to execute all things which to their faid several offices doth or may severally and respectively belong, or in any manner appertain, until other fix persons be appointed and sworn in their room; and in like manner, a fix and discreet perion shall be appointed out of the said citizens and inhabitants. to be common clerk of the faid city, who shall hold and continue in office during the will and pleafure of the governor and council of appointment, and also another se and discreet person shall be appointed out of the citizens and inhabitants of the faid city, to be the chief marshal thereof, whose duty it shall be to execute writs, processes and precepts, to arise and be issued within the faid city, from the courts and magistrates thereof, in and about the administration of justice, in the same manner as the sheriffs of other cities and counties are by law authorised to execute such writs, processes and precepts; and which chief marshal shall be from time to time, appointed, and shall hold and exercise his office for such period as sherists of other cities and counties by law are or ought to be appointed, or may or ought by law to hold and exercise their respective offices; which said mayor, recorder, clerk and marshal, shall be annually nominated and appointed in manner and form aforefaid, until otherwise directed by the legislature.

IV. And be it further enacted by the authority aforefaid, That on the second Monday in May next, and on the second Monday in May in every succeeding year forever thereaster, the freemen of the said city, being inhabitants thereof, shall and may assemble themselves, and meet together at such time of the day, and at such public place as the mayor for the time being, or in his absence or sickness, the recorder for the time being, shall appoint, and then and there, by plurality of voices or votes, elect and chuse out of the freemen, inhabitants of the said city, for the ensuing year, sour aldermen, sour assistants, one supervisor, and such a number of attestors, constables and collectors, as the common council for the said city shall, from time to time, deem necessary,

and direct to be chosen.

V. And be it further enabled by the authority aforefaid. That the mayor, or recorder of the faid city for the time being, and two or more of the aldermen, and two or more of the affifiants of the faid city, shall and may, on the fecond Monday in May next, and on the second Monday in May in every succeeding year, forever thereafter, in common council, nominate and appoint one fit person, being a freeman and inhabitant of the said city, to be the treasurer and chamberlain of the said city, for the year ensuing; every of which said persons as are herein before nominated, or hereaster to be nominated, elected and appointed to any civil office within the said city, shall, within sifteen days next after such appointment or election, respectively take and subscribe the oath of abjuration and allegiance, now or hereaster appointed by law (or if of the people called Quakers, an affirmation) and also an oath or affirmation, as the case may require, for the saithful execution of the office to which he or they shall so be appointed.

VI. And be it farther enacted by the authority aforefuid. That if any one of the freemen, inhabitants of the faid city of Hudson, shall hereafter be elected or chosen to the office of alderman, assistant, supervisor, or assessor, collector or constable, for the faid city, and having notice of his faid election, shall refuse, deny, delay or neglect, to take upon him or them to execute such

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#### 192 LAWS or NEW-YORK, Eighth Selfion.

office to which he or they shall be so chosen or elected; that then, and so often as it shall happen, it shall and may be lawful for the mayor or recorder. or any two or more of the aldermen, and any two or more of the ailidants of the faid city for the time being, in common council, to affels and impose upon every fuch person or persons so retaing, delaying or neglecting, mela reasonable and moderate fine and fines, sum and sums of money, as they, in common council, shall think fit, so as such fine for each refusal, denial, delay or neglect, shall not exceed the sum of ten pounds, current money of New-York; all which faid fines shall and may be levied by distress and tale of the goods and chattels of fuch delinquent and delinquents, by warrant under the feal of the faid city, figned by the mayor thereof for the time being, rendering the furplufage to the owner or owners thereof if any there be, necessary charges of making and felling fuch diffrels, being first deducted; or by action of debt in any court of record within the jurisdiction of the faid city, having cognizance of the fame, to be profecuted, and shall be recovered and received by and to the use of the said mayor, aldermen and commonalty of the said city, and their fucceffors forever.

VII. And be is further enasted by the authority aforefuld. That in all fuch cases forever hereafter, of the absence, sickness, or death of the mayor of the said city for the time being, it shall and may be lawful to and for the recorder of the said city for the time being, to do and execute all and singular the duties and trusts to the office of the said mayor belonging and appertaining, to all intents, purposes and constructions whatsoever, during the absence or sickness of such mayor, or until a successor be duly appointed and sworn.

VIII. And be a further enasted by the authority aforefuld, That if it shall happen that any of the aldermen or affulants, supervisor, affellors, collectors or conflables, or any one of them hereafter to be elected, nominated and fworn in their respective offices as aforefaid, shall hap, en to die or remove out of the faid city, within the time they are or shall be respectively named or elected for, or before other fit persons be respectively named or elected, and sworn in their respective rooms, it shall and may be lawful for the freemen, inhabitants within the limits of the faid city, to affemble and meet together, at fuch time and place as shall be appointed by the mayor of the said city for the time being, and then and there, by plurality of votes, to elect one of the freemen, an inhabitant within the limits of the faid city, to ferve as alderman, affithant, supervisor, assessor, collector or contable, in the room of such alderman, aditiant, supervisor, affesior, collector or constable, so dying or removing, and so often as such cases shall happen; and in case of the death or removal of the treasurer or chamberlain, out of the limits of the said city, for the common council to appoint another in his flead, at any time after fuch death or removal: And that all and every fuch person and persons so to be newly choken or appointed and fworn, shall serve in their respective offices until other fit persons be respectively chosen or appointed, and sworn in their respective rooms.

IX. And be it further enacted by the authority aforefaid. That the chief marshal so to be nominated and appointed, and every marshal to be thereafter nominated and appointed, shall, before he shall be deemed capable of executing his said office, become bound, with such sureties, in such manner and under such penalty for the saithful discharge of the duties of his office, as the sherists of other cities and counties are or shall be by law directed and required to be bound for the saithful execution of their offices.

man Cangle

#### 2017 WL 4541977 (Cal.) (Appellate Brief) Supreme Court of California.

#### NATIONAL SHOOTING SPORTS FOUNDATION, INC.,

and

SPORTING ARMS AND AMMUNITION MANUFACTURERS' INSTITUTE, INC., Plaintiffs and Appellants,

ν.

STATE OF CALIFORNIA, Defendant and Respondent.

No. S239397. August 21, 2017.

On Review from the Court of Appeal for the Fifth Appellate District 5th Civil No. F072310

After Appeal from the Superior Court of the State of California for the

County of Fresno, Case Number 14CECG00068 Honorable Donald S. Black

#### Appellants' Answer Brief On the Merits

Daniel C. Decarlo, State Bar No. 160307, \*Lance A. Selfridge, State Bar No. 101940, Lewis Brisbois Bisgaard & Smith LLP, 633 West 5th Street, Suite 4000, Los Angeles, California 90071, Telephone: 213.250.1800 Facsimile: 213.250.7900, Dan.DeCarlo@lewisbrisbois.com Lance.Selfridge@lewisbrisbois.com, for plaintiffs and appellants National Shooting Sports Foundation, Inc., and Sporting Arms and Ammunition Manufacturers' Institute, Inc.

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#### \*8 I. ISSUE PRESENTED.

This Court accepted this case for review of the following issue, as presented by the petition for review filed by respondent, State of California: May a court hold a trial to determine the practical feasibility of compliance with a technical standard imposed by the Legislature as a condition on the sale of a new product in California, based on a non-constitutional claim that the statutory standard is facially invalid if a trier of fact concludes it would be "impossible" to comply with it? Specifically, this Court is being asked to decide whether appellants may seek to enjoin the enforceability of a statute that impacts only the firearms industry, on the ground that the statute requires compliance that is physically impossible to achieve.

#### II. INTRODUCTION.

Appellants, National Shooting Sports Foundation, Inc. ("NSSF"), and Shooting Arms and Ammunition Manufacturers' Institute, Inc. ("SAAMI"), challenge the enforceability of Penal Code section 31910, subdivision (b)(7)(A). That statute requires that all semi-automatic pistols manufactured, imported or sold in California be

equipped with a microscopic array of characters [a "microstamp"] that identify the make, model, and serial number of the pistol, etched or otherwise imprinted in two or more places on the interior surface or internal working parts of the pistol, and that are transferred by imprinting on each cartridge case when the firearm is fired.

\*9 The process described by section 31910, subdivision (b)(7)(A), is known as "dual placement microstamping."

In a single cause of action for declaratory and injunctive relief, appellants allege that dual placement microstamping technology is impossible to implement. Specifically, while appellants acknowledge that a microstamp imprinted on the firing pin of a semi-automatic pistol will occasionally transfer to the primer located at the rear of a cartridge case upon firing, the record contains uncontroverted expert testimony that it is impossible to imprint a microstamp on any other surface or part of a semi-automatic pistol that will transfer to the cartridge case when the pistol is fired. (JA 45, 48, 772.) Respondent implicitly admits the truth of appellants' allegations, by acknowledging that "the relevant technology could fairly be described as emerging." (Op. Brief 8-9.) Respondent also implicitly admits that only one of the two microstamps required by section 31910, subdivision (b) (7)(A), may be placed on a pistol's firing pin, by not seeking review of that issue. (Op. Brief 20.) Nevertheless, the trial court granted respondent's motion for judgment on the pleadings without leave to amend, despite the fact that appellants' allegations must be taken as true at this stage of the litigation. (Dunn v. County of Santa Barbara (2006) 135 Cal.App.4th 1281, 1298.)

The Court of Appeal reversed, and found as a matter of statutory construction, based on the legislative history, that section 31910, subdivision (b)(7)(A), does not allow both microstamps to \*10 be placed on the same part of the pistol. (National

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Shooting Sports Foundation, Inc. v. State of California (2016) 6 Cal.App.5th 298, 307-308, review granted March 22, 2017, S239397; hereinafter, "NSSF v. California.").

This case therefore squarely presents an issue of fundamental fairness as to whether the Legislature may require the performance of a plainly impossible act as a condition to the exercise of an otherwise lawful right. Respondent argues that the separation of powers doctrine absolutely prevents this Court from reviewing the Legislature's decision to enact Penal Code section 31910, subdivision (b)(7)(A), but the core legislative function of passing laws does not deprive the judiciary of its own constitutional power to set aside laws that are palpably arbitrary. Respondent also argues that appellants may not assert a cause of action based on the maxim of jurisprudence contained in Civil Code section 3531 that "[t]he law never requires impossibilities," but it is actually the separation of powers doctrine itself that invests section 3531 with the same operative force as any other statute. Appellants therefore request that this Court affirm the decision of the Court of Appeal, and allow this action to be resolved on its factual merits, either through summary judgment or trial, as the case may be.

#### \*11 III. STATEMENT OF THE CASE.

#### A. The Parties.

Respondent is the State of California. (JA 11.) Appellant NSSF is a nonprofit trade association for members of the firearms, ammunition, hunting and shooting sports industries whose mission is to promote, protect and preserve hunting and the shooting sports. (JA 10, 778.) Appellant SAAMI is a non-profit trade association of domestic firearms, ammunition and propellant manufacturers whose mission is to develop and publish industry recommended practices and voluntary standards pertaining to the safety, interchangeability, reliability and quality of semi-automatic pistols, other firearms and ammunition. (JA 10-11, 775.) Both NSSF and SAAMI therefore have a natural interest in laws such as Penal Code section 31910, subdivision (b)(7)(A), which affect the design and operation of firearms.

### B. The Enactment of Penal Code Section 31910, Subdivision (b)(7)(A).

The issue of microstamping semi-automatic pistols first arose in the California Legislature on February 10, 2005, when Assembly Member Paul Koretz introduced Assembly Bill No. 352. (JA 847-851.) Assembly Bill No. 352 proposed that a semi-automatic pistol that was not already listed on the Roster of Handguns Certified for Sale (the "Roster"), that Penal Code section 32015, subdivision (a), requires respondent's Department of Justice \*12 to maintain, would be deemed to be "an unsafe handgun" if "it is not designed with a microscopic array of characters, that identify the make, model, and serial number of the pistol, etched into the interior surface or internal working parts of the pistol, and which are transferred by imprinting on each cartridge case when the pistol is fired." (JA 849.) Assembly Bill No. 352 thus would have required that a semi-automatic pistol contain only one microstamp ("single placement microstamping"). Assembly Bill No. 352 ultimately died in conference on November 30, 2006. (JA 854.)

The issue of microstamping semi-automatic pistols arose in the Legislature again on February 23, 2007, when Assembly Member Michael Feuer introduced Assembly Bill No. 1471. (JA 856-858.) As originally introduced, Assembly Bill No. 1471 contained the same single placement microstamping provision as Assembly Bill No. 352. (JA 858.) However, concerns were raised in the Legislature over the ability that criminals would have to defeat a pistol's microstamping features by defacing a microstamp placed on the firing pin. For example, as an April 10, 2007 report of the Senate Republican Office of Policy succinctly stated, "Criminals could easily defeat the intended identification purpose of this bill by filing off the microstamping on a firing pin. They could also switch the firing pin from one pistol to another pistol." (JA 606.)

To address this concern. Assembly Bill No. 1471 was amended, coincidentally also on April 10, 2007, to incorporate the dual placement \*13 microstamping provisions that now appear in Penal Code section 31910, subdivision (b)(7)(A). (JA 867.) Legislative history subsequent to the amendment plainly reveals the Legislature's intention that the second microstamp required

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under section 31910, subdivision (b)(7)(A), must be placed elsewhere than on a pistol's firing pin, because a microstamp on the firing pin can be easily defaced, and because the firing pin itself can simply be replaced with another firing pin bearing a different microstamp or no microstamp at all. For example, the September 11, 2007 analysis of the Senate Rules Committee upon the third reading of Assembly Bill 1471 states that "Bill 1471 would require newly designated semi-automatic handguns sold after January 1, 2010, be equipped with 'micro-stamping' technology. This technology consists of engraving microscopic characters onto the firing pin and other interior surfaces, which would be transferred onto the cartridge casing when the handgun is fired." (JA 633-634.)

The microstamping statute enacted by virtue of Assembly Bill No. 1471 was denominated Penal Code section 12126.

As noted by the Law Revision Commission Comment to section 31910, section 12126 was later redenominated as Penal Code section 31910 without substantive change. (Senate Bill No. 1080, 2010 Regular Session.)

In addition, the September 19, 2007 analysis of Assembly Bill 1471 that was prepared by the Governor's Office of Planning and Research stated that "[p]roponents of the bill argue that countermeasures can be taken by the manufacturer to prevent circumvention of the technology. Specifically, \*14 they suggest that parts of the gun that come into contact with the bullet casing, other than the firing pin, can be similarly microengraved to make filing the engraving away more difficult." (JA 618.)<sup>2</sup> The legislative history reveals no contrary intention whatsoever by the Legislature to permit both microstamps to be placed on the pistol's firing pin. The Court of Appeal therefore found that "the only logical interpretation of the statute is that the Legislature intended the microstamping to be on two different internal parts of the pistol. If one microstamp on the firing pin can be easily defeated, the same is true for two." (NSSF v. California, supra, 6 Cal.App.5th at p. 308.)<sup>3</sup>

- Both of those analyses are proper sources of legislative history. (Levine v. Superior Court (2005) 35 Cal.4th 935, 948 [Senate floor analysis]; Smith v. Workers' Compensation Appeals Board (2009) 46 Cal.4th 272, 280 [Legislative Counsel's analysis].)
- While initially taking a contrary view, respondent now admits that a microstamp placed on the firing pin of a semi-automatic pistol can be easily defeated (Op. Brief 11), and that the Legislature adopted dual placement microstamping as part of Assembly Bill No. 1471 to address that defect in Assembly Bill No. 352, by requiring that a second microstamp be imprinted on some surface or part of a semi-automatic pistol other than the pistol's firing pin (Op. Brief 12). Accordingly, respondent no longer contends that the placement of two microstamps on the firing pin would comply with the statute. (Op. Brief 20.)

As ultimately enacted, Penal Code section 31910, subdivision (b)(7)(A), incorporated the dual placement microstamping provisions of \*15 Assembly Bill No. 1471. Section 31910, subdivision (b)(7)(A), provides as follows:

As used in this part, "unsafe handgun" means any pistol, revolver, or other firearm capable of being concealed upon the person, for which any of the following is true:

#### (b) For a pistol:

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(7)(A) Commencing January 1, 2010, for all semi-automatic pistols that are not already listed on the roster pursuant to Section 32015, it is not designed and equipped with a microscopic array of characters that identify the make, model, and serial number of the pistol, etched or otherwise imprinted in two or more places on the interior surface or internal working parts of the pistol, and that are transferred by imprinting on each cartridge case when the firearm is fired, provided that the Department of Justice

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certifies that the technology used to create the imprint is available to more than one manufacturer unencumbered by any patent restrictions.

On May 13, 2013, the California Department of Justice certified that the technology used to create the imprint of the microscopic array of characters required by the provisions of Penal Code section 31910, subdivision (b)(7)(A), is available to more than one manufacturer unencumbered by any patent restrictions, thereby allowing the statute to take effect. (JA 781, 787-788, 839.) The Department of Justice did not, however, certify that dual placement microstamping is possible to implement in semi-automatic pistols, nor did section 31910, subdivision (b)(7)(A), require it to do so.

#### \*16 C. The Impossibility of Dual Placement Microstamping.

Microstamped characters that identify the make, model, and serial number of a semi-automatic pistol (a "microstamped alpha numeric code") can be etched or imprinted on the tip of the pistol's firing pin, and such a microstamped alpha numeric code will sometimes transfer onto the primer contained within the cartridge case, which the firing pin strikes during the pistol's firing process. (JA 45.) However, a microstamped alpha numeric code that is etched or imprinted on the breech face, chamber wall, extractor, ejector or magazine of a semi-automatic pistol cannot be imprinted or transferred to the cartridge case during the pistol's firing process. (JA 46-48, 772.) There are no interior surfaces or internal working parts of a semi-automatic pistol on which a microstamped alpha numeric code could be etched or imprinted other than the firing pin, breech face, chamber wall extractor, ejector and magazine. (JA 45, 772.) The record below is uncontroverted with respect to this point. The foregoing facts appear in \*17 the declarations of Frederick Tulleners, who has been a forensic scientist specializing in forensic firearms identification since 1971, and who has been employed by respondent's Department of Justice as the supervising criminalist in both its Riverside and Sacramento laboratories. (JA 37.)

- Even when it does imprint, a microstamped alpha numeric code does not satisfy the requirements of Penal Code section 31910, subdivision (b)(7)(A), because it does not by itself identify the make, model and serial number of the pistol. A database must still be consulted to convert the markings of the microstamped alpha numeric code into the information required by the statute.
- Although this appeal arises from the entry of judgment following the granting of respondent's motion for judgment on the pleadings without leave to amend, much of the factual record is already developed because of the unusual procedural posture of the case. Specifically, respondent did not bring its motion for judgment on the pleadings until late in the course of this litigation, long after appellants' evidentiary motion for a preliminary injunction had already been decided. (JA 1210-1211.)

Respondent submitted no expert testimony in the trial court to contradict Mr. Tulleners, and instead relies for purposes of this appeal on statements made in the Legislature by the author of Assembly Bill No. 1471, who in turn relied on a photograph purporting to show that the breech face of a semi-automatic pistol transferred a microstamp to a cartridge case fired by that pistol. (Op. Brief, 13-15.) The comments in the Legislature by the author of Assembly Bill No. 1471 are inadmissible hearsay for purposes of this action, because they concern a statement made other than by a witness while testifying that respondent now offers as proof of the matter stated (Evid. Code, § 1200), and the record contains no evidence to show that the author even possesses the technical expertise to comment regarding the effectiveness of breech face microstamping, which deprives his comments of any evidentiary value (Evid. Code, § 801, subd. (b).) Likewise, the photograph on which the author relied is unauthenticated hearsay for purposes of this appeal. There is no evidence in the record that \*18 the photograph is what respondent claims it to be as required by Evidence Code section 1400 and the photograph also concerns a statement made other

is unauthenticated hearsay for purposes of this appeal. There is no evidence in the record that \*18 the photograph is what respondent claims it to be, as required by Evidence Code section 1400, and the photograph also concerns a statement made other than by a witness while testifying that respondent now offers as proof of the matter stated, rendering it inadmissible hearsay under Evidence Code section 1200. 6 Respondent's reliance on such material underscores the need to conduct a trial in this

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case to establish through admissible evidence the truth of appellants' allegations that dual placement microstamping is in fact impossible to implement.

Indeed, if respondent attempts to introduce evidence of this breech face photograph at trial, appellants intend to introduce rebuttal evidence that the photograph does not depict what it purports to depict.

### D. The Loss to Appellants Caused by Penal Code Section 31910, Subdivision (b)(7)(A).

On January 9, 2014, the date this case was filed in Fresno County Superior Court (JA 9), there were 867 semi-automatic pistols listed on the Roster. A pistol that is not listed on the Roster is a handgun that has not been determined not to be unsafe. (Pen. Code, § 32015, subd. (a).) It is a crime in the State of California to manufacture, import or sell any such unsafe handgun.

(Pen. Code § 32000 subd. (a).)

As of July 31, 2017, there were only 504 semi-automatic pistols listed on the Roster, representing a decrease of approximately 42% over a

- \*19 period of slightly more than three and one-half years. The appellants have correctly alleged that dual placement microstamping is impossible to implement, the number of semi-automatic pistols listed on the Roster will continue to decrease, because older pistol models that are no longer manufactured due to obsolescence will continue to be removed from the Roster, and because newer pistol models will not be added to the Roster since they cannot comply with the dual placement microstamping requirements of Penal Code section 31910, subdivision (b)(7)(A). This represents an annual loss to appellants' manufacturing members of approximately \$183 million, unadjusted for inflation since 2014. (JA 69.)
- The Roster, which appears on the internet at < <a href="http://certguns.doj.ca.gov/safeguns\_resp.asp">http://certguns.doj.ca.gov/safeguns\_resp.asp</a>, listed 504 semi-automatic pistols as of July 31, 2017. As of that same date, the list of de-certified handgun models maintained by the Bureau of Firearms of respondent's Department of Justice, which appears on the internet at < <a href="https://oag.ca.gov/sites/oag.ca.gov/files/pdfs/firearms/removed.pdf">https://oag.ca.gov/sites/oag.ca.gov/files/pdfs/firearms/removed.pdf</a>, listed 363 semi-automatic pistols that have been de-certified from the Roster since January 9, 2014, the date on which appellants filed their complaint. Thus, as of January 9, 2014, there were 867 semi-automatic pistols on the Roster.
- As the Roster continues to shrink, Second Amendment issues will obviously arise, because semi-automatic pistols are protected firearms under the decision of the United States Supreme Court in District of Columbia v. Heller (2008) 554 U.S. 570, 628-629, and because the protection for semi-automatic pistols recognized in Heller extends to the States. (MacDonald v. City of Chicago (2010) 561 U.S. 742, 791.) However, appellants do not raise any such Second Amendment issues in this litigation, because they are trade association plaintiffs which concern themselves with issues of economic importance to the firearms industry. (JA 10-11, 13, 15.) The Second Amendment issues are being presented by other, unrelated litigants in Pena v. Lindley (E.D. Cal. 2015) 2015 U.S. Dist. LEXIS 23575, which is currently on appeal in the United States Court of Appeals for the Ninth Circuit as Case No. 15-15449.

#### \*20 IV. PROCEDURAL POSTURE.

#### A. Relief Sought in the Trial Court.

On January 9, 2014, appellants filed their complaint against respondent, asserting a single cause of action for declaratory and injunctive relief. (JA 9-18.) Appellants allege that "[a]n actual controversy has arisen and now exists between [themselves]

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and the manufacturer, distributor and retailer members they represent, on the one hand, and [respondent], on the other hand, concerning their respective rights and duties pursuant to the provisions of California Penal Code section 31910, subdivision (b)(7)(A)." (JA 13.) Specifically, appellants contend that

the provisions of California Penal Code section 31910, subdivision (b)(7)(A), are invalid as a matter of law and cannot be enforced because it is impossible for a firearm manufacturer to implement microstamping technology in compliance therewith, since no semi-automatic pistol can be designed or equipped with a microscopic array of characters identifying the make, model and serial number of the pistol that are etched or otherwise imprinted in two or more places on the interior surface or internal working parts of the pistol, and that can be legibly, reliably, repeatedly, consistently and effectively transferred from both such places to a cartridge case when the firearm is fired.

(Ibid) The complaint then alleges that respondent contends to the contrary and that a judicial declaration is accordingly appropriate, before concluding \*21 by requesting that the enforcement of Penal Code section 31910, subdivision (b)(7) (A), be enjoined. (JA 13, 15-16.)

Code of Civil Procedure section 1060 provides in pertinent part that "[a]ny person... who desires a declaration of his or her rights or duties with respect to another... may, in cases of actual controversy relating to the legal rights and duties of the respective parties, bring an original action... in the superior court for a declaration of his or her rights and duties in the premises...." Numerous cases hold that such declaratory relief actions are an appropriate procedural vehicle for challenging invalid legislative enactments. (E.g., Portnoy v. Superior Court (1942) 20 Cal.2d 375, 378; LaFranchi v. Santa Rosa (1937) 8 Cal.2d 331, 332, 335-336.) Respondent does not contend that appellants' have failed to allege the existence of an actual controversy sufficient to satisfy the pleading requirements of section 1060.

#### B. Judgment from which Appellants Appeal.

On February 18, 2015, nearly a year after respondent's demurrer to appellant's complaint had been overruled, respondent moved for judgment on the pleadings with respect to that complaint. (JA 113-116, 124-126.) Prior to the hearing of that motion on April 29, 2015, the trial court issued a tentative ruling to deny the motion, finding in appellants' favor with respect to all of the issues presented by the motion, including the separation of powers issue that is one of the primary issues on this appeal. (JA 733-736.) In particular, after noting respondent's citation to authority stating, "[T]he separation of powers doctrine [holds] that in the absence of some overriding constitutional, statutory or charter proscription, the judiciary has no authority to invalidate duly enacted legislation," the trial court \*22 acknowledged that "impossibility of compliance with a state law is ground for enjoining enforcement of a statute." (JA 733.) The trial court did so in reliance on Board of Supervisors v. McMahon (1990) 219 Cal.App.3d 286, 299-300, which appellants cited in opposition to respondent's motion. (JA 733.)

However, on July 6, 2015, while cross-motions for summary judgment were pending (JA 738-740, 899-902), the trial court mistakenly reversed itself and issued an order granting respondent's motion for judgment on the pleadings without leave to amend (JA 1139-1147). Although the trial court acknowledged that the McMahon court "found that the impossibility doctrine did not apply in that case," and thereby presumed the existence of the doctrine, the trial court nevertheless incorrectly assumed that impossibility is not a ground for enjoining the enforcement of a statute, cryptically noting that the McMahon court "did not directly address [that] issue." (JA 1143-1144.) The trial court also incorrectly stated that the McMahon court "did not 'reach any separation-of-power issues," without addressing whether the provision of the Civil Code on which the McMahon court relied is itself a statutory proscription on which a court could rely to invalidate another statute on the ground of impossibility of compliance. (JA 1144.) Then, based on its order granting respondent's motion for judgment on the pleadings without leave to amend, the trial \*23 court entered judgment in favor of respondent and against appellants on July 22, 2015. (JA 1160-1173.)

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#### C. Reversal by the Court of Appeal.

In its published opinion issued on December 1, 2016, the Court of Appeal reversed the judgment and remanded the case for further proceedings. Citing Dunn v. County of Santa Barbara, supra, 135 Cal.App.4th at p. 1298, the Court of Appeal correctly recognized that "[b]ecause judgment was granted on the pleadings, we must accept the truth of the complaint's properly pleaded facts," and that "[a]ecordingly, we must accept appellants' claim that it is impossible to effectively microstamp the required characters on any part of a semiautomatic pistol other than the firing pin." (NSSF v. California, supra, 6 Cal.App.5th at p. 302.) As previously noted, the Court of Appeal also "reject [ed] respondent's position that stamping the characters in two places on the firing pin would comply with the statute," finding that [a]ppellants have the right to present evidence to attempt to prove their claim." (Ibid.)

The Court of Appeal carefully considered the separation of powers argument on which respondent relies. <sup>10</sup> The Court of Appeal noted that \*24 "each branch [of California's system of state government] is vested with 'certain "core"...or "essential"... functions that may not be usurped by another branch," and that "'[t]he separation of powers doctrine protects each branch's core constitutional functions from lateral attack by another branch." (NSSF v. California, supra, 6 Cal.App.5th at p. 305.) Accordingly, the Court of Appeal also noted that "the courts must defer to the Legislature's factual determination unless it is palpably arbitrary and must uphold the challenged legislation so long as the Legislature could rationally have determined a set of facts that support it." (NSSF v. California, supra, 6 Cal.App.5th at p. 306.) However, noting once again that it "must accept as true appellants' factual allegation that it is impossible to effectively microstamp a semiautomatic pistol in two or more places on the interior of the pistol as required by Penal Code section 31910, subdivision (b)(7)(A)," the Court of Appeal found that "[i]t would be illogical to uphold a requirement that is currently impossible to accomplish." (Ibid.) Accordingly, the Court of Appeal held that

In this Court, respondent also attacks the statutory value of Civil Code section 3531, the maxim of jurisprudence stating that "[t]he law never requires impossibilities," but respondent did not rely on that argument in the Court of Appeal.

appellants have the right to present evidence and if they are able to prove it is impossible to comply with the dual microstamping requirement, the separation of powers doctrine would not prevent the judiciary from invalidating that legislation. Although courts must generally defer to the Legislature's factual determination, that is not the case if such \*25 determination is arbitrary or irrational. Therefore, the trial court erred in granting judgment on the pleadings in favor of respondent based on the separation of powers doctrine.

(Ibid.) The Court of Appeal then rejected respondent's petition for rehearing on December 15, 2016.

#### D. Review by the Supreme Court.

This case arrives in this Court upon the granting of respondent's petition for review on March 22, 2017 by a vote of 6-0, with the Chief Justice and Justices Werdegar, Corrigan, Liu, Cuellar and Kruger participating.

#### V. ARGUMENT.

A. The Court of Appeal Correctly Determined that Appellants' Action to Enjoin the Enforcement of Penal Code Section 31910, Subdivision (b)(7)(A), Does Not Violate the Separation of Powers Doctrine.

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Respondent asserts that appellants' action to enjoin the enforcement of Penal Code section 31910, subdivision (b)(7)(a), on the ground that it requires impossible compliance, violates the separation of powers doctrine on three separate grounds. Respondent asserts first that appellants' action interferes with the core powers of the Legislature; second that appellants' action improperly questions the wisdom of legislative enactments; and third that appellants' action prevents the enactment of technology-forcing legislation. None of respondent's arguments with respect to the separation \*26 of powers doctrine withstands scrutiny, and in fact, the separation of powers doctrine is what mandates that the opinion of the Court of Appeal be affirmed.

# 1. Appellants' Action Does Not Interfere with the Core Powers of the Legislature Because the Legislature May Not Enact Legislation that Is Palpably Arbitrary, Such

as Appellants Allege Penal Code Section 31910, Subdivision (b)(7)(A), To Be.

The separation of powers doctrine arises from the California Constitution. As stated therein, "[t]he powers of state government are legislative, executive, and judicial. Persons charged with the exercise of one power may not exercise either of the others except as permitted by this Constitution." (Cal. Const., art. III, § 3.) Each branch of government is thereby vested with certain core functions that may not be usurped by either other branch. (People v. Bunn (2002) 27 Cal.4th 1, 14.) In the case of the Legislature, that core power is the power to legislate. (Cal. Const., art. IV, § 1.) The power to legislate is of course the power to pass laws. (Carmel Valley Fire Protection District v. State of California (2001) 25 Cal.4th 287, 297.)

Citing Lockard v. City of Los Angeles (1949) 33 Cal.2d 453, 461, respondent suggests that "courts have a 'duty to uphold the legislative power,' unless one of the Legislature's acts transgresses constitutional \*27 bounds." (Op. Brief 28.) But the constitutional system from which the separation of powers doctrine arises assumes some degree of mutual oversight and influence among the three branches of government. (People v. Bunn, supra, 27 Cal.4th at p. 14.) Thus, in Lockard, where the trial court had declared invalid certain provisions of a zoning ordinance presenting no constitutional issue (33 Cal.2d at p. 455), the court described the duty of the judiciary to uphold legislative power in terms significantly less deferential than respondent acknowledges, and specifically retained for the judiciary a power to exercise oversight with regard to the legislative process extending beyond constitutional challenges:

The courts will, of course, inquire as to whether the scheme of classification and districting is arbitrary or unreasonable, but the decision of the zoning authorities as to matters of opinion and policy will not be set aside or disregarded by the courts unless the regulations have no reasonable relation to the public welfare or unless the physical facts show that there has been an unreasonable, oppressive, or unwarranted interference with property rights in the exercise of the police power.... In passing upon the validity of legislation it has been said that "the rule is well settled that the legislative determination that the facts exist which make the law necessary, must not be set aside or disregarded by the courts, unless the legislative decision is clearly and palpably wrong and the error appears beyond reasonable doubt from facts or evidence which cannot be controverted, and of which the courts may properly take notice."

( Id. at p. 461; emphasis added.)

Lockard therefore recognizes that the core legislative function of passing laws does not deprive the judiciary of its own constitutional power \*28 to set aside laws that are palpably arbitrary, regardless of whether those laws are also unconstitutional. The record in Lockard contained undisputed facts supporting the validity of the zoning ordinance at issue, as a result of which the court reversed the judgment of the trial court. (\$\infty\$33 Cal.2d at pp. 463, 468.) The court would not have reached that result based on the factual record if, as respondent contends, the court simply had a mandatory "duty" to uphold the ordinance at issue

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because it transgressed no constitutional prohibition. (Op. Brief 28.) Rather, the Lockard court examined the facts and upheld the ordinance because the court found nothing palpably arbitrary about the ordinance.

By conducting its examination of the record to determine that the ordinance at issue was not palpably arbitrary, the Lockard court performed the same judicial function that appellants ask the judiciary to perform in this case. Appellants allege that Penal Code section 31910, subdivision (b)(7)(A), requires impossible compliance (JA 13), and a statute that requires impossible compliance is palpably arbitrary. Appellants are entitled to the opportunity to prove at trial that their allegation of impossible compliance is meritorious.

\*29 2. By Seeking to Enjoin Penal Code Section 31910, Subdivision (b)(7) (A), on the Ground that it Requires Impossible Compliance, Appellants Are Not Challenging the Wisdom of the Legislature's Underlying Goal of Crime Reduction.

Appellants seek to enjoin Penal Code section 31910, subdivision (b)(7)(a), on the ground that it requires impossible compliance. Appellants thereby challenge the statute on the ground that it is palpably arbitrary, which presents an appropriate issue for judicial review, as just noted. Appellants do not challenge, and in fact wholeheartedly support, the wisdom of the Legislature's goal of crime reduction, which of course has motivated the enactment of Penal Code section 31910, subdivision (b)(7)(A). (JA 605, 609, 613.) It is not the wisdom of the legislative goal, but rather the impossible method the Legislature has chosen to achieve that goal, that lies at the heart of this case.

A case cited by respondent, Superior Court v. County of Mendocino (1996) 13 Cal.4th 45, shows that one branch of state government may indeed exercise a degree of oversight over another branch of government, without violating the separation of powers doctrine or impermissibly questioning the wisdom of legislative decisions. In that case, the Superior Court of Mendocino County challenged the power of the County of Mendocino to decree that the Superior Court observe certain unpaid furlough days as a cost saving measure. (Id. at p. 1049.) Although cost saving is plainly a legitimate legislative goal, the Supreme Court found that \*30 while a court has inherent power to control the hours and days of its operations, "the Legislature generally may adopt reasonable regulations affecting a court's inherent powers or functions, so long as the legislation does not 'defeat' or 'materially impair' a court's exercise of its constitutional power or the fulfillment of its constitutional function." (Id. at p. 1055.) Similarly, if a court enjoined the enforcement of a single piece of legislation that was palpably arbitrary, that judicial act would not defeat or materially impair the Legislature's exercise of its constitutional power to pass other laws regarding the same subject matter.

The Mendocino court also noted that

unlike those instances in which it has been held that the separation of powers doctrine bars the Legislature from exercising an exclusive judicial function (such as readjudicating or setting aside a final judicial judgment), the Legislature's power to designate legal holidays or other nonjudicial days on which courts generally will be closed does not inevitably threaten the integrity or independence of the judicial process. The circumstance that a court will be closed on a particular day is unlikely to affect the resolution of a particular controversy or prevent a court from proceeding in accordance with its own view of the governing legal principles.

(Id. at pp. 1059-1060.) Likewise, a finding in the instant case that dual placement microstamping is impossible to implement would not intrude upon the Legislature's authority to adopt other crime reduction measures that would be possible to implement.

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\*31 Finally, the Superior Court in Mendocino argued that the legislation permitting the imposition of unpaid furlough days was "invalid under the separation of powers doctrine because it limits the public's 'access to justice,' a subject that the Superior Court suggests lies exclusively within the province of the judicial branch." (Id. at p. 1060.) The Supreme Court rejected that argument, stating that

[t]he objective of preserving and promoting the public's access to justice and the judicial system, however, is by no means solely the concern or province of the judicial branch. The legislative and executive branches are necessarily and centrally involved in the formulation of a great variety of measures that vitally affect the public's "access to justice" through the judicial system, from determining the number and location of new judgeships and courthouses to establishing which court-related expenses should be financed at the state level and which at the local level.

(Ibid.) Likewise, the judiciary plainly involves itself in crime reduction efforts, from the trial of criminal suspects to the sentencing of those who are convicted, so the Legislature can hardly usurp unto itself the sole responsibility for fighting crime in California.

Citing Werner v. Southern California Associated Newspapers (1950) 35 Cal.2d 121, 130, respondent also asserts that courts may not invalidate legislation that they deem unwise, because "they may summarily put an end to certain laws that may be foolish but also to certain laws that may be wise." Werner involved a suit for defamation arising from a false charge that the plaintiff had been convicted of a crime, which was dismissed \*32 because the plaintiff did not allege that he had suffered any special damage as required by the statute at issue. (Fald. at pp. 123-124.) While the wisdom of a statute requiring special damage as an element of the tort of defamation may legitimately be the subject of conflicting opinion, there can be no legitimate disagreement that a statute requiring impossible compliance is not wise, because it cannot possibly achieve its legislative goal, which in the case of Penal Code section 31910, subdivision (b)(7)(A), is the important goal of crime reduction. Appellants have alleged that compliance with section 31910, subdivision (b)(7)(A), is literally impossible, and the purpose of trial in this action is to determine the truth of that allegation. Regardless of the outcome at trial, no wise law will be enjoined as a result of appellants' action.

## 3. No Authority Permits the Enactment of Legislation that Requires the Development of Technology that Is Completely Impossible to Implement.

Respondent tries to save Penal Code section 31910, subdivision (b)(7)(A), from the injunctive relief appellants seek by relying on American Coatings Association v. South Coast Air Quality Management District (2012) 54 Cal.4th 446. According to respondent, which argues by analogy to the pollution control industry, "lawmakers and regulators regularly adopt technology-forcing standards - laws and regulations that are 'are expressly designed to force regulated sources to develop pollution control devices \*33 that might at the time appear to be economically or technologically infeasible." (Op. Brief 31; emphasis added.)

According to American Coatings, statutes may impose technology-forcing standards only where those standards "are reasonably anticipated to exist by the compliance deadline." (54 Cal.4th at p. 452.) The statutory standards that were enforced in American Coatings were based on several studies conducted by outside consultants concluding that the standards could be

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reasonably anticipated to become feasible by the compliance deadline. (Fild. at p. 457-458.) Finally, the legislation under consideration expressly required that the required technology be achievable. (Fild. at p. 451.)

American Coatings thus differs markedly from the present litigation. First, appellants allege that the dual placement microstamping requirements of Penal Code section 31910, subdivision (b)(7)(A), are impossible, and thus certainly not achievable at any time. (JA 13.) A proposed technology that violates the laws of physics now will always violate the laws of physics. Second, section 31910, subdivision (b)(7)(A), contains no compliance deadline, and instead demands immediate compliance, now that it has been certified by the Department of Justice. Third, appellants do not allege, and respondent does not argue, that any study has ever been conducted showing any reasonable anticipation that dual placement microstamping will ever be possible to implement. In fact, \*34 uncontroverted, expert evidence submitted by appellants in support of their motion for a preliminary injunction and their motion for summary judgment (which had not been decided before the trial court granted respondent's motion for judgment on the pleadings) shows that it is impossible to microstamp any surface or part of a semi-automatic pistol other than its firing pin. (JA 45-48, 772.) Finally, the value of the annual market for semi-automatic pistols in California is approximately \$183 million. (JA 69.) Firearms manufacturers would have a strong financial incentive to comply with section 31910, subdivision (b)(7)(A), if dual placement microstamping were in fact possible, in order to share in such a lucrative market.

Respondent argues that firearms manufacturers have made no effort to comply with the statute's dual placement microstamping requirements, simply because no manufacturers have submitted any new pistol models for inclusion on the Roster. (JA 18.) That argument begs the question of how firearms manufacturers could seek to comply with Penal Code section 31910, subdivision (b)(7)(A), if they had no available means to manufacture a compliant firearm.

The technology-forcing statutory standards that American Coatings court found acceptable were therefore specific to the pollution control industry. <sup>12</sup> That is hardly surprising, because filtering has been practiced \*35 for centuries, and pollution control is simply high-technology filtering. Accordingly, absent any showing that the factors on which the American Coatings court based its decision apply also to the firearms industry, American Coatings actually supports appellants' position. The factual record developed in this litigation after summary judgment or trial will show the actual state of microstamping technology in the firearms industry, and thus whether there is any reasonable expectation that dual placement microstamping technology can ever be developed for semi-automatic pistols.

Other technology-forcing cases of which appellants are aware likewise concern only the pollution control industry, and likewise concern regulations that do not require immediate compliance. (See, Union Electric Co. v. Environmental Protection Agency (1976) 427 U.S. 246, 249-250 [challenge to state implementation plan under Clean Air Act]; Natural Resources Defense Council, Inc. v. U.S. Environmental Protection Agency (D.C. Cir. 1981) 655 F.2d 318, 322 [challenges to Environmental Protection Agency standards governing emissions of particulate matter and oxides of nitrogen from diesel vehicles]; Sherwin-Williams Co. v. South Coast Air Quality Management District (2001) 86 Cal.App.4th 1258, 1265 [challenge to rules promulgated by the South Coast Air Quality Management District regarding reduction in use of flat paint containing air pollutants].)

By making its argument in reliance on technology-forcing standards under the circumstances of this litigation, respondent tacitly admits that it is not aware of any expert evidence tending to show that dual placement microstamping technology can ever be developed for semi-automatic pistols. In that regard, it is important to note that appellants merely ask that the enforcement of Penal Code section 31910, subdivision (b)(7)(A), be enjoined. (JA 16.) If dual placement microstamping technology ever

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\*36 becomes possible to implement, respondent could return to court and seek to have the injunction against the enforcement of section 31910, subdivision (b)(7)(A), lifted. 13

In a footnote, respondent suggests that it would be possible to comply with Penal Code section 31910, subdivision (b)(7)(A), simply by not selling any semi-automatic pistols in California that do not comply with the dual placement microstamping requirements of the statute. (Op. Brief 32.) Respondent's suggestion is illusory, because it evades the issue of impossible compliance, and because any statute imposing impossible requirements on a voluntary, lawful activity could be "complied" with under respondent's reasoning simply by not performing the activity toward which the impossible requirements are directed. Three cases cited in the text below that enjoined the enforcement of statutes requiring impossible compliance, Buck v. Harton (M.D. Tenn. 1940) 33 F.Supp. 1014, Gigliotti v. New York, Chicago & St. Louis Railroad Co. (1958) 107 Ohio App. 174, and Ivaran Lines, Inc. v. Farovi Shipping Corp. (Fla.App.1984) 461 So.2d 123, implicitly reject respondent's suggestion, because it did not matter to the courts in those cases that the statutes at issue could have been complied with by not performing the otherwise lawful activities the statutes purported to forbid. The Court of Appeal of course dismissed respondent's suggestion for the obvious reason that it does not provide appellants with the relief they seek. (NSSF, Supra, 6 Cal.App.5th at p. 308.)

# B. THE MAXIM OF JURISPRUDENCE ON WHICH APPELLANTS RELY, CIVIL CODE SECTION 3531, PROVIDING THAT THE LAW NEVER REQUIRES IMPOSSIBILITIES, ALLOWS APPELLANTS TO SEEK AN INJUNCTION AGAINST PENAL CODE SECTION

ALLOWS APPELLANTS TO SEEK AN INJUNCTION AGAINST PENAL CODE SECTION 31910, SUBDIVISION (b)(7)(A), ON THE GROUND OF IMPOSSIBLE COMPLIANCE.

The maxim of jurisprudence contained in Civil Code section 3531 succinctly provides that "[t]he law never requires impossibilities." Appellants' cause of action, seeking "a judicial declaration that the \*37 provisions of California Penal Code section 31910, subdivision (b)(7)(A), are invalid and cannot be enforced because it is impossible for a firearm manufacturer to implement microstamping technology in compliance therewith," plainly relies on that maxim. (JA 15.)

Respondent did not challenge appellants' reliance on section 3531 in the motion for judgment on the pleadings from which this appeal arises (JA 127-148), so the Court of Appeal did not consider the effect of the maxim in its opinion. Respondent has now pivoted to challenge section 3531, and in fact asserts that challenge as the primary argument in its brief. (Op. Brief 20-26.) Respondents' challenge to section 3531 fails, however, because the separation of powers doctrine requires the judiciary to accord maxims the same operative force as any other statute. It also fails because section 3531 is not barred by Civil Code section 3509 as respondent asserts, and because the right to challenge the enforcement of a statute is already recognized both in California and in its sister states.

1. The Separation of Powers Doctrine Requires the Judiciary to Accord Civil Code Section 3531 the Same Operative Force as Any Other Legislative Enactment.

Civil Code section 3531 is obviously a statute. As such, in construing the meaning of the statute, the Supreme Court's "fundamental task is to ascertain the intent of the lawmakers so as to effectuate the purpose of the statute." In \*38 this search for what the Legislature meant, "[t]he statutory language itself is the most reliable indicator, so [the Supreme Court] start[s] with the statute's words, assigning them their usual and ordinary meanings, and construing them in context. If the words themselves are not ambiguous, [the Supreme Court] presume[s] the Legislature meant what it said, and the statute's plain meaning governs..."

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Martinez v. Coombs (2010) 49 Cal.4th 35, 51.) Thus, the construction of section 3531 is not at issue in this appeal. It plainly expresses exactly what the Legislature meant when it adopted the statute in 1872: "The law never requires impossibilities." Never means never, and respondent does not contend otherwise.

#### (a) Maxims of Jurisprudence Have Historically Carried the Force of Law.

Citing several cases and a 1994 law review article, respondent seeks to devalue section 3531 's operative force as a statute. Respondent asserts that because section 3531 is a maxim of jurisprudence, it is a mere, nonbinding "rule of thumb," simply an "aid to the just application of statutory law." (Op. Brief 21.) But significantly, respondent cites to no case holding that codified maxims are not entitled to the same dignity as any other statutory law. Citing only the law review article, respondent \*39 asserts that maxims do nothing more than "sum up legal experience... without compelling decisions." (Ibid.) 14

Eisenberg, Expression Rules in Contract Law and Problems of Offer and Acceptance (1994) 82 Cal. L. Rev. 1127, 1140.)

This dismissive interpretation of maxims in general, and of section 3531 in particular, has simply been pulled out of thin air. There is no legal justification in any cases or commentaries for the dubious proposition that codified maxims are not entitled to the same operative force as any other statute. Codified maxims are, after all, statutes that the Legislature duly enacted nearly 150 years ago. Respondent has not cited to any legislative history or any other statute that suggests that codified maxims in general or Civil Code section 3531 in particular are mere "rules of thumb" that are not entitled to the full operative force that the law bestows on any statute.

John Bouvier was a Philadelphia lawyer best known for his legal writings. <sup>15</sup> In 1856, sixteen years before the adoption of the Field Code in California, the sixth edition of his "Law Dictionary Adapted to the Constitution and Laws of the United States of America and the Several States of the American Union" (the "Bouvier Law Dictionary") was published. The Bouvier Law Dictionary defines a maxim as follows:

- See, < https://en.wikipedia.org/wiki/John\_Bouvier> [as of Aug. 2, 2017].
- \*40 1. An established principle or proposition. A principle of law universally admitted, as being just and consonant With reason.
- 2. Maxims in law are somewhat like axioms in geometry. They are principles and authorities, and part of the general customs or common law of the land; and are of the same strength as acts of parliament....

(<http://www.lawfulpath.com/ref/bouvier/maxims.shtml> [as of June 27, 2017]; emphasis added.) Included among "some of the more important maxims" summarized in the Bouvier Law Dictionary is the following: "A l'impossible nul n'est tenu. No one is bound to do what is impossible." (Ibid.) That is the maxim that the California Legislature ultimately codified as Civil Code section 3531, and the fact that it was originally written in Law French should not escape notice. The maxim is such an indelible part of the common law that it dates to the Middle Ages.

A far more incisive and recent commentary on the purpose of maxims appeared in 2010. Equitable maxims such as that codified by Civil Code section 3531 (which are sometimes referred to as "codified canons" or "common law canons") "focus on the imperfections in the legislative process and address unforeseen consequences common to the enactment of a wide variety of statutes." (Scott, Codified Canons and the Common Law of Interpretation (2010) 98 Geo. L.J. 341, 391.) The enactment of such maxims shows that

many legislatures want judges to limit statutes where their application would be unworkable. Although commentators \*41 may criticize [such] canon[s] because [they] result[] in some measure of judicially exercised policymaking authority, no one can

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call a judge who uses this canon a usurper of legislative authority (at least in jurisdictions with such a rule). Ten legislatures are comfortable with judges making policy choices in this regard. The common codification declares that "[i]n enacting a statute, it is presumed that.... A result feasible of execution is intended." Thus, interpreters faced with ambiguous statutes are on notice to steer away from impossibly onerous or burdensome interpretations unless that presumption can be overcome. Another state codifies this canon implicitly, allowing interpreters faced with "unworkable results" to consult "extratextual evidence of the meaning of the statute" to illuminate the statute. Montana's legislature advises that "[t]he law never requires impossibilities." No legislature rejects this canon--even a legislature that stresses plain meaning builds in unworkable results as an exception to the plain meaning rule.

(Id. at p. 395; emphasis added.) Montana's impossibility maxim is of course identical to California Civil Code section 3531, both in language and effect.

A somewhat earlier commentary in the California Law Review concurs. The author addressed the issue of impossible statutory compliance as follows:

In other cases, the courts properly may take account of the infeasibility of immediate compliance. Assume that the case arises in which immediate compliance is physically impossible, where, for example, a court has determined under a water pollution statute that all dam operators must immediately obtain permits if they are to continue discharging water downstream. There is a simple answer to the apparent dilemma between the statutory requirement and the realities of the situation. The answer lies in the principle that courts cannot require the doing of an impossibility: Equity will not decree a vain thing.

- \*42 (Plater, Statutory Violations and Equitable Discretion (1982) 70 Cal. L. Rev. 524, 580; emphasis added.) This commentary properly recognized that impossible compliance is an existing defense in equity to statutory enforcement. <sup>16</sup> The Court of Appeal, in recognition of that existing defense, asked at oral argument below whether an impossibility challenge could be raised to a law requiring that all automobiles operate as hovercrafts, implying that such a challenge indeed could be raised, (Resp's RJN, Ex. A [11/16/2016 Ct. of App. RT, 35-36].)
- This commentary also assumed that a court had been asked to compel impossible compliance. The instant case presents the obverse situation, because appellants ask the judiciary to enjoin a statute requiring impossible compliance. There is no meaningful difference between the two situations, because in both the dispositive issue is that a legislative body may not enact a law imposing requirements with which persons subject to the law cannot possibly comply.

## (b) California's Sister Jurisdictions Recognize that the Enforcement of a Statute Requiring Impossible Compliance May Be Enjoined Based on the Impossibility Maxim.

Since California's maxims of jurisprudence are codifications of common law principles, authority from other common law jurisdictions respecting the effect of maxims is highly persuasive regarding the operative effect of Civil Code section 3531 and the maxim it codifies. Thus, in *Buck v. Harton, supra*, a statute required that the price for performance of musical compositions be fixed upon a per piece basis. (\*\*\*\*43\*\* 33 F.Supp. at p. 1018.) However, because the public performance rights for musical compositions fluctuated, it was impossible to ascertain what the performance price should be at any given time, and it was therefore also impossible to comply with the statute. (\*\*\*Id. at pp. 1018-1019.) *Because of that impossibility, "[c]omplainants [were] entitled to a decree granting a permanent injunction restraining defendants... from bringing or permitting to be* 

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brought... any proceeding at law or in equity for the purpose of enforcing said Statute against complainants...." ( ld. at p. 1021; emphasis added.)

In another impossibility case, Gigliotti v. New York, Chicago & St. Louis Railroad Co., supra, a statute required train engineers to sound their train's whistle "at least 80 and not further than 100 rods" from highway crossings. (107 Ohio App. at p. 181.) At a railroad spur crossing, the plaintiff's car collided with a train which had not sounded its whistle. (11d. at pp. 177-178.) However, there was no evidence that the spur track was at least 80 rods long, so "a literal compliance with the statute was impossible." (11d. at p. 181.) Based on that finding of impossibility, the court held as follows:

It is well settled that the law is not so unreasonable as to require the performance of impossibilities... and, when Legislatures use language so broad as to lead to such results, courts may properly say that the Legislature did not intend to include those cases in which a literal obedience has become impossible. If a statute apparently requires the performance of something which cannot be performed, a court may hold \*44 it inoperative. [¶] Under these circumstances, the statute requiring the blowing of a whistle "at a distance of at least 80 and not further than 100 rods" from the crossing was inoperative..."

(Ibid.; emphasis added.)

Finally, in Ivaran Lines, Inc. v. Farovi Shipping Corp., supra, the defendants shipped an automobile abroad without obtaining a certificate of right of possession, as required by a Florida penal statute. (1461 So.2d at p. 124.) However, no such certificates of right of possession became available until after the date on which the automobile was shipped abroad. (Ibid.) The court excused the violation of the statute, explaining that "[g]enerally, the violation of a duty prescribed by statute is negligence per se but exceptions to this rule have been recognized where compliance with the provisions of the statute is impossible or where noncompliance is excusable." (11d. at p. 125.) The court added that "[t]he law does not require the performance of impossibilities as a condition to assertion of acknowledged rights, and if a statute requires performance of something which cannot be performed, the court may hold it inoperative." (Ibid.) Thus, the court held "in accordance with the prevailing law that violation of a statute or regulation, whether deemed prima facie evidence of negligence or negligence per se, is excused where it appears without dispute that compliance with the statute is impossible even in the exercise of reasonable diligence." (11d. at p. 126; emphasis added.)

\*45 The foregoing cases from California's sister jurisdictions all hold, with support from the maxim that the law never requires impossibilities, that statutes may be enjoined on the ground that they require impossible compliance. The instant case, addressing the same issue, is one of first impression in California. If California deviates from the uniform holdings of its sister states, California would become the first common law jurisdiction to deny maxims the operative legal effect that they historically have always had. California's maxims of jurisprudence were not codified merely to add advisory commentary or simple clutter to the Civil Code. California's maxims of jurisprudence were purposefully codified in 1872 as law, and they have remained so ever since.

(c) In the Absence of Any Overriding Constitutional, Statutory or Charter Proscription to Civil Code Section 3531, the Judiciary Must Acknowledge the Operative Force of the Maxim of Jurisprudence Codified Therein.

Ironically, in the final analysis, it is the separation of powers doctrine itself, on which respondent unsuccessfully relies in its effort to deny appellants their right to trial in this action, that compels the judiciary to acknowledge the operative force of Civil

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Code section 3531. This Court's definitive statement of the separation of powers doctrine appears in City & County of San Francisco v. Cooper (1975) 13 Cal.3d 898. That is a \*46 case on which respondent relied in the trial court in support of its motion for judgment on the pleadings (JA 139-140), but which respondent no longer embraces. <sup>17</sup>

Cooper was decided much more recently than Lockard v. City of Los Angeles, supra, on which respondent now prefers to rely. Whether respondent relies on either Lockard or Cooper today does not matter, because both cases recognize that challenges to statutes are not limited only to constitutional challenges. As stated in Lockard, statutes must not be set aside "unless the legislative decision is clearly and palpably wrong and the error appears beyond reasonable doubt from facts or evidence which cannot be controverted, and of which the courts may properly take notice." (133 Cal.2d at p. 461.) The notion that courts retain the power to invalidate only those statutes that are unconstitutional is demonstrably incorrect.

The separation of powers doctrine "recognizes that in the absence of some overriding constitutional, statutory or charter proscription, the judiciary has no authority to invalidate duly enacted legislation." (Cooper, supra, 13 Cal.3d at p. 915.) Neither respondent, any California court, nor any commentator has ever identified any constitutional provision, statute or charter provision that overrides Civil Code section 3531. Furthermore, respondent cites no cases that hold that statutes may not be enjoined on the ground of impossible compliance, in contradistinction to Buck, Gigliotti or Ivaran Lines.

In the absence of any such constitutional, statutory or charter proscriptions, and in the absence of any cases that reach holdings contrary to Buck, Gigliotti or Ivaran Lines, the separation of powers doctrine \*47 requires the judiciary to accord section 3531 its due weight as a statute embodying the force of law. If section 3531 is to be in any way emasculated, the Legislature, not the judiciary, must be the branch of state government to undertake that task. Since the Legislature has not done so, section 3531, as a codified maxim, retains just as much operative force as any other statute, as maxims were originally intended to have. (Bouvier Law Dictionary, supra.)

# 2. Civil Code Section 3509 Does Not Bar Appellants from Relying on Civil Code Section 3531 in Support of Their Claim that the Enforcement of Penal Code Section 31910, Subdivision (b)(7)(A), Should Be Enjoined.

Civil Code section 3509 provides that "[t]he maxims of jurisprudence hereinafter set forth are intended not to qualify any of the foregoing provisions of this code, but to aid in their just application." The language of section 3509 simply does not purport to prevent any maxim of jurisprudence from being applied in cases arising under statutes not contained in the Civil Code. This accords with the historical fact that the maxims of jurisprudence themselves have existed as part of the common law since the Middle Ages and are still part of the common law today.

The maxims of jurisprudence as "[p]rinciples of equity have long been enshrined as a vital part of California's jurisprudence." (McMackin v. Ehrheart (2011) 194 Cal.App.4th 128, 131, 135, 142; emphasis added.) \*48 Thus, in Booksa v. Patel (1994) 24 Cal.App.4th 1786, the court relied on another codified maxim, Civil Code section 3514, providing that "[o]ne must so use his own rights as to not infringe upon the rights of another," to find that while an owner has the right to possess his land and everything beneath it, he had no right to sever the roots of a neighbor's tree that extended beneath his land. (Fig. 1d. at pp. 1790, 1792.) And in Jacobs v. State Board of Optometry (1978) 81 Cal.App.3d 1022, the court held that administrative review of a certain matter was unnecessary where the agency had already made clear what its ruling on that matter would be, relying on yet another codified maxim, Civil Code 3532, which provides that "[t]he law does not require the performance of a useless or idle act." (Fid. at pp. 1029-1030.) The foregoing cases involved the application of codified, equitable maxims to statutes contained in codes other than the Civil Code, but Civil Code section 3509 did not restrict those

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courts from relying on the maxims at issue for that purpose. Likewise, it does not restrict the judiciary from applying Civil Code section 3531 to the determination of appellants' impossible compliance claim.

Respondent does still assert that Civil Code section 3531, as well as the other maxims, binds the legislative prerogative of future Legislatures. (Op. Brief 21-22.) That argument ignores the power of Legislatures to repeal previously enacted legislation. As a necessary part of their elective duties, Legislatures regularly repeal outdated statutes when those statutes \*49 no longer serve society's purposes. A law that remains in effect does so because the current Legislature allows it to remain in effect. In the words of a popular song, "If you choose not to decide you still have made a choice." (Rush (1980) "Freewill" [lyrics by Neil Peart].) Civil Code section 3531 remains in effect by legislative design, and therefore is a proper statutory proscription to the enforcement of Penal Code section 31910, subdivision (b)(7)(A).

Respondent cites People v. One 1940 Ford V-8 Coupe (1950) 36 Cal.2d 471 to support its argument that a statute may not be nullified or defeated by a maxim. (Op. Brief 22-23.) In that case, an automobile registered to a private owner, which a bank claimed to own pursuant to a conditional sales contract, was seized because the registered owner had used the automobile unlawfully to transport narcotics. (36 Cal.2d at p. 472.) A section of the Health and Safety Code provided that the claimant of an interest in a vehicle seized for that reason could prove that its interest was bona fide if the interest was created after a reasonable investigation of the moral character of the purchaser and without knowledge that the vehicle was used for an unlawful purpose. (Ibid.) Although the bank did not know that the seized automobile was to be used for the unlawful transportation of narcotics, the bank never conducted the investigation contemplated by the Health and Safety Code. (Fild. at p. 473.)

\*50 Judgment was rendered after trial for the bank in One 1940 Ford because evidence was introduced at trial that an investigation, if it had been conducted, would have shown that the registered owner of the seized automobile was a person of good repute. (Ibid.) In that regard, the bank was allowed to rely at trial on Civil Code section 3532, the maxim of jurisprudence providing that the law does not require an idle act. (136 Cal.2d at p. 473.) Nevertheless, the Supreme Court reversed the judgment in favor of the bank, finding that performing the investigation was not an idle act, and that the maxim thus did not apply. (13d. at p. 477.) The court explained as follows:

Inquiry prior to entering into the contract is thus related to the legislative purpose and if reasonably pursued would produce the facts as to the moral responsibility, character and reputation of the purchaser. Such investigation may not be said to be an idle act even though the proof at the trial may be entirely in his favor.

(Ibid.)

One 1940 Ford thus supports appellants' position rather than respondent's position. The One 1940 Ford court did not find that Civil Code section 3532 had no operative force, as respondent would like to argue. Instead, the One 1940 Ford court found that section 3532 did not apply because the required investigation was not an idle act within the scope of the maxim. (\$\infty\$ 36 Cal.2d at p. 477.) By making that finding, the court expressly acknowledged the operative force of section 3532. \*51 Expressed differently, in deciding One 1940 Ford, this Court found in 1950 that a codified maxim carries the full force of law like any other statute.

Civil Code section 3531, by contrast, providing that "[t]he law never requires impossibilities," directly applies to the instant case, because appellants have alleged that "it is impossible for a firearm manufacturer to implement microstamping technology in compliance with Penal Code section 31910, subdivision (b)(7)(A)," and that allegation must be taken as true on appeal

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from a judgment arising from a pleading motion. (JA 13; Dunn v. County of Santa Barbara, supra, 135 Cal.App.4th at p. 1298.) Moreover, the One 1940 Ford decision by its terms applied only to the specific statutes then under consideration, namely certain provisions of the State Narcotics Act contained in the Health and Safety Code. (Fild. at p. 472, 476.) The case did not consider the applicability of section 3531, and even if it had, the statutory compliance at issue in One 1940 Ford was found to be plainly possible. (Fild. at p. 477.) 18

Respondent also cites Moore v. California State Board of Accountancy (1992) 2 Cal.4th 999 to support its argument that a statute may not be nullified or defeated by a maxim. (Op. Brief 21.) Moore adds little to the present analysis, because it contains only a passing reference in dicta to maxims, none of which were actually at issue in the case. (III. at p. 1012.)

As noted above, the Legislature may not act in ways that are palpably arbitrary in enacting legislation. (\*\*52 Lockard v. City of Los Angeles, supra, 33 Cal.2d at p. 461.) The required statutory compliance in One 1940 Ford was not palpably arbitrary, and the bank could have easily complied with the statute at issue by undertaking the simple administrative task of conducting an investigation, which this Court held would not have been an idle act. The instant case arises in a much different context: There is no better example of a palpably arbitrary legislative enactment than one requiring an act that is physically impossible to perform, as appellants allege. The Legislature in this case simply chose, perhaps as a matter of political expedience, to blithely ignore the impossible compliance that Penal Code section 31910, subdivision (b)(7)(A), requires. <sup>19</sup> Ignoring the required impossible compliance is what invokes the pre-existing impossibility defense to statutory enforcement that the McMahon court acknowledged twenty-seven years ago, and which remains a vital part of California jurisprudence today. (\*McMackin v. Ehrheart, supra, 194 Cal.App.4th at p. 131,135, 142.)

Respondent euphemistically refers to the impossible compliance required by Penal Code section 31910, subdivision (b)(7)(A), as "the challenges that implementing microstamping presented." (Op. Brief 24; emphasis added.)

\*53 3. The Court of Appeal Properly Relied on Board of Supervisors v.

McMahon in Ruling that Appellants Have the Right to Present Evidence that It

Is Impossible to Comply with Penal Code Section 31910, Subdivision (b)(7)(A).

As noted above, the separation of powers doctrine "recognizes that in the absence of some overriding constitutional, statutory or charter proscription, the judiciary has no authority to invalidate duly enacted legislation." (City & County of San Francisco v. Cooper, supra, 13 Cal.3d at p. 915; emphasis added.) The trial court relied on Cooper for a statement of the separation of powers doctrine when it granted respondent's motion for judgment on the pleadings (JA 1144-1145), but the trial court did not analyze the effect of any such statutory proscription in this action. By failing to do so, the trial court committed reversible error in granting respondent's motion for judgment on the pleadings, as the Court of Appeal recognized. (NSSF v. California, 6 Cal.App.5th at p. 306.)

The impossibility challenge that appellants assert to section 31910, subdivision (b)(7)(A), arises directly from the codified equitable maxim that "[t]he law never requires impossibilities." (Civ. Code, § 3531.) "Consistent with this maxim, the law recognizes exceptions to statutory requirements for impossibility of performance." (Board of Supervisors v. McMahon, supra, 219 Cal.App.3d at p. 300; emphasis added.) By making that statement, the McMahon court recognized that Civil Code section 3531 is an overriding statutory proscription to the enforcement of other statutes. \*54 Since Penal Code section

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31910, subdivision (b)(7)(A), requires performance with which it is impossible to comply, as appellants allege in their complaint (JA 15), section 3531 proscribes its enforcement.

Civil Code section 3531 does not equivocate. It declares absolutely that "[t]he law never requires impossibilities." (Emphasis added.) Respondent provided no citations below to any authority that reduces the impact of that statutory edict, and neither respondent nor the trial court explained how a statute that is fatally defective for impossibility of compliance can nevertheless be enforced either as a legal or a practical matter. Indeed, the judgment below can be reversed simply by applying the common rules of statutory construction that "[i]n the construction of a statute the intention of the Legislature... is to be pursued, if possible" (Civ. Code, § 1859), and that "[t]he terms of a writing are presumed to have been used in their primary and general acceptation..." (Civ. Code, § 1861.) As the McMahon court understood, when the Legislature used the word "never" in Civil Code section 3531, it meant "never." Appellants are entitled to show as a factual matter upon summary judgment or at trial that it is impossible to comply with Penal Code section 31910, subdivision (b)(7)(A). If they make that showing, Civil Code section 3531 will prevent the enforcement of Penal Code section 31910, subdivision (b)(7)(A), without the need for any further inquiry.

\*55 McMahon is central to the determination of this appeal, and the Court of Appeal correctly determined that it provides the basis for appellants' cause of action to enjoin the enforcement of section 31910, subdivision (b)(7)(A). (NSSF v. California, supra, 6 Cal App.5th at p. 306.) First, as noted, it was the McMahon court that unambiguously declared, in reliance on the statutory proscription of Civil Code section 3531, that "[c]onsistent with this maxim, the law recognizes exceptions to statutory requirements for impossibility of performance." (219 Cal.App.3d at p. 300.) Perhaps even more significant, however, is the fact that the McMahon court carefully analyzed the claim of impossibility of compliance that the respondent asserted. The McMahon court would not have undertaken that analysis if impossibility of compliance were not a defense to the enforcement of a statute in the first place.

At issue in McMahon was the liability for payment of the state's fifty percent share of funding for the federal Aid to Families with Dependent Children (AFDC) program, in which California has elected to participate. (Fld. at p. 291) <sup>20</sup> A provision of the Welfare and Institutions Code required counties to pay 5.4 percent of the total cost of AFDC grants. (Ibid.) However, the County of Butte adopted an ordinance, Measure E, \*56 that prohibited the use of any county funds for AFDC funding. (Fld. at p. 292.) The state petitioned for a writ of mandate and sued for injunctive relief against the county, contending that Measure E violated state law, and the county cross-complained for declaratory and injunctive relief, seeking to compel the state to fund the entire nonfederal portion of the AFDC program. (Ibid.)

The federal government paid the other fifty percent share of AFDC funding. (\*\*219 Cal.App.3d at p. 291.)

The county's chief administrative officer, Martin Nichols, testified at trial that the increased welfare costs imposed on the county by the AFDC program had forced the county to cut local services such as police and fire protection, road maintenance, and libraries. Nichols also projected that the county would run out of money for other local programs and services. (FId. at p. 293.) The county claimed based thereon that it could not comply with the funding mandate of the Welfare and Institutions Code, and it asked the court "to invoke the equitable doctrine excusing performance where circumstances make such performance impossible." (FId. at p. 299.) Acknowledging, as noted above, that "[c]onsistent with [Civil Code section 3531], the law recognizes exceptions to statutory requirements for impossibility of performance" (FId. at p. 300), the McMahon court meticulously analyzed the county's claim of impossibility. If the McMahon court had not considered impossibility as a defense to compliance with the statute at issue, it would have (and indeed should have) treated the county's arguments as irrelevant.

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\*57 Rather than simply disregarding the county's position altogether, the McMahon court made the factual finding that "Nichols's testimony demonstrates no literal impossibility of County funding for the AFDC program at the heart of this dispute. Nichols's revenue projections do not show that the County will ever be unable to make the AFDC payments at the heart of this dispute." (Ibid.; emphasis in original.) Moreover, "the County has at least five years before projected increases in state-mandated program costs would halt local County programs completely," as a result of which "Nichols's window gave the County and the Legislature some time to address the County's problems." (Id. at p. 301.) The court found that "the record lacks the extensive factual development sufficient to justify affirmative relief," and that "[t]he County simply has not demonstrated that it has exhausted its ability to raise new revenues or deliver services differently." (Id. at p. 303.) The court thus could not "conclude that, on the record before the trial court, the County demonstrated a reasonable probability of prevailing on its 'impossibility' claim." (Ibid.; emphasis added.)

The *McMahon* opinion makes sense because impossibility of compliance is a recognized defense to the enforcement of a statute. The *McMahon* court devoted significant effort to showing that the county had failed to prove its asserted inability to comply with its AFDC funding obligations. That effort would not have been justified if impossibility of \*58 compliance were not a defense to the enforcement of a statute. Indeed, it would have been a waste of valuable judicial time for the McMahon court to undertake that effort simply as an academic exercise if no such defense to statutory enforcement existed.

McMahon is the only California case known to appellants wherein the impossibility doctrine is addressed in light of Civil Code section 3531. <sup>21</sup> Appellants know of no case from any jurisdiction reaching a contrary result, and given the absolute nature of the declaration in section 3531 that "[t]he law never requires impossibilities," one would not expect any such contrary case to exist. In any event, impossibility of compliance as a ground to enjoin the enforcement of a statute is not a new or novel concept. Civil Code section 3531 was enacted in 1872 as a codification of a common law principle that is centuries old. McMahon itself was decided a quarter of a century ago.

Impossibility as a defense to statutory enforcement was also addressed in Sutro Heights Land Co. v. Merced Irrigation District (1931) 211 Cal. 670, but without reliance on Civil Code section 3531. Appellants discuss Sutro on the next two pages.

Moreover, impossibility of compliance as a ground to enjoin the enforcement of a statute is not a doctrine peculiar to California. As demonstrated by Buck v. Harton, supra, 33 F.Supp. 1014, Gigliotti v. New York, Chicago & St. Louis Railroad Co., supra, 107 Ohio App. 174, and \*59 Ivaran Lines, Inc. v. Farovi Shipping Corp., supra, 461 So.2d 123, it has been equitably applied across the United States when necessary to prevent the miscarriage of justice. By relying on impossibility of compliance as the basis for their suit to enjoin the enforcement of Penal Code section 31910, subdivision (b)(7)(A), appellants are hardly asking this Court to make a radical departure from existing law. Under these circumstances, the trial court's judgment suggesting that the separation of powers doctrine renders courts powerless to enjoin the enforcement of a statute that seeks impossible compliance ignores both sound judicial policy and common sense. By this appeal appellants seek redress from this inequitable result.

Respondent admits that McMahon supports the "unremarkable" proposition that a court exercising its equitable powers may decline to require an impossible act. (Op. Brief 25.) The proposition is unremarkable indeed, as respondent states, because it has long existed in equity. The proposition also captures the exact relief appellants seek in this action. Appellants simply ask this Court to decline to require them to comply with Penal Code section 31910, subdivision (b)(7)(A), if appellants can prove their allegation that the statute imposes impossible dual placement microstamping requirements.

Finally, respondent describes the McMahon case as being consistent with this Court's decision in Sutro Heights Land Co. v. Merced Irrigation District, supra. (Op. Brief 25.) Indeed it is. In Sutro, this Court refused to \*60 compel an irrigation district

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to drain certain lands as required by statute, because the facilities and work necessary to accomplish that drainage would have brought "financial ruin upon the district." (211 Cal. at pp. 673, 699-700, 703.) This Court in essence found that the Legislature did not intend to compel the performance of an impossible act, explaining as follows:

We do not believe that, under this state of facts, it was ever intended by those responsible for the enactment of the Drainage Act of 1907 [namely, the Legislature], that an irrigation district, situated as is the defendant in this action, should be compelled to work its own destruction by undertaking to provide drainage facilities for the district, the expense of which is beyond its financial ability to meet or pay for.

Sutro, like McMahon and the instant case, presented no constitutional claim. The Sutro court nevertheless upheld the impossibility claim made by the irrigation district, without even relying on Civil Code section 3531. The Sutro court identified the element of factual impossibility that was missing in McMahon (and as a result of which the McMahon court issued no injunction), but which appellants allege is present in the instant action. This Court should provide appellants the same opportunity that the irrigation district had in Sutro to prove that the statute \*61 at issue requires impossible compliance, and that its enforcement should therefore be enjoined. <sup>22</sup>

Respondent concludes its discussion of the maxims of jurisprudence with a one-sentence footnote apparently relying on Code of Civil Procedure section 526, subdivision (b)(4), which provides that "[a]n injunction cannot be granted... [t]o prevent the execution of a public statute by officers of the law for the public benefit," and Civil Code section 3423, subdivision (d), which provides in almost identical language that "[a]n injunction may not be granted... to prevent the execution of a public statute, by officers of the law, for the public benefit." Many cases, however, hold that that the public benefit exemption does not apply to an invalid statute, the execution of which courts have full authority to enjoin. (E.g., Financial Indemnity Co. v. Superior Court (1955) 45 Cal.2d 395, 402; Conover v. Hall (1974) 11 Cal.3d 842, 850; Agricultural Labor Relations Board v. Superior Court (1976) 16 Cal.3d 392, 401.) Those statutes are therefore red herrings as applied to this appeal, because respondent's reliance on them begs the question of whether Penal Code section 31910, subdivision (b)(7)(A), is an invalid statute. If section 31910, subdivision (b)(7)(A), is indeed invalid by reason of statutory proscription as appellants argue, no court need ever consider whether it is subject to the public benefit exemption of Code of Civil Procedure section 526, subdivision (b)(4), or Civil Code section 3423, subdivision (d).

#### \*62 VI. CONCLUSION.

Respondent sprinkles the word "freestanding" throughout its opening brief, with pejorative intent. "The maxims of jurisprudence," respondent says, "do not authorize a freestanding facial 'impossibility' claim empowering a court to invalidate a statute." (Op. Brief 20.) "Recognizing NSSF's freestanding impossibility claim," respondent adds, "would violate the separation of powers doctrine." (Op. Brief 26.) Respondent essentially argues that appellants' cause of action to enjoin the enforcement of Penal Code section 31910, subdivision (b)(7)(A), is not tethered to any supporting legal principles. Respondent is wrong.

Appellants have shown above, based on long-established authority, that the separation of powers doctrine does not foreclose judicial review of legislative enactments that are palpably arbitrary. Appellants have also shown above, based on authority that reaches back to the early common law, that the codified maxims of jurisprudence are entitled to the same operative force as any

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other statute, and that the separation of powers doctrine itself restrains courts from devaluing those maxims as organic law. By repeatedly characterizing as "freestanding" the legal foundations that support appellants' cause of action, respondent merely tries to mask the fact that courts have long possessed the power to enjoin the enforcement of laws that require impossible compliance.

\*63 The very fact that this is a firearms case makes it a case of significant public importance. Its importance is enhanced by the issue of first impression it presents as to the effect to be accorded to California's codified maxims of jurisprudence. Its importance is further enhanced by the question of fundamental fairness it presents as to whether the Legislature may require the performance of a plainly impossible act as a condition to the exercise of an otherwise lawful right. Appellants submit that this Court should answer that question in the negative. Thus, for the foregoing reasons, appellants respectfully request that this Court affirm the decision of the Court of Appeal, reverse the judgment against appellants, and remand this case to the trial court for further proceedings. <sup>23</sup>

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Respondent includes a section in its opening brief discussing the effect of a due process challenge to Penal Code section 31910, subdivision (b)(7)(A), that appellants could possibly make. (Op. Brief 33-36.) Appellants had mentioned in a footnote in their answer to respondent's petition for review that they would have the right to seek to amend their complaint upon remand to assert a due process claim under Article I, Section 7, of the California Constitution. (Ans. Pet. Rev. 18.) Appellants included that footnote because at the hearing in the Court of Appeal below, Justice Franson asked why appellants did not originally bring a constitutional challenge on grounds other than the Second Amendment. (Resp's RJN, Ex. A [11/16/2016 Ct. of App. RT, 48-49].) But since appellants have not yet actually made any such due process challenge, it is not properly before this Court now. It is sufficient to say at present that if appellants ever do raise a due process challenge to section 31910, subdivision (b)(7)(A), the challenge would be meritorious, because a statute requiring impossible compliance is not a statute that reasonably relates to a proper legislative goal, or one that is based on rational speculation. (See, Coleman v. Department of Personnel Administration (1991) 52 Cal.3d 1102, 1125; In re Jenkins (2010) 50 Cal.4th 1167, 1181.)

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# Firearms micro-stamping feasible but not ideal, experts say

UC Davis forensic science program researchers testing new microscopic engraving technology on gun firing pins have concluded that while it is feasible, the technology did not work well for all guns and ammunition tested.

"My study shows that while this technology works with some firearms, it also has problems in other firearms," said UC Davis forensic science graduate student Michael Beddow. "At the current time, it is not recommended that a mandate for implementation of this technology in semiautomatic handguns be made. Further testing and analysis is required."

Todd Lizotte of ID Dynamics, located in Londonderry, N.H., developed a way to use an ultraviolet laser to engrave microscopic markings onto firing pins, similar to how codes are engraved onto computer chips.

When the trigger is pulled, the micro-stamped firing pin will hit the primer of the cartridge case and leave the marked code on it. The idea is that the ejected cartridge can be matched to the gun from which it was fired, which is the premise for the Crime Gun Identification Act of 2007.

Governor Arnold Schwarzenegger passed the Assembly Bill 1471 in October 2007, requiring all new models of semiautomatic pistols sold in California after Jan. 1, 2010 to be engraved with a micro-stamped code in at least two areas of the "internal surface or internal workings parts of a pistol."

Fred Tulleners, director of the Forensic Science Graduate Group, discovered issues with the process.

"When trying new things, we want to really investigate it," he said. "We found it is technologically flawed." Tulleners is the former director of crime labs in the Sacramento and Santa Rosa areas as well as the former director of the California Criminalistics Institute.

Beddow tested the micro-stamped firing pins of six different semiautomatic handguns, two semiautomatic rifles and one pump action shot gun at the California Criminalistics Institute and the California Highway Patrol Academy.

Each firing pin contained three different types of codes: an alpha-numerical code on the tip of the firing pin surrounded by a gear code with a bar code going down the length of the firing pin. Recruits fired 2,500 rounds of ammunition to test the durability of repeated firing, Beddow said.

The ammunition was labeled in numerical order and shot through various guns. The cases were then collected in order to see potential change in the legibility of the characters. The firing pins themselves were photographed at intervals to determine if there had been any changes.

"We had mixed results. By and large, [in] most cases, the bar codes and gear codes did not succeed in impact. It has to do with how the firing pin operates. Sometimes they do multiple hits," Tulleners said. "For instance, [in] the AK-47 gangs use, the firing pins make multiple hits [to the cartridge]."

Multiple hits from the firing pin will mar imprints to the cartridge, thus nullifying the effectiveness of the micro-stamping. The most successful code was the alpha-numerical code.

"The alpha-numerical code provided the best quality of the numerical codes. The quality of forgeability of the impression ranged from firearm to firearm; every gun shoots differently and functions different so the legibility was different," Beddow said. "Bottom line, the technology is feasible. However, [it] does not function equally."

The study was supervised by David Howitt, a UC Davis chemical engineering and materials science professor, and was completed and informally released a year ago. The study was peer reviewed by six external reviewers, the National Research Council among them. This March, the council came out with

the same conclusions in their report: more research would be needed to prove that firearms identification rests on firmer scientific footing.

Other concerns with the new technology include the cost of implementing codes on all firing pins and how beneficial the technology will be. According to Tulleners, there are three types of shootings: crimes of passion, professional hits and assassinations (which are less solvable) and gang shootings.

"This research conceivably affects gangs. However, we routinely link cartridge cases to guns," Tulleners said. "Without DNA, gangs are notorious for passing guns, and just because you link a cartridge does not mean you'll find who did it. Gangs can deface the firing pin or buy a whole bunch of firing pins and replace them."

As for the cost of the firing pins, Tulleners estimated the engraved firing pins would cost \$7.87 or \$6.72 each, which is a very conservative estimate. "There is no real benefit to society, and the money is better spent on other progressions in society," he said.

WENDY WANG can be reached at campus@californiaaggie.com.

What Micro Serialized Firing Pins
Can Add to Firearm Identification
in Forensic Science:
How Viable are Micro-Marked
Firing Pin Impressions as
Evidence?

David Howitt, PhD, Frederic A. Tulleners, and Michael T. Beddow Forensic Science Graduate Group University of California, Davis

Funded by the California Policy Research Center
University of California

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David Howitt, PhD, is a professor in the Department of Chemical Engineering and Materials Science at the University of California, Davis and serves on the faculty of the UC Davis Forensic Science Graduate Group. He may be reached by email at dghowitt@ucdavis.edu. Frederic A. Tulleners is the director of the Graduate Forensic Science Program within UC Davis Extension and former California Department of Justice laboratory director of the California Criminalistics Institute. He may be reached by email at ftulleners@ucdavis.edu Michael T. Beddow, UC Davis M. S. graduate in forensic science at UC Davis, conducted the core tests on which this study is based. He may be reached by email at michael.beddow@hotmail.com.

CD copies of this report in PDF format can be obtained from: Forensic Science Graduate Program, UC Davis Ext., 1333 Research Park Drive, Davis, CA 95618

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Todd Lizotte of ID Dynamics in Londonderry, New Hampshire.

## EXECUTIVE SUMMARY

Every time a semiautomatic firearm is discharged, a bullet will leave the barrel and the cartridge case, which initially contained the bullet and powder charge will be ejected from the firearm. During the discharging process, working surfaces inside the firearm impart microscopic markings onto various areas of each bullet and cartridge case. One of these working surfaces is the *firing pin*, an object that strikes the primer surface in the base or back of the cartridge case, thereby causing the powder charge to deflagrate and fire the bullet. These ejected cartridge cases are one of the key pieces of evidence used in solving firearm-related crimes. More precisely, it is the microscopic markings, such as those impressed onto the back of the cartridge case by the firing pin, that forensic firearms examiners scrutinize in order to determine whether an identification with the crime gun can be made. This examination and comparison process is highly meticulous, time consuming and requires a forensic scientist with specialized equipment, training and experience.

The transfer of intentional microscopic impressions of intentional microscopic marking from the working surfaces of a firearm to each fired cartridge case was the goal behind the recent development of a micro-machining technology designed to machine an array of microscopic characters onto the face of a firing pin. The surface area of a firing pin is sufficiently large enough for a wide variety of alphanumeric characters, symbols, barcode lines, or other encoding structures to be machined on it. Todd Lizotte of ID Dynamics, located in Londonderry, New Hampshire, developed a micro-machining method that utilizes an ultraviolet laser to engrave micro-encoding structures onto firing pins. The method is similar to that used to engrave codes on computer chips.

When the trigger is pulled, the firing pin strikes the softer primer portion of the cartridge case in a center fire firearm cartridge or the rim of a rimfire caliber cartridge depending on the type of firearm in question. This process stamps the laser-machined code into the primer or rim of the cartridge case. In principle, the code impressed on the spent cartridge case could be looked up in a database and matched to a specific firearm, considerably facilitating the work of forensic science or police investigators. Through continuous testing and development, this technology has progressed from a basic alphanumeric code laser-machined on the face of the firing pin (known as first-generation firing pins) utilizing a masking method, to the current direct-writing process that can place three different encoding formats on a given firing pin: an alphanumeric code, a gear code and a radial bar code. (The latter are known as second-generation firing pins).

The viability of this emerging technology will impact the recent California Assembly Bill No. 1471 (AB 1471), the Crime Gun Identification Act of 2007, which was chaptered into to law and amended California Penal Code section 12126 on October 13, 2007. This law requires that all new models of semi-automatic pistols have the capability of placing an microscopic array of characters that identify the make, model, and serial number of the pistol, etched in 2 or more places on the interior surface or internal working parts of the pistol, and that are transferred by imprinting on each cartridge case when the firearm is fired.

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The goal of this study, which was funded in 2005 by the California Policy Research Center (CPRC) as part of its annual competitive grant cycle offering to UC faculty, was to evaluate the efficacy of this new technology so that policymakers could make informed decisions in support of facilitating the identification of forensic science evidence in firearm-related crimes.

## Research Objectives, Methods and Materials

A series of tests were conducted using a sample of readily available firearms to determine (1) the durability and longevity of an array of micro-characters laser-machined onto various firing pins, (2) the effect of repeated firings on the legibility of impression of the micro-characters on the ejected cartridge cases, and (3) the ease with which laser-machined micro-characters could be intentionally defaced or obliterated, and (4) to evaluate the cost of the proposed technology.

A primary question regarding the technology of laser-machined micro-characters laser-machined onto firing pins has to do with their ability to withstand repeated firing. To assess their durability, six firing pins for a .40 caliber Smith and Wesson Model 4006 semi-automatic pistol were equipped with second-generation encoding structures (containing the dot code). These six firing pins were placed in six different Smith and Wesson pistols at the California Highway Patrol Academy and issued to six different cadets for testing during their firearms training. Each cadet fired approximately 2500 rounds of ammunition. Photomicrographs were taken of the firing pins before and after test firing with a Philips FEI XL-30 Scanning Electron Microscope (SEM) so that direct comparison of any changes could be assessed. The range of firearms used for this study included pistols; a rifle and a shotgun because these are all used in crimes of violence and may leave cartridge case evidence. They consist of various handgun models (including new pistols at the CHP Academy) and firearms that will be in use for the foreseeable future. This allowed us to observe the effects of different firing pin impressions

made by firearms that have different discharge pressures. These firearms and their future model derivations are expected to provide similar results.

The vendor was supplied with 14 firing pins which were subsequently engraved at a cost of \$3,500 or  $\sim \$250.00$  per firing pin. These firing pins were obtained after their initial laser machining without any additional processing steps such as deburring, etching and diamond coating or initial test firing. The study showed that these additional steps are not needed because the failure mechanism is primarily influenced by the firearm design and these secondary processes including diamond coating would not resolve that issue.

In order to determine the legibility of the impressed characters made by secondgeneration firing pins, five different semi-automatic pistols (of varying make, model and caliber), two different caliber semi-automatic rifles and one pump action shotgun where chosen. The firearms tested were:

- Ruger Mark I, .22 Long Rifle (rimfire semi-automatic pistol)
- SeeCamp, .25 ACP-LWS (semi-automatic pistol)
- AMT "Backup", .380 auto (semi-automatic pistol)
- Sig Sauer P229, .40 Caliber (semi-automatic pistol)
- Colt 1911 Government Model, .45 ACP (semi-automatic pistol)
- Colt AR-15, .223 Caliber (semi-automatic rifle)
- Norinco AK-Series, 7.62x39mm (semi-automatic rifle)
- Mossberg 500, 12 gauge (pump action shotgun)

These firearms were chosen based not only upon their availability but also for the sake of diversifying the caliber and quality of firearm tested. For each of the above firearms, a single second-generation (containing gear code) micro-serial numbered firing pin (i.e., bearing a gear code) was obtained and documented using an SEM.

In addition to testing this technology with the above firearms, a variety of different ammunition brands were also tested with each firearm. The point of introducing such variance in ammunition brand was to observe how the transfer and legibility of the impressed micro-characters were affected by varying primer cup composition and primer cup hardness. (The brands of ammunition tested with each firearm can be seen in Table 3.)

<sup>&</sup>lt;sup>1</sup> The firing pin for the Ruger, 22LR only contains the alphanumeric encoding structures. This is due to the design of the firing pin and the nature of rim fire firearms. Due to the firing pin geometry for the Norinco, radial bar coding was not possible.

The type of ammunition one uses, can affect the impressions made by a firing pin. This has been well documented. We used ammunition that was available in the local community. This ammunition can be commercial, import or military surplus. The subjects who commit crimes of violence are not selective about the type of ammunition they use. The Norinco type AK rifle is one of the popular rifles used by street gangs as are some of the 9 mm and .45 ACP type pistols. The Colt 1911 .45 ACP pistol continues to be one of the most popular pistols with a substantial after-market parts support. A detailed study of the California database could provide a frequency breakdown for new handguns sales but it is difficult because this database is not structured for easy sorting. Furthermore, the California new handgun sales profile may not be reflective of what is routinely used in gang shootings.

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Every cartridge case was collected in order of firing and analyzed with a variable magnification stereo-microscope equipped with a ring light and polarizing filter. From these analyses a data table was created for each firearm documenting the number of characters from each encoding format that were legible on each and every cartridge case. This data was translated into a transfer percentage for each encoding format for each cartridge case. An average transfer percentage was then calculated for each brand of ammunition tested. During the course of the experiment, the serial numbers where extensively documented with photomicrographs. Finally, the averages for each brand of ammunition were plotted for each firearm. These charts can be found in the appendix associated with each firearm.

Two different methods were designed to evaluate the ease with which laser-machined micro-characters could be intentionally defaced or obliterated. In the first method, the firing pin for an AMT "Backup" 380 Auto semi-automatic pistol was held perpendicular to a household sharpening stone and rubbed back and forth for 30 seconds. The second method involved placing the firing pin for a Sig Sauer P229 semi-automatic pistol on its side on an anvil and rolling it back and forth while lightly peening it with a ball peen hammer for 15 seconds. The firing pin was then stood on its base and the tip was peened for an additional 15 seconds.

## Key Findings

The legibility and quality of the micro-stamped characters for all three encoding formats varied among the set of firearms tested. The function and design of each firearm affected the manner in which the firing pin struck the primer or rim of the cartridge case, thereby controlling the depth of the firing pin impression and the presence or absence of firing pin drag, multiple strikes of the firing pin and flow

back. Three of the firearms tested demonstrated an overall decline in transfer rate, while the transfer rate for all firing pins tested demonstrated a direct relationship between the brand of ammunition tested and the transfer rate. Each brand of ammunition produced a different transfer rate. This ammunition-specific transfer rate was reproducible upon repeated testing. (These results are illustrated in the "Encoding Structures Transfer Trend" graphs located in the appendix for each firearm.)

Overall, the alphanumeric characters and the gear code structures proved more durable under repeated firings (i.e., these characters were still legible on the firing pins upon completion); however, some degree of degradation—i.e., flattening—was seen on the alphanumeric structures of the firing pins tested. The dot code structures on the Smith and Wesson firing pins suffered severe degradation and deposition of foreign material, making them illegible on the firing pins (arguably a function of their small dimensions).

The radial bar code structures on eight out of the fourteen firing pins tested exhibited severe degradation, including all six of the Smith and Wesson firing pins and those for the SeeCamp .25 ACP and AMT .380 Auto. The degradation observed involved the flattening/peening of the radial bar code structure by continual contact with the walls of the firing pin aperture during repeated firing. With the exception of the radial bar code structures on the Sig Sauer firing pin, which showed moderate degradation, the radial bar codes on the remainder of the firing pins showed minimal signs of degradation, consisting only of the deposition of foreign material.

Because of patent issues we could not obtain the coding sequence of the radial, dot and gear codes. For order to remain usable there will be a minimum size for these alternate coding technologies and decoding information must be provided.

Finally, both defacement/obliteration methods demonstrated that the microcharacters could easily be intentionally destroyed with the firing pin removed from the firearm. The destruction of these characters while the firing pin was installed in the firearm would be difficult.

Due to the varying amounts of degradation seen on all of the firing pins, a determination of what constitutes a suitable lifespan of these characters needs to be developed. At the current time only the alphanumeric encoding format has the potential to reliably transfer information from the firing pin to the cartridge case, thereby facilitating the identification of crime guns outfitted with micro-stamping technology. If any numbering system has the future potential to handle a large database and have some survivability, it is the alpha–numeric system. Future research effort should begin focus on alpha-numeric coding and it's applicability

to the various firearms that are used in gang related shooting. The other area that needs more research is to evaluate the effectiveness of firing pin serial number impressions (or the equivalent breech face engraved serial numbers) on brass cartridge cases (excluding the primer area). Our study so far shows that this is a significant problem area based on our limited evaluation of impressions made by the firing pin in the .22 caliber pistol.

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Our expectation is that the results of the firing pins used in this study will be relevant to the current models we tested and their future derivation. In this study we also used the Scanning Electron Microscope (SEM) to image the firing pins. However in a typical laboratory, such imaging will have to done by trained laboratory staff using a properly configured stereomicroscope. The SEM will be off-limits to the cartridge case because most crime labs use the SEM for the detection of Gunshot residue on shooters hands and the presence of a cartridge case would severely contaminate the SEM.

The basis for this report, in the form of a thesis was also reviewed by Professor Michael Hill in the Mechanical Engineering Department and the report, as submitted to the CPRC, was externally reviewed by Lucian Haag, an independent Firearms expert and Professors Simon Cole and George Tita of the UC Irvine Department of Criminology. The report fulfilled and exceeded the purpose of the original grant and the reviewers' comments are provided in <u>Appendix O: External</u> Review of the Micro-Serialized Report.

# Policy Implications and Recommendations for Further Research

The findings of this study will have a direct impact on any legislation involving micro-serialized firing pins including the recently enacted revisions to California Penal Code section 12126 application which proposed the application of second-generation micro-serialized firing pins manufactured by ID Dynamics to *all* semiautomatic handguns sold in the state of California. As shown, while the technology works with some firearms, it does not perform equally well for every encoding structure or for every semiautomatic handgun tested. As only a limited number of firing pins, encoding sequences, and firearms were tested in this study, it is not known how this emerging technology would perform across the board in relation to the over 2000 different makes and models of semiautomatic handguns sold in California each year. At the present time, therefore, because its forensic potential has yet to be fully assessed, a mandate for the implementation of this technology in all new semiautomatic handguns sold in the state of California is counter-indicated. We specifically propose further research on alpha-numeric

serial numbers on firearms mostly in gang related shootings, suitability of such alpha-numeric imprint on fired cartridge case areas other than the soft primer area, realistic and accurate production cost estimates for such micro-engraving and a evaluation as to what percent of gang related shooting could realistically be solved by such technology given current gang firearms usage.

The recent release of the National Research Council of the National Academies report on <u>Ballistics Imaging</u>, March 5, 2008 supports the concept of our research and they (NRC) recommend further research on "microstamping," a technique that imprints unique marks on guns or ammunition-"

Several areas for further research recommend themselves, including:

#### 1. Criteria to determine the transfer rate required for identification

The data collected for each cartridge case in this study only provides the transfer rate of each encoding format. In order for this information to be useful, criteria need to be set stipulating exactly what transfer rates (for each encoding format) constitute a sufficient quantity of characters to allow for the potential identification of the firing pin that produced them. These criteria should be created in conjunction with practicing firearms examiners, the state of California and the personnel responsible for the creation of the database for this technology.

# 2. Decoding protocols for properly interpreting radial bar and gear codes

At the current time no protocols have been provided regarding the interpretation of the radial bar codes and gear codes. Without such protocols the impressions of these encoding structures are nothing more than that: impressions. This could affect the current California Penal Code 12126 section if the intent of this law requires the implementation of this unproven secondary technology. Decoding conventions need to be obtained from ID Dynamics for these two encoding formats to be interpretable. Once this information is obtained, testing will need to be conducted to determine what factors affect their interpretation, such as changes in width and spacing. Without these instructions the radial bar codes and gear codes are rendered mute, unable to provide any identifying information.

#### 3. Firearm-related crime statistics to be compiled

A survey of crimes committed with semiautomatic handguns needs to be compiled and sorted into two specific categories: crimes committed by the registered owner of the firearm and firearm crimes committed by someone with a firearm not registered to the end user, such as gang related shootings. This is especially important in the area of gang related shootings since firearms are frequently recovered, linked to past homicides but the holder of the firearms cannot be charged for prior homicides. This information will aid considerably in determining the forensic potential this technology holds for the law enforcement community in the identification of possible suspects in firearm-related crimes.

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#### 4. Implementation strategies to be developed collaboratively

The development of a viable commercial implementation strategy for this technology is a necessity. This must be completed in collaboration with officials from the state of California, firearms manufacturers and ID Dynamics. Many different implementation strategies for this technology may be possible. The laser micro-machining could be conducted by each individual firearm manufacturer, a consortium, an independent company, or by the state although the latter possibility is unlikely. These and other scenarios should be prototyped and evaluated prior to any implementation of this technology. The role of the State could be one of developing specific technical detail as to the form and sequence of the micro-serial numbers that would complement the State's firearms databases. The State would also have to ensure that this technology is not proprietary and can be competitively bid by interested parties at a reasonable cost. Ideally these scenarios should be prototyped and evaluated prior to any legislative or commercial implementation of this technology.

#### 5. Technology implementation prototype to be piloted

Prior to implementing this technology statewide, a smaller-scale prototype should be piloted. The ideal scenario for testing such a prototype would involve a group of selected law enforcement agencies equipped with a variety of handguns so that about 3,000 firing pins from assorted handgun models can be evaluated. This number of firearms equipped with micro-machined firing pins should be sufficient to allow for a more accurate evaluation of this technology and allow for interested parties to provide a realistic bid on firing pin manufacturing costs. This study would provide beneficial information as to the time required and cost incurred for the laser machining of micro-characters onto firing pins. It would also address the suitability of such micro-numbers in handguns other than the CHP Smith and Wesson firearms. As an example, Glock firing pins are substantially different and

have different dynamics. Furthermore if radial and gear code technology is to be contemplated, we need to test the coding structure with realistic serial numbers.

Along with this we would recommend that a survey be conducted as to the utility of this technology in gang and non-gang related shooting incidents and compare this to the current NIBIN technology which images the cartridge cases found at crime scenes and conduct a preliminary automated comparison.

## INTRODUCTION

When a firearm is discharged, microscopic toolmarks are imparted from the firearms' internal surfaces onto the bearing surface of each bullet and cartridge case. It is these individual toolmarks that forensic firearms examiners scrutinize, through a comparison microscope, to classify and identify the firearm from which these items were fired. More specifically, a microscopic comparison is conducted to determine if a match can be made between the evidence bullet or cartridge case and test-fired specimens obtained from the firearm in question. This identification process is highly time consuming, as the number of microscopic toolmarks that must be compared can vary in position, illumination and orientation, and requires specialized equipment, training and extensive experience.

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#### Basic Firearm Function and Firearms Evidence

Every time a firearm is discharged, a specific series of events occur that in turn leave unique toolmarks on the bullet and cartridge case. When the trigger is depressed the firing pin travels forward, striking either the primer (with center fire cartridge cases) or the rim of the cartridge case (with rimfire cartridge cases). Upon impact, the shape of the firing pin as well as any imperfections and/or residual manufacturing tool marks on the firing pin are transferred into the firing pin impression. This impact initiates the deflagration of the friction-sensitive priming compound. In turn this ignites the gunpowder, causing an instantaneous expansion of hot gases.

The deflagration creates pressure that forces the bullet through and out of the barrel. As the bullet travels down the barrel, and engages the rifling, microscopic imperfections from the barrel's manufacturing processes are transferred to the bullet, creating a series of striations (*striae*).

The increase in pressure also has an effect on the cartridge case, causing it to expand outwards against the chamber walls as well as rearward against the breach face. This expansion causes the transfer of chamber markings onto the sides of the case and as well as breach face markings onto the head or rim of the case and the primer. Additional toolmarks are impressed on the cartridge case as it is extracted and ejected from the action of the firearm. An extractor pulls the cartridge case out of the chamber. This motion will result in extractor markings being produced on the rim of the cartridge case. As it is being extracted, the cartridge case will come into contact with the ejector which will cause it to rotate towards the ejection port. The ejector also produces markings that are left of the head of the cartridge

case. During ejection, the cartridge case can also sustain toolmarks from contacting the ejection port.

Each ammunition component (bullet and cartridge case) and the markings imparted on these two items during the discharge of a firearm are the key items of firearms evidence. All of the markings created on the ammunition components will contain both class and individual characteristics. *Class characteristics*—generally, manufacturing and design features that are transferred to the bullet or cartridge case—constitute a family of firearms or specific firearms manufacturers. *Individual characteristics* are the markings, imperfections and striae transferred to the cartridge case or bullet that serve as crucial evidence in the identification of a specific firearm.

## Micro-machining Technology

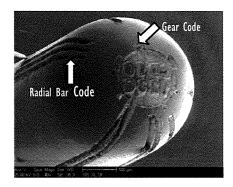
Todd Lizotte of ID Dynamics, LLC developed a micro-machining technology that utilized a solid-state ultraviolet laser to machine an array of microscopic characters onto the tip of a firearm's firing pin. By normal standards, the tip of a firing pin is small (typically about 0.075 inches in diameter), however in the micro-machining world this diameter is sufficiently large enough that a wide variety of letters, numbers, symbols and or barcodes can be machined on its surface. These characters are not readily visible to the naked eye, but can be easily viewed under an optical microscope at approximately 20 times magnification or with a scanning electron microscope (SEM). The principle behind this technology is that every time a firearm is discharged, the characters machined on the firing pin will be impressed into the primer or cartridge case rim, thereby allowing for the identification of the gun from which the cartridge case was fired by merely reading off the impressed characters and looking them up in a database of all engraved firing pins and their associated firearms.

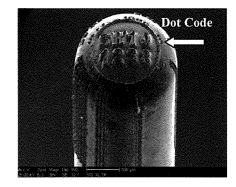
Since the advent of this technology, ID Dynamics has continuously made changes to the morphology and arrangement of the micro-characters. The first-generation engraved firing pins contained only an array of alphanumeric characters on the face of the firing pin. Proof of concept testing on this generation of firing pins was conducted by ID Dynamics as well as by George G. Krivosta of the Suffolk County Crime Laboratory in Hauppauge, New York<sup>2</sup> and Lucien C. Haag of Forensic Science Services.<sup>3</sup>

<sup>&</sup>lt;sup>2</sup> "NanoTag<sup>TM</sup> Markings From Another Perspective," Krivosta, George G., Suffolk County Crime Laboratory, Hauppauge, NY. *AFTE Journal*, Vol. 38, No. 1, Winter 2006.

<sup>&</sup>lt;sup>3</sup>. Ballistic ID Tagging' A Further Look", Haag, Lucien C., Forensic Science Services, Carefree, AZ. PowerPoint Presentation.

Subsequently two formats of second-generation firing pins have been produced—see Figures 1 and 2 below—each containing three different types of encoding structures. The first of the two formats (*Figure 2*) contained alphanumeric characters on the tip of the firing pin surrounded by a dot code a radial barcode. The second layout (*Figure 1*) was based on the same design as the first; however the dot code was replaced by a gear code.





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Figure 1

Figure 2

The alphanumeric coding on the tip of the firing was provided in two different formats: uncorrected and corrected. The uncorrected format was such that the characters were directly legible on the face of the firing pin thereby the impressions they left were backwards. The corrected format provided the alphanumeric characters written backwards on the firing pin so that their impression would be directly legible.

According to proposed Assembly Bill 1471 (formerly AB 352),<sup>4</sup> (missing footnote #4 and need to update) the "make, model and serial number" of every semiautomatic handgun sold in California must be machined on its firing pin. However, due to geometry and size constraints, the manufacturer placing an eight-digit alphanumeric tracking/reference code (i.e., two lines of 4 characters) on the face of the firing pins. By reducing the number of characters machined on the face of the firing pin, the size of each character can be increased which will enhance the legibility of their impressions on the primer. This eight-digit alphanumeric code provides enough possible combinations to allow for an individual tracking code to be assigned to all semiautomatic handguns sold in the State of California. The concept is that a database will be created that will pair the alphanumeric tracking code placed on each firing pin with the make, model and serial number of the firearm in which it is placed. As long as the tracking code in the firing pin impression is legible, a basic database search can be conducted to identify the registered owner of the firearm in question.

<sup>&</sup>lt;sup>4</sup>. Subsequently chaptered into law in October of 2007.

## Issues with Laser Machining

The firing pin in a particular firearm is typically unique to that specific make and model of firearm. It is not generally interchangeable with other makes and models of firearms. For this reason, every different geometry of a firing pin will have a unique a fixture that must be manufactured so that it will hold the firing pin perfectly in line with the laser. If this alignment is not obtained, the encoding structure will be improperly placed on the firing pin and/or the encoding structures may be deformed or damaged. This will cause an unsatisfactory or illegible transfer of the encoding structures into the firing pin impression. As this microcharacter laser machining process is still in the developmental stage, the above issues were encountered in five out of the fourteen firing pins that were machined for this study. The manufacturer was notified of these issues and the fixtures were corrected; replacement micro-serialized firing pins were obtained and subsequently used in this research. See appendix B for images and details of specific the issues encountered.

## Issues with Firing Pin Machining

For the purpose of this study, we wanted firing pins that came directly from the laser machining without any subsequent process such as deburring, etching, diamond coating and preliminary test firing. Some of the subsequent firing pins provided by the vendor had this deburring/etching process completed. In particular; the process of diamond coating is a common industrial technique to increase the abrasion resistant of a particular tool that is subject to lateral abrasion. The technique consists of placing a very thin coating/layer of diamond like material on the surface of the tool. The mechanism of wear of a firing pin microserial number is impact abrasion and this result is not in surface wear but in structural deformation. Impact deformation results in structural change of the micro engraved numbers and a diamond coating that reduces surface wear would have no effect this structural change. The subsequent result of the CHP pistol tests and their alpha-numeric data shows that these additional machining steps appear to be unnecessary.

The issue is not with the micro-engraved alphanumeric number reproducibility but with the fact that certain combinations of firearms and ammunition will not allow legible reproduction of the micro-engraved numbers, alphanumeric numbers and the radial codes. In this test, only the alphanumeric encoding performed well on

the new CHP Smith & Smith & Wesson pistols, the radial bar codes and the dot codes being illegible.

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## Research Objectives, Methods and Materials

A series of tests were conducted using a sample of readily available firearms to determine (1) the durability and longevity of an array of micro-characters laser-machined onto various firing pins, (2) the effect of repeated firings on the legibility of the imprint of the micro-characters on the spent ammunition, and (3) the ease with which laser-machined micro-characters could be intentionally defaced or obliterated.

#### Durability and Longevity of Micro-Characters

The initial question regarding the laser-machined micro-characters is their durability to withstand repeated firing. To answer this question, six firing pins for a .40 caliber Smith and Wesson Model 4006 semi-automatic pistol were equipped with second-generation encoding structures (containing the dot code). These six firing pins were documented prior to firing by imaging with a Philips FEI XL-30 Scanning Electron Microscope (SEM). The California Highway Patrol (CHP) Academy provided assistance for the durability study, in that they allowed these firing pins to be installed in six of the Smith and Wesson Model 4006 firearms issued to their cadets. Their assistance was requested because of the number of rounds of ammunition fired by each cadet in a relatively short period of time. During the course of the academy, each recruit fired approximately 2500

Table 1 Encoding Data for Smith & Wesson Firing Pins						
Pin	Alphanumeric	Dot Code	Bar Code			
Α	SW10, 1234	20	22			
В	SW10, 1235	19	22			
C	SW10, 1236	21	23			
D	SW10, 1237	21	23			
Е	SW10, 1238	21	20			
F	SW10, 1239	19	21			

rounds of ammunition (Winchester Ranger SXT). The alphanumeric encoding structures for all six firing pins were identical except for one character so as to allow for the inter-comparison of the wear patterns on the characters of all six firing pins. The encoding characters for the six Smith and Wesson firing pin are listed in Table 1 above.

The first ten cartridge cases fired from each of the six Smith and Wesson pistols were collected to determine if the character impressions undergo an initial break in period.<sup>5</sup> Six more cartridge cases from each firearm were collected during the remainder of the cadets' firearms training. Upon completion of the CHP cadets' firearms training, the serialized firing pins were removed and imaged once again utilizing the SEM. A comparison of the firing pins was then conducted utilizing analysis TM imaging software.

### Legibility of Impressed Characters

In order to analyze the legibility of the impressed characters in the firing pin impressions, five different semi-automatic pistols (of varying make, model and caliber), two different caliber semi-automatic rifles and one pump action shotgun where chosen. These firearms were:

- Ruger Mark I, .22 Long Rifle (rimfire semi-automatic pistol)
- SeeCamp, .25 ACP-LWS (semi-automatic pistol)
- AMT "Backup", .380 auto (semi-automatic pistol)
- Sig Sauer P229, .40 Caliber (semi-automatic pistol)
- Colt 1911 Government Model, .45 ACP (semi-automatic pistol)
- Colt AR-15, .223 Caliber (semi-automatic rifle)
- Norinco AK-Series, 7.62x39mm (semi-automatic rifle)
- Mossberg 500, 12 gauge (pump action shotgun)

These firearms were chosen based upon their availability as well as to diversify the calibers and quality of firearm tested. For each of the above firearms, a single second-generation (containing gear code) micro-serial numbered firing pin was obtained<sup>6</sup> and documented using an SEM. Images of all the unfired firing pins are illustrated in Appendix A.)

<sup>&</sup>lt;sup>5</sup> A ten round break in period was suggested by Todd Lizotte, ID Dynamics.

<sup>&</sup>lt;sup>6</sup> The firing pin for the Ruger, 22LR only contains the alphanumeric encoding structures. This is due to the design of the firing pin and the nature of rim fire firearms. Due to the firing pin geometry for the Norinco, radial bar coding was not possible.

Table 2 Encoding Structures for Each Second-generation Firing Pin Tested					
Firearm	Alphanumeric Code	# of Teeth in Gear Code	# of Lines in Radial Bar Code		
Ruger	SR10123K (Single Line of Text)	N/A	N/A		
SeeCamp	SC10, 123C (Uncorrected Format)	7	11		
AMT	AM10, 123E (Corrected Format)	9	12		
Sig Sauer P229	SS10, 1232 (Corrected Format)	7	13		
Colt 1911	CD10, 123G (Corrected Format)	7	11		
Colt AR-15	CD10, 123H (Corrected Format)	8	12		
Norinco AK	NC10, 123D (Uncorrected Format)	9	N/A		
Mossberg	MS10, 123B (Corrected Format)	8	12		

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In addition to the testing of this technology with multiple calibers of firearms, there was also a need to conduct testing with different brands of ammunition because of the differences in primer cup composition and primer cup hardness. A study conducted by Fred Tulleners<sup>7</sup> illustrates the hardness of a primer can vary depending on the manufacturer of the cartridge case. The brands of ammunition chosen for this study were based upon public abundance and availability (see Table 3). For each of the five semi-automatic pistols tested, fifty rounds of each brand of ammunition were fired. Upon completion of the first series of test firing, further test firing was conducted keeping the order of ammunition brand constant. This second test firing sequence allowed cartridge cases of the same brand of ammunition to be compared when fired several hundred rounds apart from one another, allowing for more complete documentation of any possible changes in transfer of the characters to the firing pin impressions. For the two rifles the brands of ammunition were changed every 60 rounds for the first series of test firing, and every 40 rounds for the second test firing. (It should be noted that the order of ammunition brand was kept constant between the two test firing series.) The number of rounds per brand of ammunition was altered in the case of the rifles due to the number of rounds of ammunition per box.

<sup>&</sup>lt;sup>7</sup> "Vickers Hardness Values of Selected 40 S&W Primers," Tulleners, Fred, California Department of Justice, Sacramento, CA; Randich, Erik, Lawrence, Livermore National Laboratories, Livermore, CA; Giusto, Michael, California Criminalistics Institute, Sacramento, CA. *AFTE Journal*, Spring 2003, Vol. 35, No 2, pp. 204-8.

Table 3 List of Firearms and Ammunition Brands Tested				
Firearm	Ammunition Manufacturers			
Ruger, 22 LR	Winchester, Remington, Federal (American Eagle), PMC, CCI Blazer			
SeeCamp, 25 ACP	Winchester, Remington, Federal (American Eagle), CCI Blazer			
AMT, 380 Auto	Winchester, Remington, Federal (American Eagle), PMC, Armscor, Cor-Bon			
Sig P229, 40 S&W	Winchester, Remington, Federal, Speer, PMC, Corbon, CCI			
Colt 1911, 45 ACP	Winchester, Remington, Federal (American Eagle), PMC, Wolf, Armscor, Cor-Bon			
Colt AR-15, .223	Winchester (USA, Military), Remington, Federal, PMC, Golden Bear, Squires Bingham, Corbon <sup>8</sup>			
Norinco AK, 7.62 x 39 mm	Winchester, Remington (UMC), Federal, PMC, Wolf, Foreign Steel Case			
Mossberg 500A 12 gauge	Winchester, Remington, Federal, PMC, Wolf, miscellaneous			

The test firing series was conducted in a slightly different manner for the shotgun. The first series consisted of 50 rounds of each brand of ammunition and for the second series mixed brand bulk ammunition was used: the brand of ammunition for each shot was random. Prior to the beginning of the test firing process, all ammunition, except for the mixed bulk 12 gauge, was engraved numerically identifying the location in the order of which it would be fired.

Throughout the test firing process, the firing pins were removed and imaged with the SEM. The intervals at which firing pins were imaged are as follows: after one shot, after 10 shots, after 100 shots and upon completion of test firing.

Every cartridge case was analyzed visually utilizing a 7.5-64-power variable magnification Olympus stereo zoom microscope. To reduce the amount of glare and reflection from the metallic surface of the primers, a Schott ring light equipped with a polarizer/analyzer was used. On the majority of the cartridge cases, the impressed encoding characters were best visualized under crossed

<sup>&</sup>lt;sup>8</sup> The Cor-Bon ammunition utilized for this research was packaged and distributed by Corbon, but assembled with Remington cartridge cases (headstamp R-P) and unknown primer manufacturer

polarized light. This method of examination was chosen, as the stereo zoom microscope is one of the key pieces of instrumentation present in forensic firearms The use of alternative methods such as Scanning Electron Microscopy (SEM) or confocal microscopy to identify the illegible characters was not investigated since these instruments are not readily available for the analysis of firearms evidence within forensic laboratories. The purpose of most SEM's in forensic laboratories is for Gun Shot Residue (GSR) and trace evidence analysis, thus the placement of firearms evidence into the sample chamber of the SEM would be prohibited due to GSR contamination issues. A data table was created for each of the firing pins based upon the visual the observation of the cartridge cases and documenting the number of characters from each type of encoding that were readily legible within the firing pin impressions. For any individual alphanumeric character to be counted as a positive transfer, it had to be fully legible; partial character transfers were not counted. For the bar code characters to be counted, both edges of each individual line had to be visible. For the gear code characters to be counted, all three edges of each individual structure had to be visible.

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Although the above listed firearms were intended to test the legibility of the impressed characters, micro-character durability and longevity data was also obtained and analyzed as the firing pins were documented throughout the test firing process.

#### Micro-Character Defacement/Obliteration

The ease in which these micro-characters can be removed or obliterated was questioned. In order to answer this question, two different methods for character obliteration were chosen. The methods were chosen based upon common household tools and objects readily available to the general public. The firing pins that were selected were the AMT .380 Auto and the Sig Sauer P229 semi-automatic pistols.

The first obliteration method tested entailed rubbing the face of the AMT firing pin on the fine-grain side of a household sharpening stone. This method attempted to obliterate the alphanumeric and gear code structures from the firing pin while leaving the radial bar code undamaged. The firing pin was held perpendicular to the fine grain side of the sharpening stone and rubbed back and forth with moderate pressure for 30 seconds. No further action was taken. The firing pin was then installed in the firearm and ten rounds of Winchester ammunition were test fired.

In the second obliteration method a 16-oz. ball peen hammer was used to lightly peen the Sig Sauer P229 firing pin containing all three encoding structures. To do so, the firing pin was laid on its side on the anvil portion of a steel bench vice and rolled back and forth while lightly peening the radial bar code. This process was conducted for 15 seconds. The firing pin was then placed with its base on the anvil and the face of the firing pin containing the alphanumeric and gear code structures was lightly peened for 15 seconds. No further action was taken to obliterate the encoding structures. The firing pin was then installed in the firearm and ten rounds of Winchester ammunition were test fired.

#### **KEY FINDINGS AND DISCUSSION**

#### Durability and Longevity of Micro-Characters

The SEM images of all micro-serialized firing pins were analyzed using analySIS<sup>TM</sup> imaging software. For each firing pin, measurements were obtained (in microns) of the width and height of every alphanumeric character. These measurements were taken prior to test firing, at set intervals throughout test firing, and then once again after test firing: measurements were only taken before and after test firing for the six Smith and Wesson Model 4006 firing pins.

#### Smith and Wesson Model 4006, 40 S&W Semi-Automatic Pistol

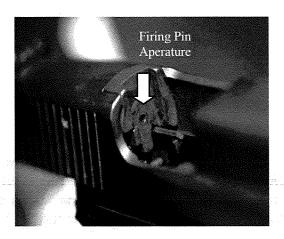
Comparing the measurements of the height and width of the alphanumeric characters before and after firing 2500 rounds of ammunition, only minor changes were seen on all of the firing pins except for Pin F. All of the firing pins showed a softening of the alphanumeric characters' visual appearance. Two of the alphanumeric characters on firing pin F, "W1", in the top row of text showed a large amount of deformation. Both of the characters where flattened and shifted slightly to the right. The number "6" in the second row of text on firing pin C also showed a slight deformation in character. One other issue noticed amongst the alphanumeric characters was the deposition of foreign material in and around the characters. This deposited material is from byproducts of the discharge of the ammunition as well as from the softer primer material.

The dot code structures surrounding the face of the firing pin showed extreme wear and degradation. On all six of the firing pins, the multiple dot code structures were obliterated from repeated firing, or were filled completely with foreign material: The filling of these structures with foreign material was common to all six firing pins. The majority of the dot code structures did not survive through the full test firing cycle.

The radial barcode structures also showed extreme wear and degradation. First noted was obliteration of the bar code structures near the tip of the firing pin by the firing pin aperture. Enough size difference between the diameter of the firing pin and the diameter of the firing pin aperture (*Figure 3*) was present to allow the firing pin to move from side to side while at full extension during firing. The

<sup>&</sup>lt;sup>9</sup> "Softening" describes the smoothing out of the characters' surfaces, rounding of the characters edges, and disappearance of rough/jagged fragments on the characters' surfaces left from the laser machining process.

impact of the firing pin against the walls of the firing pin aperture caused a peening affect, thus pounding a portion of the bar code structures flat (*Figure* 4). This effect was noticed on all six of the firing pins. The remaining portion of the bar code structures between the obliterated section and the tip of the firing pin were filled with deposited foreign material.



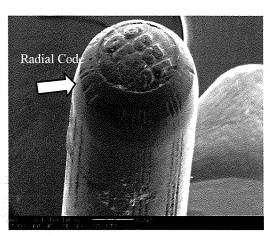


Figure 3

Figure 4

Of the three forms of encoding structures present on the six Smith & Wesson firing pins tested, the bar code structures and dot code structures were the most susceptible to degradation from repeated firing. The alphanumeric encoding structures on the face of the firing pins demonstrated moderate-to-good durability and retention of overall shape, except for the few above-mentioned characters on firing pins C and F. The testing of the durability and longevity of the microcharacters over a period of firing 2500 rounds of ammunition was felt to be adequate in comparison to the average number of rounds of ammunition fired over the lifetime of most semi-automatic pistols. The measurements for the alphanumeric characters and supporting images are illustrated in Appendix C.

#### Ruger MK I, .22 LR Semi-Automatic Pistol

The evaluation of the micro-machined characters for the Ruger .22 LR firing pin was based upon alphanumeric encoding only, as most of the firing pins for .22 caliber rimfire firearms are not amenable for gear and radial bar code labeling. The first issue to address regarding this firing pin is the quality of its original manufacture. The quality of the alphanumeric characters on this firing pin was inferior to those found on the rest of the firing pins tested. The edges of the

characters lacked crispness and their alignment was poor. The largest issue was that the first character in the encoding sequence, "S," was machined off the face of the firing pin. The manufacturer informed the investigators that the geometries to be utilized for this technology on rimfire firing pins had not yet been perfected.

The second issue has to do with the fact that this is a rimfire firearm in which case the firing pin strikes the rim of the brass cartridge case rather than an exposed primer. Thus every time the firearm is discharged; the firing pin is contacting a much harder material. The last issue with the firing pin for a rimfire firearm is that only a portion of the end of a rectangular firing pin strikes the cartridge case, thus allowing for only part of the encoding structures to come into contact with the rim of the case.

This firing pin was test fired for a total of 250 rounds of ammunition. Over this test firing period, the alphanumeric characters showed extreme signs of degradation, so much so that no character dimensions were obtainable. The degradation and deformation of the alphanumeric characters were documented through SEM images only. These images can be seen in Appendix D.

#### SeeCamp .25 ACP LWS Semi-Automatic Pistol

The alphanumeric characters on the SeeCamp firing pin showed negligible degradation over the course of test firing 394 rounds of ammunition. The only change in the alphanumeric characters that was noted was the softening of the characters' appearance in comparison to their original state. By the completion of the test firing, some build up of foreign debris was noticed in and around the alphanumeric characters.

The gear code structures did not appear to incur any major changes during testing. The only noticeable event was the slight narrowing of the structures; however, this narrowing was not significant.

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The radial bar code structures suffered the same degradation as the radial bar codes on the Smith & Wesson Model 4006 firing pins. After ten cartridges were fired, the effects of the firing pin contacting the firing pin aperture were observed. By the completion of the test firing, a section of the radial bar code structures was showing severe peening from this lateral pin movement. The remaining portion of the radial bar code structures, between the damaged section and the tip of the

<sup>&</sup>lt;sup>10</sup> Test firing of the SeeCamp firing pin was ceased at 394 rounds of ammunition due to firearm malfunction. An integral component within the firearm broke disallowing continued use of the firearm. This malfunction was in no way related to the testing of the laser-machined firing pin.

firing pin, contained deposits of foreign material. All measurements and images for the above results are illustrated in Appendix E.

#### AMT "Backup" .380 Auto Semi-Automatic Pistol

The appearance of the alphanumeric characters was softened after firing ten rounds. Both the "A" and the "3" showed slight deformation after the completion of test firing 600 rounds of ammunition. The left side of the "A" began to collapse toward the center of the character and the number "3" was slightly flattened and gained in height by approximately 28 microns. Both of these characters were still legible.

The gear code structures showed no major signs of degradation. The deposition of foreign material in the gear code structures was noticed throughout the test firing; however, the location and severity of these deposits were not constant.

The radial bar code structures suffered the same degradation as those on the Smith & Wesson firing pins. After ten rounds had been fired, the effects of the firing pin striking the aperture of the firing pin port were noticed. By the completion of the test firing, a section of the radial bar code structures showed severe peening to complete obliteration from this lateral firing pin movement. All of the radial bar code structures, except one, were damaged all the way to the tip of the firing pin. The data and images for the above results can be seen in Appendix F.

#### Sig Sauer P229, .40 S&W Semi-Automatic Pistol

The alphanumeric characters on the Sig Sauer firing pin showed signs of softening after ten rounds of ammunition had been fired. Throughout the remainder of 1000 rounds test fired, no major signs of character degradation or deformation were noticed. The number "3" in the bottom row of text showed the most signs of degradation. Large amounts of foreign material deposits were noticed in and around the alphanumeric characters. In some areas these deposits were level with the top of the characters. However, the location and size of the deposits did not remain constant throughout the test firing.

The gear code structures showed minimal to no signs of degradation. Throughout the test firing process, deposits of foreign material were noticed accumulating within the gear code structures. None of the deposits remained constant except for one; the gear code structure directly above the second "S" in the top row of text was almost completely filled with foreign material at 100 rounds of ammunition fired and remained this way through 1000 rounds fired.

The firing pin material that separates one radial bar code structure from the next suffered the most degradation within the radial bar code structures. These separating structures began to fail near the tip of the firing pin, creating the appearance of one wide bar code structure as opposed to the intended two structures. However, these separating structures were exceptionally narrow on this firing pin prior to testing. Large quantities of foreign material deposits were visible in the entire length of most radial bar code structures. These deposits were also not constant throughout the test firings. See Appendix G for the data and images for the above results.

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#### Colt 1911, .45 ACP Semi-Automatic Pistol

In the laser machining of this firing pin, the fixture issues were apparently not resolved. The ends of the radial bar code structures are uneven and one set of radial bar code structures continue through the gear code almost reaching the alphanumeric structures. The continuation of these two radial bar code structures causes them to join together at the tip of the firing pin and looked like one wide structure.

The softening of the appearance of the alphanumeric characters on the Colt 1911 firing pin was not noticed until 100 rounds of ammunition were fired. At this point in the test firing sequence a large quantity of foreign debris had been deposited around the alphanumeric characters. By completion of test firing, at 750 rounds fired, no major degradation of the alphanumeric characters was noticed; however, a large quantity of foreign debris was present around the characters making the "3" difficult to visualize.

The gear code structures showed no sign of degradation. Throughout the test firing process, varying quantities of foreign debris deposits were noticed within each gear code structure. The most sever deposits were noticed upon completion of the test firing.

The separating structure between two radial bar code structures, located below the "12" in the second line of text, was the only portion of the radial bar code that showed any degradation. A portion of this separating structure was destroyed within the first 100 rounds fired (This degradation is indicated in the images on page 4 of Appendix H with the white arrows). Throughout test firing, varying quantities of foreign debris were noticed within the radial bar code structures. See Appendix H for data and images associated with the above results.

#### Colt AR-15, .223 Semi-Automatic Rifle

The alphanumeric characters on the Colt AR-15 firing pin were not as rough before firing as those on some of the other firing pins. This was due to a secondary process performed by ID Dynamics to remove unwanted debris left behind by the laser machining process. Even with the removal of the machining debris from the face of the firing pin, a softening of the alphanumeric characters was noticed after 10 rounds were fired; after 100 rounds, there was noticeable degradation. The top of the number "1" in the bottom row of text was beginning to disintegrate and the rest of the characters, except for the "C", were beginning to flatten out. Upon completion of test firing, through 760 rounds of ammunition, all of the alphanumeric characters had begun to flatten and lose surface material.

The only sign of degradation exhibited by the gear code structures was a softening in their edges. Deposits of foreign material were minimal throughout test firing except for one of the gear code structures after 760 cartridges were fired, the one directly to the right of the number "1" in the bottom line of text, had been filled with a foreign substance.

Throughout the test firing, the quantity of foreign material deposition present in the radial bar code structures increased to a maximum upon completion of the test firing. See appendix I for the data and images for the above results.

#### Norinco AK, 7.62x39mm Semi-Automatic Rifle

All of the encoding characters on the Norinco AK firing pin were extremely crisp prior to firing. After ten cartridges had been fired, a softening of the alphanumeric characters was noticeable. Also, at ten rounds fired, the right side of the letter "N" was beginning to slant to the left and the letter "D" was beginning to rotate clockwise on the base. Imaging at 100 and 600 rounds of ammunition fired revealed the continued deformation of the letters "N" and "D" as well as the elongation of the letter "C" and the number "3." Various quantities of foreign deposits were seen throughout test firing, however at 600 rounds, severe deposition of foreign material had accrued, covering over half of the letter "N" and the number "1" (in the bottom row). All alphanumeric characters were readily legible upon completion of test firing except for the "N" and "1". The "D" could potentially be mistaken for a deformed "0" or "O".

The gear code structures showed discernable signs of degradation. Throughout test firing, varying quantities of foreign material deposits were observed. The most severe deposits were seen after 600 rounds by which point three of the structures

were completely filled and not readily visible and a fourth partially filled but still visible. The images and data for the above results are illustrated in Appendix J.

#### Mossberg 500A, 12 Gauge Pump Action Shotgun

Post machining, secondary processes were conducted on the Mossberg firing pin by the manufacturer to remove unwanted debris left behind by the laser machining process. No noticeable changes occurred to the alphanumeric characters after 10 rounds of ammunition were fired. After 100 rounds, a softening of the characters was noticeable. At this point, minor degradation to the number "1" in the top row was observed as a loss of material in the center of the character. Also at this point minor deposition of foreign material around the characters was noticed. In the images taken upon the completion of the test firing, after approximately 850 rounds fired, significant flattening of the characters was noticed. The spacing between the top and bottom rows of text had collapsed, as had some of the spacing between the characters in each row. At this point a larger quantity of deposited foreign material had accrued around the alphanumeric characters.

Throughout test firing, varying quantities of foreign material were deposited in the gear code structures. After 100 rounds, damage to the face of the firing pin was noticed, consisting of a small depression that caused the narrowing of the gear code structure located above the number "1" in the top row. Through the remainder of the test firing the edges of the gear code structures were rounded causing a slight change in their dimensions.

The radial bar code structures showed no visible sign of degradation; however, throughout test firing varying quantities of foreign material deposits were visible. The quantity of foreign material present in the radial bar code structures was not constant. See Appendix K for images and data for the above results.

#### Legibility of Impressed Characters

Each firearm tested produced a unique shape and depth of firing pin impression. Due to this variation in the firing pin impressions the results for the legibility of the impressed characters will be presented separately for each firearm.

There were three main factors that contributed to the quality of the impressed characters as well as the quantity of the characters that were transferred: depth of firing pin impression, firing pin drag and multiple strikes of the firing pin in the same impression. Firing pin drag is caused by the cartridge case beginning its ejection prior to the firing pin being fully retracted from the firing pin impression. This causes the firing pin to be drug out of the firing pin impression and across part of the surface of the primer. In some instances this action obliterated some of the transferred characters. Firing pin drag did not occur on all of the firearms tested.

Firing pins striking more than once in the same firing pin impression can cause several different issues. Each time the firing pin strikes the primer it does not strike in the exact same location as the original impression. The method by which the firing pin is secured in the firearm as well as the design of the firearms bolt assembly will dictate the impending results, the character orientation and location of each subsequent strike. The analysis of cartridge cases that were struck more than once by the firing pin was conducted in a specific manner. Many of the cartridge cases containing multiple firing pin strikes showed more legible characters than are present on the firing pin. In these cases, whichever strike produced the greatest number of impressed legible characters was counted. Any legible characters produced by one of the other firing pin strikes were not counted.

#### Smith and Wesson Model 4006, .40 S&W Semi-Automatic Pistol

Seventeen cartridge cases were collected, throughout the micro-character longevity study from each of the six Smith & Wesson firing pins tested. All six Smith & Wesson firearms produced, on average, firing pin impression of sufficient depth to allow for the engagement of all three types of encoding structures with the primer. Instances of multiple firing pin strikes in the same impression were observed in at least two of the cartridge cases collected from each firing pin. Firing pin drag was also observed from each of the six firing pins tested. In the majority of instances, where firing pin drag was observed, it was responsible for the obliteration of some of the transferred characters.

The alphanumeric characters, for the cartridge cases from all six firing pins, showed an average overall transfer rate of 90%. The percent transfer for any one cartridge case ranged from a complete transfer (100%) to as low as a 38% transfer. The crispness of the alphanumeric characters impressions was diminished through continued firing. This was especially noticed in the evaluation of the first 10 cartridge cases. No discernable overall pattern was identifiable for their transfer rate. The deformation of the "W1" seen on the firing pin had a direct affect on the transferred characters. The flattened "W1" caused these two characters as well as the "S" and the tops of the "2" and "3" not to be legible in the impression.

The dot code structures were the most difficult of the encoding structures to visually identify in the firing pin impressions. An average overall transfer rate of 62% was observed. The percent transfer of dot code structures for any one cartridge case ranged from a complete transfer (100%) to no transfer (0%). A general decreasing trend throughout test firing was noticed in the transfer rate of the dot code structures for all of the firing pins except for firing pin F. The transfer rate of the dot code structures for pin F was sporadic. This decreasing transfer rate can be attributed to the accumulation of foreign debris within the dot code structures.

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The transfer of the radial bar code structures to the firing pin impression was directly dependent upon the depth of the firing pin impression. All instances where zero impressed bar code structures were identifiable, the firing pin impression lacked sufficient depth to allow the radial bar code to engage the primer. The average overall transfer rate of 66% for the radial bar code structures was observed. The percent transfer for the number of radial bar code structures transferred to any one cartridge case ranged from a complete transfer (100%) to no transfer (0%). The transfer rate for each of the six firing pins was sporadic, except for firing pin E that showed a general decreasing transfer rate. The quality of transfer of the radial barcode structures was diminished by the degradation of a section of the encoding structures. The peening of a section of radial barcodes by the firing pin aperture caused the transferable length of each bar code structure to be greatly shortened. All tables, graphs and images for the above results are illustrated in Appendix C.

#### Ruger MK I, .22LR Semi-Automatic Pistol

Given the nature of this rimfire firing pin and firearm design, it was determined that a maximum of five out of the eight alphanumeric characters can contact the rim of the cartridge case, thus providing a maximum possible transfer rate of 63%. Over the 250 rounds of ammunition test fired, the average transfer rate of legible alphanumeric characters was 16%. The percent transfer rate for any one cartridge case ranged from no transferred characters (0%) to a maximum observed transfer rate of 38%. The transfer rate of these alphanumeric characters demonstrated an overall decreasing trend over the course of test firing. This decrease in character transfer rate can be directly correlated to the continual degradation of the alphanumeric characters seen on the firing pin throughout test firing. None of the impressions contained a readily legible "S". The lack of this character's presence in the firing pin impression is due to the character being improperly machined off of the face of the firing pin.

Seventy-eight out of the 250 cartridge cases analyzed showed instances where the firing pin struck more than one time in the same impression. These multiple strikes of the firing pin made the characters, already difficult to decipher, more difficult to interpret. This same situation of multiple strikes of the firing pin along with insufficient and poor quality character transfer, by a .22 caliber rimfire, was observed in a study conducted by Krivosta. All data and images for the above results are illustrated in Appendix D.

#### SeeCamp, .25 ACP LWS Semi-Automatic Pistol

The major issues facing the rate and quality of character transfer for this firearm were the shallow firing pin impressions, multiple strikes of the firing pin within the same impression and flowback. Flowback is the bulging of the primer into and around the firing pin port. This is caused by a combination of the firearm design, weak primer cup material and the high pressure in the cartridge case upon discharge. Flowback was noticed with all brands of ammunition tested; Remington produced the most severe. On cartridge cases with nickel plated primers, the flowback caused this plating to crack, thus increasing the difficulty of impressed character identification.

Of the 394 rounds of ammunition fired, 356 of the cartridge cases showed multiple strikes of the firing pin within the same firing pin impression. In the majority of the multiple strike impressions, the subsequent firing pin strikes displayed a lateral movement. This lateral movement, in some instances, created impressions that appeared to contain more characters in each row of alphanumeric text than were actually on the firing pin. Multiple instances of impressions appearing to contain two rows of five or six characters were observed. This firearm also failed to discharge multiple rounds of ammunition in all brands of ammunition except for Winchester. The ammunition showing the worst failure to discharge rate was CCI Blazer: thirty out of fifty rounds of CCI Blazer ammunition tested failed to discharge.

The alphanumeric characters on this firing pin displayed an average overall transfer rate of 78%. The percent transfer rate for any one cartridge case ranged from a complete transfer (100%) to a minimum transfer of 13%. No overall pattern was identifiable for the transfer percentage of the alphanumeric characters. Each brand of ammunition tested demonstrated a different transfer rate.

The quantity and quality of gear code structures that were identifiable in the firing pin impressions were directly related to the depth of the firing pin impression and the extent of flowback. With increased flowback, the legibility of the gear code structures decreased. An average overall transfer rate of 58% was documented for

the transfer of gear code structures. For any one cartridge case a range from complete transfer (100%) to no transfer (0%) was observed for the gear code structures. No discernable overall pattern was noticed for the transfer rate of the gear code structures throughout test firing: the transfer rate was ammunition brand specific.

The radial bar code structures on the SeeCamp firing pin did not transfer to a single cartridge case. This total lack of transfer for this encoding structure was due to the shallow depth of the firing pin impression. The depth of all of the firing pin impression for this firearm was insufficient to allow the radial bar code structures to engage the primer. All data and images for the above results can are illustrated in appendix E.

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#### AMT "Backup" .380 Auto Semi-Automatic Pistol

The only major issue facing the transfer of the encoding structures on the AMT firing pin was shallow firing pin impressions. Throughout the test firing, 224 out of the 700 rounds of ammunition fired showed signs of multiple firing pin strikes in the same firing pin impression.

The alphanumeric characters transferred with an average overall transfer rate of 95%. The transfer rate for any one cartridge case varied from a maximum of 100% to a minimum of 25%. The transfer rate remained relatively constant throughout test firing, except for test fires conducted with Armscor and Corbon ammunition. These two brands of ammunition showed a 10% decrease in the transfer rate.

The gear code structures transferred at almost the exact same pattern as the alphanumeric characters, demonstrating a fairly constant transfer rate except when test fires were conducted with Armscor and Corbon ammunition. The average overall transfer rate for the gear code structures was 94%. The transfer rate for any one cartridge case ranged from a maximum of 100% to a minimum of 22%.

The transfer of the radial bar code structures showed a completely different transfer pattern. The first fifty rounds of ammunition fired demonstrated an average barcode transfer rate of 43%, with a range from 0% to 92% for any one cartridge case. The remaining 650 rounds of ammunition test fired showed a significant drop in the transfer rate of the alphanumeric characters. The average transfer rate for test fires 51-700 was just over 1%. The depths of the firing pin impressions were too shallow to allow for the radial bar code structures to engage the primer. The data and images related to the above results are illustrated in Appendix F.

#### Sig Sauer P229, .40 S&W Semi-Automatic Pistol

The major issue that affected the legibility of the impressed characters for the Sig Sauer P229 firing pin was firing pin drag. Every brand of ammunition tested, showed signs of firing pin drag, indicating that this is a result of the firearm's function rather than being ammunition brand specific. The gear code and radial bar code structures suffered the most damage from the firing pin drag, however in some cases the alphanumeric characters were affected as well.

Some ammunition manufacturers stamp an identifying character into the surface of the primers placed in their ammunition. Of the ammunition brands tested in this study, CCI Blazer and Speer contained primer stamps. These primer stamps interfered with the transfer and subsequent legibility of the impressed encoding structures. Multiple strike situations were also noticed, but only in 113 cartridge cases out of the 1000 rounds of ammunition test fired. The transfer rates for all three encoding structures followed almost the exact same ammunition brand based trends. CCI Blazer and Remington ammunition produced the worst transfer rates.

The alphanumeric characters showed an overall average transfer rate of 94%. The transfer rate for any one cartridge case ranged from a complete transfer (100%) to a minimum of no legible transfer (0%). The transfer rate of these characters was directly dependent upon the brand of ammunition being tested as well as the severity of the firing pin drag.

The gear code structures provided an overall average transfer rate of 88%, with a range from complete transfer (100%) to as low as 14%. The legibility of the transferred gear code structures was also dependent upon the presence and severity of firing pin drag as well as the brand of ammunition being tested. No correlation was present between the transfer rate of these characters and the number of rounds of ammunition fired.

The radial bar code structures transferred at a much lower percentage when compared with the other two encoding structures. However, the same patter of transfer rate based upon ammunition brand was observed. The overall transfer rate for the radial bar code structures was 29%, ranging from 0-69% for any one cartridge case. All data and images for the Sig Sauer P229 results are illustrated in Appendix G.

Colt 1911, .45 ACP Semi-Automatic Pistol

As previously documented by Krivosta<sup>1</sup>, the micro-character impression for the Colt 1911 collected in this study demonstrated a high rate of multiple firing pin strikes in each firing pin impression. Out of the 750 rounds of ammunition test fired 459 of the tests revealed multiple strikes within the same firing pin impression. This was the major issue facing the legibility of impressed characters for this firing pin.

The alphanumeric characters transferred with an overall average rate of 76%, ranging from no transfer (0%) to complete transfer (100%) for any one cartridge case. Around 100-150 rounds of ammunition fired the number "3" began to loose legibility. This decrease in legibility can be associated with the deposition of foreign material seen on the firing pin beginning at 100 rounds of ammunition fired. The transfer rate for the alphanumeric characters was dependent upon the brand of ammunition being tested.

The gear code structures transferred with an average overall rate of 90%. The transfer rate of these structures for any one cartridge case ranged from 57% to 100%. The transfer rates for the gear code structures closely followed the ammunition brand specific pattern.

The radial bar code structures once again showed the lowest transfer rates of the three encoding structures, but still followed the same pattern as that seen with the other two types of encoding structures. The radial bar code produced an overall average transfer rate of 59%, ranging from 0% to 91%. The initial micromachining errors on this firing pin precluded a complete transfer of the radial bar code structures. The two adjacent bar code structures that did not remain separated at the tip of the firing pin transferred into the firing pin impression as a single bar code structure that was twice as wide as the rest. Since only one large structure was legible, instead of two narrower structures, it was counted as one line. The data and images for the Colt 1911 45 ACP results are illustrated in Appendix H.

#### Colt AR-15, .223 Semi-Automatic Rifle

Out of the 760 rounds of ammunitions test fired with the AR-15 firing pin only 77 of them had multiple strikes within the same firing pin impression. Golden Bear and Remington ammunitions caused shallow firing pin impressions. This reduction in firing pin impression depth was observed both times each ammunition was tested. Trends for the transfer rates of all three types of encoding structures were noticed following similar patterns specific to the brand of ammunition being tested.

The alphanumeric characters had an observed overall average transfer rate of 88%. The transfer rate for any one cartridge case ranged from no transfer (0%) to complete transfer (100%). A decreasing trend in the transfer rate of the alphanumeric characters was seen over the course of test firing.

The gear code structures on this firing pin transferred with great success. This can be attributed to the lack of firing pin drag and few instances of multiple strikes within the same impression. The overall average transfer rate for the gear code structures was 100%, ranging for any one cartridge case from 75% to 100%.

The transfer rates for the radial bar code structures varied greatly between each brand of ammunition tested. Upon repeated testing, the transfer rate observed for each brand of ammunition was seen to be the same. The overall average transfer rate for the radial bar code structures was 45%. The transfer rate for any one cartridge case ranged from 0% to 92%. The two brands of ammunition that caused shallow firing pin impression showed the lowest transfer rates for the radial bar code structures. The data and images for the Colt AR-15 results are illustrated in Appendix I.

#### Norinco AK-Series, 7.62x39mm Semi-Automatic Rifle

Without the incorporation of radial bar code structures, the Norinco AK firing pin was evaluated based on the transfer rates of the alphanumeric and gear code structures. This firearm demonstrated the most severe instances of multiple firing pin strikes in the same firing pin impression. Every cartridge case collected had been stuck multiple times by the firing pin. The severity of these multiple strike situations were enhanced due to the change in direction of each impression. Each time the firing pin struck the primer, during one cycle of the firearm, the orientation of the encoding structures was different. This made the identification of the encoding structures impression extremely difficult.

The alphanumeric characters had an overall average transfer rate of 41%. The transfer rate for any one cartridge case ranged from 0% to 100%. These characters showed a decreasing trend in transfer rate through continued test firing. Each brand of ammunition provided a different transfer rate between the first and second test firing, except for the foreign steel case ammunition. The foreign steel case ammunition showed very similar transfer rates between the first and second test firing. The degradation that was noticed on the firing pin was transferred to the quality of its impression. In many of the impressions, the deformed "D" looked like a "0" or "O" in the impression. The other degraded alphanumeric characters increased the difficulty of interpreting the impression. It was not apparent if the deposition of foreign material on the firing pin affected the transfer

of the characters into the firing pin impression, due to the severity of the multiple strikes of the firing pin.

The gear code structures followed the same decreasing transfer rate trend and ammunition dependent transfer rates as that of the alphanumeric characters. The overall average transfer rate was 52%, ranging from 0% to 100%. The effects of the foreign material deposits that were seen in the gear code structures could not be identified, once again due to the affects of the multiple strikes of the firing pin. Each additional strike of the firing pin made the identification of the gear code structures very difficult, and in many cases their orientation unknown. The data and images for the Norinco AK results are illustrated in Appendix J.

#### Mossberg 500A, 12 gauge Pump Action Shotgun

The impressions created from the Mossberg firing pin showed a decreasing trend in the transfer rate in two of the encoding structures: the alphanumeric and gear These two encoding structures followed similar decreasing code structures. patterns. No correlations between transfer rate and the brand of ammunition can be drawn, as each brand of ammunition was only fired once: the first 300 rounds of ammunition fired. The remaining 552 rounds of ammunition fired can only provide individual and overall transfer rates, as the ammunition utilized was of mixed brands and the order of firing was random. One further issue facing the legible transfer of the encoding structures was the presence of oxidation on the surface of some of the primers. The oxidation filled many of the impressions preventing the impressed characters from being identified: the oxidation also hindered the viewing of the impression with cross-polarized light. Throughout test firing 172 of the 852 rounds of ammunition fired showed signs of multiple firing pin strikes. Shallow firing pin impressions were also seen in roughly 100 of the shot shells collected.

The alphanumeric characters transferred at an overall average rate of 50%, ranging from 0% to 100% for any one shot shell. The degradation and flattening of the characters seen on the firing pin was also observed in the impressions. Beginning at around 150-200 rounds of ammunition fired the quality of the impressed characters began to rapidly decrease. The transfer rate for the alphanumeric characters in the first fifty rounds of ammunition fired was 98%, decreasing to a transfer rate of 16% for the last 50 rounds of ammunition fired.

The overall average transfer rate for the gear code structures was 67%. The transfer rate for any one shot shell ranged from 0% to 100%. The transfer rate of the gear code structures decreased with increased test firing; this can be correlated

to the identified degradation of these structures and deposition of foreign material with in them.

The transfer of the radial bar code structures to the primer provided no increasing or decreasing trend. The average overall transfer rate for these structures was 63%, ranging from 0% to 100% for any one shot shell. Instances of shallow firing pin impression depth directly affected the percent transfer of the radial bar code structures. See Appendix K for data and images supporting the Mossberg 500A results.

#### Micro-Character Defacement/Obliteration

Due to the location of the firing pins within the firearms, defacement of the micro-characters while the firing pin is in the firearm will be extremely difficult. The two micro-machined firing pins that were defaced in this study were removed from the firearm.

The time and tools required for the removal of a firing pin varies between firearms. Table 4 lists the time and tools required to remove and immediately replace the firing pin in all of the firearms utilized in this study.

Table 4 Time and Tools Required to Remove and Replace Firing Pins				
Firearm	Tool Required to Change Firing Pin	Time		
Ruger, .22 LR	3/32" punch	4 min., 30 sec.		
SeeCamp, .25 ACP	1/16" punch, needle nose plies	3 min.		
AMT, .380 Auto	1/8" roll pin punch, hammer, bench block	1 min		
Sig P229, .40 S&W	3/32" punch, hammer, bench block	3 min.		
Colt 1911, .45 ACP	1/8" punch	30 sec.		
Colt AR-15, .223 caliber	No tools required	1 min.		
Norinco AK, 7.62x39mm	1/16" punch, hammer, bench block	1 min., 15 sec.		
Mossberg 500A, 12 gauge	1/16" punch, 1/8" punch, hammer, bench block	3 min.		

#### AMT "Backup", .380 Auto Semi-Automatic Pistol

The AMT firing pin was chosen for the defacement test due to the overall shallow firing pin impressions precluding the transfer of the radial bar code structures. One of the intentions of ID Dynamics for machining the radial bar code onto the firing pins was to allow for the transfer of potentially identifying characters in the event that the characters on the face of the firing pin were damaged or intentionally removed. The method of defacement for this firing pin was chosen to test when the alphanumeric characters and gear code structures were removed, whether or not the radial bar code structures would be transferred into the firing pin impression.

The rubbing of the firing pin for 30 seconds on the sharpening stone completely removed the alphanumeric and gear code structures while leaving the radial bar code structures intact. Of the ten rounds of ammunition test fired none of the impressions contained any of the encoding structures, except for one. Cartridge case number seven had two out of the nine radial bar code structures transfer, however they were very faint.

The defacement method was successful and it was documented that even with the removal of the encoding structures from the face of the firing pin impressions were too shallow to allow for the transfer of the radial bar code structures. The transfer data and images of the defaced AMT 380 Auto firing pin and cartridge cases are illustrated in Appendix L.

#### Sig Sauer P229, .40 S&W Semi-Automatic Pistol

The Sig firing pin was chosen for defacement because the majority of the cartridge cases in the legibility study contained impressions of all three encoding structures. The method chosen for the obliteration of the encoding structures on this firing pin was intended to observe the transfer rate upon defacement of all three encoding formats.

The light peening of the encoding structures, for an overall time of 30 seconds, was a successful method of defacement. Through ten rounds of ammunition test fired, no alphanumeric characters were legible in the firing pin impressions. The gear code structures transferred with an average rate of 21%. At least one gear code structure was visible in each impression. Five out of the ten firing pin impressions contained 1 out of the eight radial bar code structures. The transfer data and images of the defaced Sig Sauer firing pin and cartridge cases are illustrated in Appendix L.

#### Blind Test of Impressed Character Legibility

All character legibility and character transfer data for this study was collected by this author. The author having knowledge of exactly what characters and number of encoding structures were present on each firing pin prior to the observation of their subsequent impressions, analyses of a select number of cartridge cases by impartial parties were conducted to remove any biased conclusions. To conduct this blind test, two cartridge cases were chosen from each of the firearms tested in this study (except for the Smith and Wesson Model 4006 firearms tested at the CHP Academy) for a total of 16 cartridge cases. Table 5 seen below lists the cartridge case number selected for each of the firearms.

Table 5 List of Cartridge Case Numbers Chosen for Blind Test			
Firearm	Cartridge Case Number		
Ruger	53, 93		
SeeCamp	76, 177		
AMT	4, 104		
Sig Sauer	9, 70		
Colt 1911	29, 215		
Norinco	126, 130		
Colt AR	24, 183		
Mossberg	51, 680		

The cartridge cases selected for this test were chosen to demonstrate different quality and quantity of micro-character legibility.

Prior to analysis, each of the test participants were provided with a general description of the geometry of the different types of micro-characters that were machined on the second-generation firing pins. A variable magnification stereomicroscope equipped with a ring light and polarizing filter was used for the analyses. The participants were instructed to view each cartridge case and record the number of characters from each encoding format that were legible. This data was then directly compared to the transfer data obtained by this author for each of the sixteen cartridge cases used in this test.

The results obtained from this test varied by participant. The results obtained by this author and those obtained by the two participants in this test were placed into

bar graphs so as a direct comparison of transfer results for each encoding format from each cartridge case analyzed could made. The analysis of these comparisons shows variability in the interpretation of the impressed characters. For the sixteen cartridge cases forty-eight comparisons were made. In only nine of the forty-eight comparisons did the results obtained by the two test participants, match those obtained by this author. In the remainder of the comparisons at least one of the sets of results differed, with fourteen comparisons in which all three sets of transfer data differed. The comparisons of these results are illustrated in appendix M.

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This blind test demonstrates the occurrence of variability in the transfer data results obtained through visual analysis of the micro-characters' impressions. Each individual that analyzes these cartridge cases will potentially obtain different results. This is due to each individual's interpretation of the "legibility" of the encoding structures and alphanumeric characters.

The concept of laser-machined micro-characters on firing pins explored by ID Dynamics can be a feasible technology. Overall, the alphanumeric characters and the gear code structures proved to be capable of withstanding repeated firing, however, some degradation of the structures was seen with specific firearms. Since varying amounts of degradation of the micro characters was observed between all of the firearms tested, a determination of what constitutes an acceptable lifespan for these characters needs to be developed. Further research and development are required for the use of this technology on rimfire firing pins.

The dot code structures tested on the Smith and Wesson firing pins were determined to be an unsuitable form of encoding structure for this technology. Due to their relatively small dimensions (in comparison to the other encoding structures) they suffered severe degradation as well as severe deposition of foreign material making them illegible on the firing pin. These same issues were realized by the manufacture and were the reasons for the change to the gear code structures on the second-generation firing pins.

The radial bar code structures withstood repeated test firing overall, however issues with specific firearms were noted. The flattening/obliteration of a portion of the radial bar code structures by the continual contact with the firing pin aperture was observed on eight out of the fourteen firing pins tested: the SeeCamp 25 ACP, AMT 380 Auto and all six of the Smith & Wesson Model 4006. Since a limited number of firearms were tested in this study, it is unknown how many different firearms will produce this same result. A second issue facing the radial bar codes arose with the observed degradation of the separating structures between groups of bar code structures on the Sig Sauer firing pin. It was unknown if this degradation was a result of these separating structures being machined too narrow,

or if it was due to the material from which the firing pin was manufactured. This degradation will directly affect the width of the radial bar code structures as well as their impressions, thereby directly affecting the legibility and potential decoding.

The quality and legibility of the impressions of the three encoding formats were firearm and ammunition brand specific. Each firearm demonstrated a different transfer pattern. The function and design of each firearm affected the manner in which the firing pin struck the primer or rim of the cartridge case, thereby controlling the depth of the firing pin impression and the presence or absence of firing pin drag, multiple strikes of the firing pin and flowback.

Three of the firearms tested showed signs of decreasing overall transfer rates throughout test firing, however the transfer rates for each of the encoding formats was seen to be directly dependent upon the brand of ammunition tested. Each brand of ammunition provided a different transfer rate that can be seen in the "Encoding Structures Transfer Trend" graphs locate in the appendix for each firearm. In most all instances the transfer rate for each brand of ammunition was constant upon repeated test firing. The testing of such a wide array of ammunition brands demonstrated that the brand of ammunition utilized plays a direct role in the percent transfer and legibility of the micro-characters. Unfortunately, the brands of ammunition available to the public are most likely uncontrollable.

It was demonstrated that the encoding structures on the firing pin can be damaged or obliterated with relative ease once the firing pin is removed from the firearm.

The alphanumeric encoding format is currently the only one of the three encoding structures utilized on the second-generation firing pins that will allow for the potential identification of a firearm. ID Dynamics could provide no information regarding the reading and decoding the impressed radial bar code and gear code This lack of information precludes the analysis, assessment and viability of these two encoding formats.. Without decoding protocols, it is unknown what factors and quantity of degradation will negate a positive identification of a firearm from these two encoding formats. The results provided in the text above and in the appendices only provide the quantity of the radial bar code and gear code structures that were transferred into each firing pin impression. No data was collected regarding changes in the dimensions and or spacing of the structures for these two encoding formats. In order for the radial bar code and gear code formats to be utilized as a method of individual firearm identification from micro-serialized firing pins, the methods for reading and decoding these two encoding formats must be obtained from the manufacturer and tested.

Estimated Costs for Firing Pin Fabrication

We developed cost estimations based upon two scenarios. The cost estimates assume a large production effort and serialization of numerous firing pins. The details of the cost estimate and the source of the data is listed in <u>Appendix N Estimated Cost for Equipment Setup and the Machining of Micro-Serialized Firing Pins.</u> These costs assume full-scale production of serial firing pin for all new handgun sold in California. If micro-serial requirement applies only to a few selected new models, one can logically expect a dramatic increase in manufacturer production costs which would invalidate the cost efficiencies we used in our estimate.

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#### Scenario 1:

Stand alone processing station capable of engraving 100-200 firing pins per day. First year cost per engraved firing pin - \(\frac{\\$7.87}{\})

#### Scenario 2:

Fully automated processing station, capable of engraving 1000 plus firing pins per day. First year cost per engraved firing pin -\$6.72

These costs are very conservative costs and can be much higher. In fact, <u>if additional</u> processing steps are added such as deburring, etching, and diamond coating, then the end cost can be much more than what has been calculated in Appendix N

#### External Review of the Micro-Serial Number Report.

The initial report submitted to the CPRC was reviewed by three external reviewers; Lucian Haag, a well known independent firearms expert, and former president of the Association of Firearms and Toolmark Examiners (AFTE) and Simon A. Cole and George Tita from the UC Irvine Department of Criminology, Law & Society, School of Social Ecology. These unedited reviews and the responses to some of the suggestions appear in <u>Appendix O. External Review of</u> the Micro-Serialized Report.

In summary Mr. Haag said: "The research presented not only fulfills the general objectives stated in the Report but goes beyond in that it also addresses the second generation micro-serialization—" "The authors clearly understand forensic science and forensic firearms evidence. Their appendices also demonstrate skilled use of stereo microscopes and scanning electron microscopes. Other forensic scientists should have no difficulty in reaching similar conclusions from a detailed inspection of the data and illustrations in this Report".

Professor Cole said: "This is a comprehensive and informative report. The research was performed appropriately and competently, and the report clearly and coherently reports the results of the research". "The investigators have appropriately performed the research they set out to do. They have also addressed some important issues that I do not recall from the original proposal (e.g., Recommendation #3, which is excellent and insightful".

Professor Tita said: "I have found the research report to be written in a clear and concise manner ---. The authors have also done a solid job in fulfilling the stated purpose of the originally funded research proposal. It is my opinion that the report provides extremely valuable information with regards to the pending legislation regarding the implementation of a micro-imagine process for firing pins on all guns sold in California (Assembly Bill 1471). The research findings and recommendations, all of which are supported by the careful and compelling analyses conducted by the authors, clearly demonstrate that funding such a program would be wasteful without further research".

# POLICY IMPLICATIONS AND RECOMMENDATIONS FOR FURTHER RESEARCH

The finding of this study have direct implications for the Crime Gun Identification Act of 2007's (AB 1471's) proposed application of second-generation microserialized firing to all semiautomatic handguns sold in the state of California. As shown, while micro-stamping technology works with some firearms, it does not perform equally well for every encoding format or in every semiautomatic handgun. As only a limited number of firing pins, encoding sequences, and firearms were tested in this study, it is unknown how this emerging technology would function across the board in relation to all the different makes and models of semiautomatic handguns sold in California each year. Given this uncertainty this research suggests that is this technologies current stage of development it is likely inadequate to provide the satisfactory transfer of the micro-character from all firearms currently on the California Safe Handgun List. To determine if any other firearms equipped with this technology will inadequately provide a satisfactory transfer of the micro-characters, one of every make and model of semi-automatic handgun sold in the state of California would have to be tested. This would implicate that over 2000 different firearms would have to be equipped with micro-serialized firing pins and thoroughly tested.

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Furthermore, it must be determined if the current placement of an eight-digit alphanumeric code (consisting of two lines of four characters) on the face of the firing pin will accurately allow for the inclusion of sufficient information to create a searchable database associating this encoding format with the "make, model and serial number of the pistol" as required by AB 1471 (and by AB 352. At the present time, therefore, because its forensic potential has yet been fully assessed, a mandate for the implementation of this technology in all semiautomatic handguns sold in the state of California is counter-indicated. Further testing, analysis, and evaluation are required.

Several areas calling for further research recommend themselves, including:

1. Criteria to determine the transfer rate required for identification

The data collected for each cartridge case in this study only provides the transfer rate of each encoding format. In order for this information to be useful, criteria need to be set stipulating exactly what transfer rates (for each encoding format) constitute a sufficient quantity of characters to allow for the potential identification of the firing pin that produced them. These criteria should be created in conjunction with practicing firearms examiners, the state of California and the personnel responsible for the creation of the database for this technology.

### 2. Decoding protocols for properly interpreting radial bar and gear codes

At the current time no protocols have been provided regarding the proper interpretation of the radial bar codes and gear codes. Without such protocols the impressions of these encoding structures are nothing more than that: impressions. Decoding conventions need to be obtained from ID Dynamics for these two encoding formats to be interpretable. Once this information is obtained, testing will need to be conducted to determine what factors affect their interpretation, such as changes in width and spacing. Without these instructions the radial bar codes and gear codes are rendered mute, unable to provide any identifying information.

#### 3. Firearm-related crime statistics to be compiled

A survey of crimes committed with semiautomatic handguns needs to be compiled and sorted into two specific categories: crimes committed by the registered owner of the firearm and firearm crimes committed by someone with a firearm not registered to the end user, such as gang related shootings. In the crime laboratory, it is the firearms used in gang related shootings that are of most concern. It is not unusual to link several homicides based on fired cartridge case identifications from the IBIS system. When the responsible handgun is later recovered from a suspect, they are unable to charge the suspects with the prior homicides because the gang participants pass the handguns between their fellow members. By looking at the source/history of these recovered handguns we can estimate whether or not the issue of firing pin serialization would have a significant effect on linked the suspect to the actual homicide. This information will aid considerably in determining the potential benefit this technology will provide to the law enforcement community for the identification of possible suspects and potential leads to the identification of individuals responsible in firearm-related crimes.

#### 4. Implementation strategies to be developed collaboratively

The development of a viable commercial implementation strategy for this technology is a necessity. This must be completed in collaboration with officials from the state of California, firearms manufacturers and ID Dynamics. Many different implementation strategies for this technology may be possible. The laser micro-machining could be conducted by the state, each individual firearm manufacture, a combined effort of the two, or by another private entity. These and other scenarios should be prototyped and evaluated prior to the legislative and commercial implementation of this technology.

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#### 5. Technology implementation prototype to be piloted

Prior to implementing this technology statewide, a smaller-scale prototype should be piloted. The ideal scenario for testing such a prototype would be a group of selected law enforcement agencies equipped with about 3,000 semiautomatic This number provides an incentive for vendors with firing pin engraving technology to come up with competitive bids to manufacture such serialized firing pins, which would have unique serial numbers. It would also expand the study by providing for a mix of different handgun and calibers for those that we have not tested. This number of firearms equipped with micromachined firing pins should be sufficient to allow for a more accurate evaluation of this technology. This study would provide beneficial information as to the time required and cost incurred for the laser machining of micro-characters onto firing pins. It would also address the suitability of such micro-numbers in handguns other than the CHP Smith and Wesson firearms. As an example, Glock firing pins are substantially different and have different dynamics. Furthermore if radial and gear code technology is to be contemplated, we need to test the coding structure with realistic serial numbers.

#### 6. Relevance to Current Firearms

The firearms and firing pins used in this study are relevant to current firearms and most of their future model changes. The manufacture of firearms is a traditional and incremental process and any changes happen over a long period of time. Many model variations of firearms involve only incremental change to that particular firearm. The CHP Smith and Wesson pistols used in this study were new pistols purchased by the CHP. The Colt 1911 design pistol is still produced both in the traditional design and new model variation with interchangeable parts. Thus our expectation is that the results of the firing pins used in this study will be relevant to the current models we tested and the future derivatives.

# What Micro Serialized Firing Pins Can Add to Firearm Identification in Forensic Science: How Viable are Micro-Marked Firing Pin Impressions as Evidence?

APPENDICES

Appendix A thru Appendix O are listed in a separate PDF document.

DIVISION OF LAW ENFORCEMENT BUREAU OF FIREARMS P O BOX 160487 SACRAMENTO, CA 95816-0487 Telephone: (916) 210-2377 E-Mail Address: bofregulations@doj.ca.gov

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December 23, 2022

Firearms Manufacturers and Interested Parties

Re: <u>Invitation for Preliminary Comments on Proposed Rulemaking</u>
Regarding Firearm Microstamping

#### **Background**

Since 2001, California's Unsafe Handgun Act has established baseline safety and certification standards for handguns. The Act places restrictions on the manufacture, sale or importation of "unsafe handguns" that do not meet these minimum standards. Over a decade ago, California lawmakers expanded these restrictions by enacting the Crime Gun Identification Act, the nation's first law mandating that newly developed semiautomatic pistols incorporate microstamping technology to assist law enforcement in solving gun crimes. This technology transfers a microscopic array of characters ("microstamp") from the firearm to the ammunition cartridge when the firearm is fired. Law enforcement could then use the microstamped cartridge to identify the handgun that fired the ammunition.

Previously, California Penal Code section 31910 had required the microstamp to be imprinted in two or more places on the internal working parts of the handgun. Effective July 1, 2022, Assembly Bill (AB) No. 2847 revised the criteria by requiring the microstamp to be imprinted in only one place on the interior of the handgun. This change was made to encourage manufacturers to equip handguns with a microstamping mechanism.

#### **Invitation for Comments**

Existing regulations implementing the law do not require the unique microstamp on each handgun to be transmitted to and recorded by the Department of Justice (Department). Without a record of this information, law enforcement is unable to use the microstamp to identify firearms that are used in criminal activity.

In accordance with California Government Code sections 11346, subdivision (b), and 11346.45, the Department seeks input from stakeholders in developing a procedure for each handgun's unique microstamp to be transmitted to the Department so that it can be recorded for future reference.

Comments on the following topics will assist the Department in developing new regulations to achieve the law's objectives in the most effective manner:

Firearms Manufacturers and Interested Parties December 23, 2022 Page 2

- Who is best suited to provide the microstamp to the Department? Is it manufacturers, U.S. distributors, a U.S. regional distribution location, or dealers?
- When should the microstamp be provided to the Department? For example, manufacturers could be required to report the microstamp to the Department prior to the firearm being offered for sale in California, or manufacturers could be required to report the microstamp to the Department shortly after the sale of each microstamp-equipped handgun.
- How should the microstamp be provided to the Department? For example, the microstamp could be transmitted via an Excel document through a secure transfer protocol.
- If the firearm part that creates the microstamp imprint needs to be replaced (e.g., a firing pin is broken), should the regulated replacement part have the same microstamp as the original part, or should the manufacturer be able to provide a replacement part with a different microscopic array?

The public is invited to submit comments related to any issue regarding the implementation of this procedure.

Commenters are encouraged to review the short "Tips for Submitting Effective Comments" guide for help formulating and submitting effective comments, found here:

https://oag.ca.gov/sites/all/files/agweb/pdfs/meeting/tips-effective-comments.pdf

This invitation for comments is not a proposed rulemaking action under Government Code section 11346. This invitation for comments is part of the Department's preliminary rulemaking activities under Government Code section 11346, subdivision (b). The public will have the opportunity to provide additional comments on any proposed regulations or modifications when the Department proceeds with a notice of proposed rulemaking action.

#### **Time for Comments**

The Department invites interested parties to submit comments by 5 p.m., February 1, 2023.

#### **How to Submit Comments**

Comments may be submitted by email or mail:

- E-mail: <u>bofregulations@doj.ca.gov</u>
  Please include "Microstamp" in the subject line.
- Mail written comments: Kelan Lowney
   Department of Justice
   P.O. Box 160487
   Sacramento, CA 95816

Please note that comments submitted to the Department are public records.

#### **Further Information**

Information regarding the rulemaking will be posted to <a href="https://oag.ca.gov/firearms/regs">https://oag.ca.gov/firearms/regs</a>. To receive email notifications of future rulemaking activities, please e-mail: <a href="mailto-bofregulations@doj.ca.gov">bofregulations@doj.ca.gov</a>.

Sincerely,

ALLISON MENDOZA, Acting Director

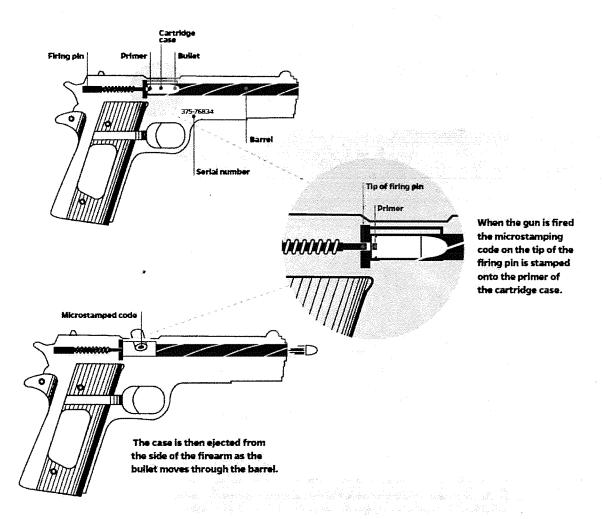
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Bureau of Firearms

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For ROB BONTA Attorney General



Source: Microstamping: A Tool to Identify Crime Guns, Solve Shootings, and Hold Gun Traffickers Accountable, Johns Hopkins Bloomberg School of Public Health, Center for Gun Violence Solutions, 2 (2022), https://publichealth.jhu.edu/sites/default/files/2022-11/johns-hopkins-center-for-gun-violence-solutions-microstamping-memo-11-2022.pdf

#### **DEFENDANT'S DEMONSTRATIVE EXHIBIT 1**



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Source: Microstamping: A Tool to Identify Crime Guns, Solve Shootings, and Hold Gun Traffickers Accountable, Johns Hopkins Bloomberg School of Public Health, Center for Gun Violence Solutions, 2 (2022), https://publichealth.jhu.edu/sites/default/files/2022-11/johns-hopkins-center-for-gun-violence-solutions-microstamping-memo-11-2022.pdf

## **EXHIBIT 5**

1	UNITED STATES DISTRICT COURT
2	CENTRAL DISTRICT OF CALIFORNIA
3	SOUTHERN DIVISION - SANTA ANA
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5	HONORABLE CORMAC J. CARNEY, UNITED STATES DISTRICT JUDGE
6	
7	LANCE BOLAND, an individual;
8	MARIO SANTELLAN, an individual; RENO MAY, an individual; JEROME
9	SCHAMMEL, an individual; and CALIFORNIA RIFLE & PISTOL
10	ASSOCIATION, INCORPORATED, a California corporation,
11	Plaintiffs,
12	v. No. 8:22-cv-01421-CJC
13 14	ROBERT BONTA, in his official capacity as Attorney General of the State of California; and DOES 1-10,
15	Defendants.
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17	REPORTER'S TRANSCRIPT OF EVIDENTIARY HEARING - DAY 1
18	SANTA ANA, CALIFORNIA
19	JANUARY 23, 2023
20	
21	
22	SUZANNE M. MCKENNON, CRR, RMR UNITED STATES COURT REPORTER
23	UNITED STATES COURTHOUSE
24	350 W 1st STREET, ROOM 3411 LOS ANGELES, CALIFORNIA 90012
25	(213) 894-3913 suzanne@ears2hands.com

1		1	APPEARANCE	S:				
		2						
		3	On Behalf	of the Plaintiff:				
ţ		4	JOSHU					
		5	KONST	A. BRADY, Attorney at Law TADINOS T. MOROS, Attorney at Law ANDER ASCH FRANK, Attorney at Law				
		6	Michel and Associates PC 180 East Ocean Boulevard, Suite 200					
1		7		Los Angeles, California 90802				
•		8						
		9	On Behalf	of the Defendants:				
Arrest Arresta	1	10		ES JOSEPH SAROSY, Attorney at Law R. BECKINGTON, Attorney at Law				
1 2	The disease of 1860	11		CAAG - Office of Attorney General				
	1	12		California Department of Justice 300 South Spring Street, Suite 1702 Los Angeles, California 90013				
	1	13						
		14		CLINTON WOODS, Attorney at Law CAAG - Office of Attorney General of California California Department of Justice 455 Golden Gate Avenue, Suite 11000 San Francisco, California 94102-7004	California			
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    Exhibit 7
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    Exhibit 8
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    Exhibit 9
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    Exhibit 12
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        (Proceedings commenced on January 23, 2023, at 9:11 a.m.)
              THE COURTROOM DEPUTY: Please remain seated and come
2
    to order. This United States District Court is now in session.
3
    The Honorable Cormac J. Carney presiding.
              THE COURT: Good morning.
         (All replied, "Good morning, Your Honor.")
6
              THE COURTROOM DEPUTY: Calling Item Number 1, SACV
7
    22-01421, Lance Boland, et al., versus Robert Bonta.
8
         Counsel, please state your appearances.
9
              MR. DALE: Joshua Dale for plaintiffs.
10
              MR. BRADY: Sean Brady for plaintiffs.
11
              MR. FRANK: Alexander Frank for plaintiffs.
12
              THE COURTROOM DEPUTY: Good morning, Your Honor.
13
              MR. MOROS: Konstadinos Moros for plaintiffs.
14
              THE COURT: Good morning, gentlemen.
15
              MR. SAROSY: Good morning. Charles Sarosy for
16
    defendant.
17
              THE COURT: Hello, sir.
18
              MR. WOODS: Good morning, Your Honor. Clint Woods
19
    for defendant.
20
              THE COURT: Hello, sir.
21
              MR. BECKINGTON: And good morning, Your Honor.
22
    Beckington, also for defendants.
23
              THE COURT: Hello, sir.
24
         Well, thank you for being here. The way I envision this
25
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is we're going to have what I'll call two phases.
1
                                                        The first is
    what I would call the evidentiary hearing, where I would like
2
    to hear witnesses on the important issues in the case.
3
    then the second phase is what we'll call the argument phase
    where you'd make your arguments and I ask you questions.
         So it looks like we have a witness all ready to go.
                                                               This
6
    is the first witness on the video?
7
8
              MR. BRADY:
                          That's correct. Your Honor.
9
              THE COURT:
                           Okay. And who is that?
10
              MR. BRADY:
                           That is Stephen Helsley.
11
              THE COURT:
                           Okay. And, Rolls, do you want to swear
12
    Mr. Helsley in?
13
              THE COURTROOM DEPUTY: Will do, Your Honor.
14
              THE COURT:
                          All right.
15
              THE COURTROOM DEPUTY:
                                      Do you solemnly swear that the
16
    testimony you shall give in the cause now before this Court
17
    shall be the truth, the whole truth, and nothing but truth, so
    help you God?
18
19
              THE WITNESS:
                             I do.
20
              THE COURT: Have him state his name for the record.
21
              THE COURTROOM DEPUTY:
                                      Please state your name for --
22
    please state your name and spell your last name for the record.
23
              THE WITNESS: Yes. My name is Stephen.
    S-t-e-p-h-e-n, Craig, Helsley, H-e-l-s-l-e-y.
24
25
              THE COURT: Please proceed, Counsel.
```

1	MR. BRADY: Thank yoʻu, Your Honor.						
2	STEPHEN CRAIG HELSLEY,						
3	called by and on behalf of Plaintiffs, testified as follows:						
4	DIRECT EXAMINATION						
5	BY MR. BRADY:						
6	Q. Good morning, Mr. Helsley. Can you hear me?						
7	THE COURTROOM DEPUTY: Mute your speaker.						
8	THE WITNESS: Yes.						
9	BY MR. BRADY:						
10	Q. Okay. Thank you for joining us this morning, Mr. Helsley.						
11	Can you provide the Court with your background, your former						
12	employment with the California Department of Justice and other						
13	related background?						
14	A. Yes. I was hired by the California Department of Justice						
15	in June of 1967 as a narcotic agent trainee. Later, I was						
16	promoted to a supervisor position and then to a manager's						
17	position.						
18	And then in 1979, the then Attorney General Deukmejian						
19	promoted me to be the Chief of the Bureau of Narcotic						
20	Enforcement.						
21	Later, Attorney General Van de Kamp transferred me to run						
22	the Bureau of Forensic Services, which is the California crime						
23	laboratory system.						
24	And then Attorney General Van de Kamp promoted me to be						
25	the Assistant Director of the Division of Law Enforcement,						

1 | which in the context of how the department is structured, now

- 2 | the titles of the positions, I would now be the Chief of the
- 3 Division of Law Enforcement.
- 4 Q. Okay. And in your capacity in any of those roles at the
- 5 | California Department of Justice, did you have any firearms
- 6 experience?
- 7 | A. Yes. I was the Department's firearms instructor for
- 8 | trainings for about ten years. I went to a variety of range
- 9 | masters schools and firearm classes.
- 10 And then when the assault weapon debate began, Attorney
- 11 General Van de Kamp assigned me to be the lead in terms of
- 12 | technical firearm-related things for the Roberti-Roos Assault
- 13 | Weapon Control Act bill.
- 14 | Q. And you have now since retired from the California
- 15 | Department of Justice?
- 16 A. Yes. I was with the Department for 26 years.
- 17 | Q. Are you currently employed in any fashion?
- 18 A. Well, sort of employed. I serve as historian for two
- 19 | British gun-making firms, John Rigby & Company and William
- 20 | Powell. But I can't really say that I'm paid. I trade my work
- 21 | for information that I need from, say, Powell. I'm writing a
- 22 | book on Powell, and I need them to do things for me. So it's
- 23 | sort of a trade situation.
- 24 Q. So you author books about firearms?
- 25 A. Yes. I've co-authored five books on firearms.

- 1 | Q. You have been an expert witness in cases against the
- 2 | California Department of Justice in firearm-related matters on
- 3 | several occasions; is that correct?
- 4 | A. I have.
- 5 | Q. Do you recall how many cases? If you don't know the exact
- 6 | number, an estimate would suffice.
- 7 | A. Well, I think -- it's getting a little bit vague in my
- 8 | head now with age, but I think I've been deposed by the
- 9 Department on three occasions.
- 10 | Q. Okay. And do you recall for what you were being called as
- 11 | an expert in those other cases?
- 12 A. One of them was magazines, the capacity of magazines.
- 13 | That was the Duncan case.
- One of them was what constituted handgun ammunition. That
- 15 was the Parker case.
- 16 And then -- I'm a little bit vague. I think I was deposed
- 17 | in the Rupp case, which is assault weapon case.
- 18 Q. And as an expert, what were you being offered to testify
- 19 about in those matters? What was your expertise that you were
- 20 | being called for the plaintiffs to rely on?
- 21 A. Well, the nature of the questioning was how much did I
- 22 | know about ammunition, how much did I know about firearms, what
- 23 did I know about the history of the process that brought us to
- 24 | the deposition. The questioning was the full range of
- 25 | firearm-related questions.

1 Q. So would it be fair to characterize your expertise as in

- 2 | firearm technicalities and the historical background on firearm
- 3 development?
- 4 A. Yes.
- 5 | Q. In any of those cases, do you recall if the Attorney
- 6 | General's Office ever challenged your expertise as being an
- 7 expert in any of those fields?
- 8 A. They didn't. As a matter of fact, I think that in one
- 9 case, there were sort of an informal stipulation that I was an
- 10 | expert.
- 11 Q. Got it. Are you familiar with the term "chamber load
- 12 | indicator"?
- 13 A. I am.
- 14 | Q. And what is a chamber load indicator to you?
- 15 | A. It's a mechanical device on a firearm that lets the user
- 16 know that there is a cartridge in the chamber of the gun
- 17 | without opening the gun.
- MR. BRADY: Am I unable to share my screen?
- 19 THE COURTROOM DEPUTY: Try and see.
- 20 MR. BRADY: I just did. It said "Host disabled
- 21 | participant screen sharing." I'm just wondering if that is the
- 22 | Court or if that's him, or is it us?
- THE COURTROOM DEPUTY: Let me -- I can make you as a
- 24 | co-host and see.
- 25 MR. BRADY: I apologize, Your Honor.

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1
              THE COURT: No apologies necessary. Hopefully, we
2
    can get it.
              THE COURTROOM DEPUTY:
                                     I'll try it.
3
              MR. BRADY: There. I think that -- okay. That
    works. Thank you.
5
              THE COURTROOM DEPUTY: Good? Okav.
    BY MR. BRADY:
7
         Mr. Helsley, can you tell me what you see on your screen?
    Q.
         First of all, the firearm is a shotgun based on the Powell
9
    patent 1163 of 1864. And that firearm is equipped with a
10
    loaded chamber indicator, which is Powell's patent 1055 of
11
    1869.
12
         So am I correct in understanding that this is an image of
13
    a firearm that has chamber-load-indicator technology that has
14
    been around since at least 1869?
15
         Correct.
16
    Α.
                          I would like to offer Exhibit 1. This is
              MR. BRADY:
17
    Exhibit 1 for everybody's reference.
18
              THE COURT: Any objection?
19
              MR. WOODS: No objection.
20
                          Exhibit 1 will be received into evidence.
              THE COURT:
21
         (Exhibit 1 was received into evidence.)
22
    BY MR. BRADY:
23
         Mr. Helsley, can you take a look at your screen and tell
24
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25

me what you see?

1 A. Yes. That's a different view of the same firearm, showing

- 2 | the firing pin is inlaid with platinum, and it says, "loaded."
- 3 Q. So this is another example of a chamber load indicator?
- 4 A. Yes.
- 5 Q. From around -- based on a patent from 1869?
- 6 A. Yes.
- 7 MR. BRADY: I'd like to offer this as Exhibit 2.
- 8 THE COURT: Any objection?
- 9 MR. WOODS: No objection.
- 10 THE COURT: Exhibit 2 will be received into evidence.
- 11 (Exhibit 2 was received into evidence.)
- 12 BY MR. BRADY:
- 13 Q. As a historian of firearm development, have you formed any
- 14 opinions on whether chamber-load-indicator technology has ever
- 15 | been widely adopted by the firearm industry?
- 16 A. It has not. Powell, for instance, when they designed
- 17 their next firearm and patented it in 1876, the chamber loaded
- 18 | indicator was dropped, never to surface again.
- 19 Q. Are you aware, Mr. Helsley, of any semi-automatic handgun
- 20 | models that incorporated chamber-load-indicator technology
- 21 | prior to, say, 1990?
- 22 A. Yes. Walther had one designed for their PP and PPK
- 23 | pistols. And that would be 1929.
- 24 Q. 1929 was the year that Walther produced that model with
- 25 the chamber loaded indicator?

- 1  $\mid$  A. That's when they brought it to the market.
- 2 | Q. Okay. As a historian, are you familiar with any laws that
- 3 | have required chamber load indicators on firearms to be sold?
  - A. Obviously, the California law.
- 5 | Q. Other than that?
- 6 A. Massachusetts has sort of a requirement. And I say, "sort
- 7 of" because, if the handgun has a 10-pound trigger pull and an
- 8 external safety, then the indicator is not required. That is
- 9 | the only state that I know of.
- 10 Q. Got it. Would it be fair to say that your testimony is,
- 11 | that chamber load indicators have been commercially available
- 12 | since at least 1869 but have never enjoyed any popularity in
- 13 the commercial firearms market?
- MR. WOODS: Objection. Lacks foundation.
- THE WITNESS: The authors of the definitive book on,
- 16 | say, British shotguns refer --
- 17 MR. WOODS: I'm sorry. I wanted to interpose an
- 18 objection -- I apologize -- that the question lacks -- or calls
- 19 | for something that lacks foundation.
- 20 | THE COURT: Overruled.
- MR. WOODS: Thank you.
- MR. BRADY: May the witness proceed, Your Honor?
- THE COURT: Please do.
- 24 BY MR. BRADY:
- 25 Q. I'm sorry, Mr. Helsley. The question was, in your

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1 | knowledge of history of firearms and chamber load indicators,
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- 2 | have you formed any opinions on whether the chamber load
- 3 | indicators have been commercially -- have enjoyed commercial
- 4 | success in the firearms marketplace?
- 5 A. Very little success.
- 6 Q. So they have not been popular?
- 7 A. No.
- THE COURT: I would be interested to know why.
- 9 BY MR. BRADY:
- 10 | Q. Mr. Helsley, do you have any thoughts as to why that would
- 11 be the case? Do you have opinions, in your expert opinion?
- 12 A. Well, the key here is training and education. If the
- 13 person who's going to handle the firearm doesn't know what a
- 14 | loaded chamber indicator is, it will have very little meaning
- 15 to them.
- The loaded chamber indicators aren't used on revolvers,
- 17 | they're not used on rifles or shotguns. To the extent that
- 18 | they're used, they're used on semi-automatic pistols. And in
- 19 | some cases, they're nothing more than just a little bit of red
- 20 | paint on a small part.
- 21 So it's -- the user has to assume that all guns are always
- 22 | loaded. And if you do that, then you're in good shape. If
- 23 | you're relying on a 12-year-old boy picking up a handgun and
- 24 | knowing what that little red thing means, it's a mistake.
- 25 | Safety is between the ears and not a mechanical device.

- 1 | Q. Can I ask you, in your experience with firearms, you
- 2 | have -- obviously, you were a trainer for the California
- 3 Department of Justice, so you have experience with firearms,
- 4 | shooting them and training people with them; correct?
- 5 A. Yes.
- 6 Q. In your experience, would a chamber load indicator alter
- 7 | the way that you treat a firearm, in any way?
- 8 A. No.
- 9 Q. And that's because, as you indicated, the rule of firearm
- 10 | safety is you always treat a firearm as if it were loaded;
- 11 | right?
- 12 A. Correct.
- 13 | Q. And if you do that, then a magazine -- or I'm sorry -- a
- 14 | chamber load indicator provides no benefit.
- 15 Is that fair to say?
- 16 A. Correct. You need to keep your finger out, away from the
- 17 | trigger, and you need to have the barrel pointed in a safe
- 18 direction.
- 19 | Q. Are you familiar with magazine disconnect mechanisms?
- 20 A. I am.
- 21 THE COURT: Before you get to that, I just have one
- 22 question.
- MR. BRADY: Of course, Your Honor.
- THE COURT: Mr. Helsley, am I to then understand
- 25 | that, if you have a CLI, it's really -- well, why -- let me

1 | rephrase that question.

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Is it then just an aesthetic issue, from your standpoint, why manufacturers don't put a chamber load indicator on the weapon?

THE WITNESS: There are reasons. For instance, some of the devices aren't particularly reliable and can break and cause the firearm to malfunction. The way it's been described to me is they're viewed as gadgets, and they're a way to help sell a product, but they're not really for safety because there's no training that goes in to tell the user what they are. And so for whatever the reasons, the industry has just not adopted them all over the last century.

THE COURT: So they're just not needed from the manufacturer's standpoint?

THE WITNESS: Yes. If there was a need, I am sure they would meet the need.

THE COURT: But they don't impact the structural integrity of the weapon or its ergonomics; is that fair?

THE WITNESS: Correct.

THE COURT: I'm sorry, Counsel.

MR. BRADY: Of course. Please feel free, Your Honor.

22 Q. Mr. Helsley, are you familiar with magazine disconnect

23 | mechanisms?

24 A. I am.

25 | Q. Can you explain what your understanding is of a magazine

disconnect mechanism?

- 2 A. The magazine disconnect disables the firearms if the
- 3 | magazine is not inserted fully.
- 4 | Q. And what is the purpose, the purported purpose, of that,
- 5 to your knowledge?
- 6 A. Well, the proponents would say that it's a safety feature
- 7 | that you could store the firearm in a different place than the
- 8 | magazine and thus the gun couldn't be fired.
- In the law enforcement context, some would argue that
- 10 | the -- if you're in a fight with a suspect and the magazine
- 11 comes out of the gun, then the suspect can't take your gun and
- 12 | shoot you with it.
- 13 Q. Is it your understanding that law enforcement officers are
- 14 exempt from the unsafe handgun requirement?
- 15 A. They are.
- 16 Q. And in your experience as a law enforcement officer in
- 17 | California, do law enforcement officers, in your experience,
- 18 | tend to carry handguns that are on the roster or are not on the
- 19 roster?
- 20 A. That's difficult to say because guns come and go from the
- 21 | roster. And departments buy guns, replace guns. The majority,
- 22 | I believe, of California law enforcement carry one of the
- 23 | Glocks. There are lots of models of Glocks. My guess is that
- 24 | 80 percent or more of California law enforcement carry Glocks.
- 25 | To the best of my knowledge, there is no Glock with a magazine

- 1 | disconnector.
- 2 | Q. Do you know, Mr. Helsley, when magazine disconnect
- 3 | mechanism were invented?
- 4 A. The first magazine disconnector that I'm aware of was part
- 5 of the Browning Hi-Power, it was called; or in its military
- 6 | role, the P35.
- 7 Q. Is that a handgun?
- 8 A. 1935.
- 9 Q. Is that a handgun?
- 10 A. That's a handgun.
- 11 | Q. A semi-automatic handgun?
- 12 A. Yes.
- 13 Q. And, obviously, it has a detachable magazine if it has a
- 14 | magazine disconnect mechanism; correct?
- 15 A. Yes.
- 16 Q. I'm sorry. What year did you say? Did you say what year
- 17 | that model of firearm was invented or put on the market?
- 18 A. In '35.
- 19 Q. 1935. So at least one -- and that Browning Hi-Power is
- 20 | made -- Browning is a fairly large firearm manufacturer;
- 21 | correct?
- 22 A. Yes.
- 23 Q. Especially at that time?
- 24 A. Yes.
- 25 Q. So is it fair to say that at least one commercial

- 1 | semi-automatic handgun model available to the public came with
- 2 | a magazine disconnect mechanism back in 1935?
- 3 A. Correct.
- 4 Q. As a historian of firearm development, have you formed any
- 5 opinions on whether magazine-disconnect-mechanism technology
- 6 has ever been widely adopted by the firearm industry.
- 7 A. It has not.
- 8 Q. Have you ever seen a Browning Hi-Power without a magazine
- 9 disconnect mechanism?
- 10 A. Yes. The law enforcement officers that I worked with that
- 11 | carried that as a duty firearm, had it removed from the pistol.
- 12 Q. Removed?
- 13 A. Removed.
- 14 Q. So magazine disconnect mechanisms can be removed?
- 15 A. Can be easily removed.
- 16 Q. Easily. Can you explain "easily"? What was more or less
- 17 | the basic process? Could, for example, I do it? Or would it
- 18 take a little bit more like somebody like yourself?
- 19 A. If you're familiar with hand tools, it's simple to do.
- 20 What's involved -- and, of course, you can go onto the Web and
- get all the instructions you want on this. You drift out a pin
- 22 | that is in the trigger -- okay. Back up a step.
- You would field strip the firearm so that the slide is off
- the frame, you drift the pin out of the trigger, and then you
- reach in with a probe of some sort and pull the safety back,

(

and the magazine disconnect device with a spring will come out.

You push the safety back into place, you reassemble the gun,

- and that's it. It's a three- or four-minute process.
- Q. And, Mr. Helsley, why do people remove magazine disconnect mechanisms? What is the point of doing that?
  - A. The reasons are two. First of all, the trigger pull can be enhanced with the magazine disconnector out. The magazine disconnector, when the trigger is pulled, is pushing against the magazine before it releases the sear, and that causes a rough and inconsistent trigger pull. More importantly, though, it keeps the magazine from dropping free.

So when law enforcement is trained, generally, they want -- for rapid reloading of their handgun, they want to be able to push the magazine release button, have the magazine drop free from the gun, and insert a new one. The magazine disconnector won't allow that.

And also -- and then there is this debate. Most law enforcement that I know of want to be able to -- if they only have the one round in the chamber of the gun when they're reloading, they want to be able to fire the gun. And, of course, the magazine disconnector won't allow that. So it won't allow the firing of one round in the chamber during the reload, it slows down the reload, and it makes for a trigger pull that is not very good.

Q. Got it.

THE COURT: And for those three reasons, Mr. Helsley, is that why the industry hasn't widely adopted magazine disconnect mechanisms?

THE WITNESS: Well, I can only guess on that.

THE COURT: I wouldn't want you to guess.

Do you know why, then, it isn't widely adopted?

THE WITNESS: Again, I have to assume that the customers didn't want it.

## BY MR. BRADY:

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- 10 | Q. Mr. Helsley, can you tell me what you see on your screen?
- 11 | A. This is a newer version of the Browning Hi-Power.
- 12 | Q. And it looks like this is now made by FN?
- 13 A. Yes. Well, FN and Browning have always had a connection.
- 14 Q. Okay. So there is -- it's still the same manufacturer as
- 15 | the previous Browning Hi-Power?
- 16 A. Yeah. The Browning Hi-Power, quote, unquote, has been
- 17 | made in a variety of places. It was a military firearm during
- 18 | World War II. I believe it was made in Canada at that time.
- 19 But this is the latest one. The FN -- I assume this is being
- 20 | made in America.
- 21 Q. So it's your understanding this is the latest iteration of
- 22 | the Browning Hi-Power?
- 23 A. Yes.
- Q. On the screen here, the first line on this page of
- 25 | Browning's discussion of its new -- or FN describing the new

1 Hi-Power, it says, "Magazine disconnect deleted."

- 2 What is your understanding of that language?
- 3 A. That they redesigned it to eliminate the magazine
- 4 | disconnect function.
- 5 Q. So the latest version of the Hi-Power, that always had the
- 6 | magazine disconnect mechanism, no longer has it?
- 7 A. Correct.
- 8 Q. Are you familiar with any laws, other than -- excuse me --
- 9 | California's Unsafe Handgun Act, that have ever required
- 10 | firearms have magazine disconnect mechanisms?
- 11 A. No.
- 12 | Q. So would it be fair to sum up your testimony on magazine
- 13 disconnect mechanisms that they have been commercially
- 14 available since at least 1935 in popular semi-automatic
- 15 | handguns but have never enjoyed popularity in the commercial
- 16 | marketplace?
- 17 A. Whatever popularity there was was very limited.
- 18 Q. And there were no laws, to your knowledge, that required
- 19 | them?
- 20 A. No.
- 21 | Q. So it wasn't a popular feature among lawmakers?
- 22 A. No.
- MR. BRADY: I would like to offer this as Exhibit 3,
- 24 | the depiction of the Browning Hi-Power.
- THE COURT: Any objection?

MR. WOODS: No objection. 1 Exhibit 3 will be received into evidence. THE COURT: 2 (Exhibit 3 was received into evidence.) BY MR. BRADY: Mr. Helsley, are you familiar with the term 5 "microstamping"? 6 I am. Α. Can you explain to us what your understanding of that is? Q. 8 Microstamping is the -- I assume it's done by laser, 9 putting identifying characteristics on the tip of a firing pin-10 so that, when that firing pin strikes the primer of a 11 cartridge, it will allow for the identification of whether or 12 not that cartridge was fired in a particular firearm. 13 Are you aware of any commercially sold firearm that has 14 Q. ever been manufactured with microstamping technology? 15 16 Α. No. Are you aware of any technology similar to microstamping 17 0. that have ever been included on commercially manufactured 18 firearms? 19 20 Α. No. MR. BRADY: Thank you, Mr. Helsley. That will be 21 all. 22 23 THE COURT: All right. 24 CROSS-EXAMINATION 25 BY MR. WOODS:

- 1 Q. Good morning, Mr. Helsley.
- 2 A. Good morning.
- 3 | Q. My name is Clint Woods. I'm a Deputy Attorney General for
- 4 | the State of California. I just have very few questions for
- 5 you.
- 6 You retired from the California Department of Justice
- 7 | before the Unsafe Handgun Act was enacted; correct?
- 8 A. Correct.
- 9 Q. So as part of your duties with the California Department
- 10 of Justice, you never interacted with the Unsafe Handgun -- the
- 11 | Unsafe Handgun Act or the roster of handguns; is that correct?
- 12 A. Not as far as my duties with DOJ is concerned.
- 13 | Q. Okay. Are you aware -- you had some testimony about -- we
- 14 | looked at some pictures of shotguns with chamber load
- 15 | indicators.
- 16 Do you recall that testimony?
- 17 A. Yes.
- 18 | Q. Those really old guns from the 1800's; is that right?
- 19 A. I'm sorry. Say again.
- 20 | Q. The really old shotguns from the 1800's?
- 21 A. Yes.
- 22 Q. Okay. Do you know whether shotguns are required to have
- 23 | chamber load indicators in California?
- 24 A. They are not.
- 25 | Q. Okay. You testified earlier that it was your guess that

- 1 | around 80 percent of law enforcement used Glocks.
- 2 Do you recall that testimony?
- 3 A. Yes.
- 4 Q. Okay. Have you ever done any kind of formal or informal
- 5 | survey of how many law enforcement agents in California use
- 6 Glocks?
- 7 A. No. It's just based on visual observation of the police
- 8 officers I see. They all seem to have Glocks in their
- 9 holsters.
- 10 | Q. Understood. Do you know if there are any Glocks that are
- 11 | currently on California's roster?
- 12 A. There are.
- 13 | Q. Do you know how many?
- 14 A. No.
- MR. WOODS: Okay. All right. No further questions.
- 16 | THE COURT: All right. Anything further?
- MR. BRADY: Nothing, Your Honor.
- 18 | THE COURT: All right. Thank you, sir. You are
- 19 excused.
- 20 Next witness.
- MR. FRANK: Good morning, Your Honor.
- 22 THE COURT: Good morning.
- MR. FRANK: Plaintiffs' next witness will be
- 24 Mr. Lance Boland.
- THE COURT: All right. Mr. Boland, if you could,

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please, come forward, sir. Stand right by the court reporter 1 for a second, a few seconds. We're going to administer an oath 2 to you and then have you take the witness stand. 3 THE COURTROOM DEPUTY: Mr. Boland, right there, sir. 5 Face me. Raise your right hand. Do you solemnly swear that the testimony you shall give in 6 the cause now before this Court shall be the truth, the whole 7 8 truth, and nothing but the truth, so help you God? THE WITNESS: I do. 10 THE COURTROOM DEPUTY: Please be seated. Go around, 11 sir. 12 THE WITNESS: Go around? THE COURTROOM DEPUTY: Yes, sir. 13 Please state your name and spell your last name for the 14 15 record. THE WITNESS: Lance Boland, B-o-l-a-n-d. 16 17 THE COURT: Please proceed. MR. FRANK: Thank you, Your Honor. 18 19 LANCE BOLAND, 20 called by and on behalf of Plaintiffs, testified as follows: 21 DIRECT EXAMINATION BY MR. FRANK: 22 Mr. Boland, what is your profession? 23 24 I am an infrastructure engineer as well as a firearms 25 instructor.

Q. Can you please describe your firearms instructor experience?

A. I have been teaching since about 2009; professionally, since 2013. My certifications include basic rifle, pistol, shotgun; personal protection inside the home and outside the home; home firearm safety; metallic cartridge reloading --

(The court reporter interrupted.)

THE WITNESS: Personal protection inside the home, personal protection outside the home, home firearm safety, metallic cartridge reloading, shotshell reloading. I'm also a master instructor for the International Association of Law Enforcement Firearms Instructors. I also have instruction directly from Glock training U.S., both in the Glock operators as well as the Glock Instructor Development workshops.

15 BY MR. FRANK:

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- 16 Q. And do you have any other accreditations for firearms
- 17 | instruction?
- 18 A. Can you rephrase the question?
- 19 Q. Sure. You mentioned that you have -- I believe it's
- 20 TALEFT.
- 21 A IALEFI?
- 22 Q. Yes.
- 23 A. Yeah. That is International Association of Law
- 24 | Enforcement Firearms Instruction. And I currently hold a
- 25 | master rating with them.

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1 | Q. And you operate a firearms training school; is that right?

- 2 A. That is correct.
- 3 Q. How many rounds of ammo have you fired in your lifetime
- 4 | through a semi-automatic pistol? Are you able to estimate
- 5 | that?
- 6 A. If you estimate, it would be in the -- over the hundreds
- 7 of thousands, probably closer to a million.
- 8 Q. And how many people have come to your training school
- 9 | since -- I believe you said it was 2013 --
- 10 A. 2013.
- 11 Q. -- roughly?
- 12 A. 7,400, roughly.
- 13 Q. And that's on a continuous basis since it opened in 2013?
- 14 A. That's correct.
- 15 Q. And do you teach people how to safely handle handguns?
- 16 A. Yes, we do.
- 17 Q. Are you familiar with the rules of gun safety?
- 18 A. Yes, sir. Yes, I am. There is two different sets that
- 19 | are typically taught. One through the National Rifle
- 20 Association. One that is used -- we refer to them as the
- 21 | Cooper Rules. And our school teaches the Cooper Rules.
- 22 | Q. Can you please explain what the Cooper Rules are?
- 23 A. Sure. There is a total of four rules. As long as any of
- 24 | the rules are going to be followed, typically, we can avoid
- 25 I tragedies. The rules that we follow are:

We treat all guns as if they are loaded at all times.

We keep the gun pointed in a safe direction. "Never point your muzzle at anything you do not intend to destroy or kill" is how we state it.

Keep your finger off the trigger until your sights are on target, and you've made the decision to shoot.

And the last one that we follow is know your target and what's beyond it.

- Q. And everyone who comes to your training school will receive that instruction of those four rules?
- 11 A. It's the first hour of our classes.
- 12 Q. Do you know what a chamber load indicator is?
- 13 A. Yes.

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- 14 | Q. Can you please describe what you know it to be?
- 15 A. A chamber load indicator is going to be a mechanical item
- on a semi-automatic handgun that, when a cartridge is loaded
- into the chamber, it's going to give some type of visual
- 18 | indication that there is a cartridge that is present inside the
- 19 gun, in the chamber.
- 20 Q. And does the chamber load indicator impact the way that
- 21 you teach the four Cooper Rules of gun safety?
- 22 A. No.
- Q. Is that because the rules should be observed regardless of
- 24 | whatever mechanical aspects the firearm might have?
- 25 A. Regardless of what the gun may be capable of doing in

- 1 | pertaining to safety.
- 2 Q. Now, during your experience, your decade or more of
- 3 experience of training people and teaching people how to shoot,
- 4 | have you ever seen people bring guns into your training school
- 5 | that have chamber load indicators on them?
- 6 A. Yes.
- 7 Q. And have you ever seen a chamber load indicator on a
- 8 | firearm fail?
- 9 A. Yes.
- 10 Q. How many times, roughly, would you say?
- 11 A. I've seen it a couple times now.
- 12 Q. Are there any particular models of firearm that you've
- 13 | seen it fail on more than others?
- 14 A. The Smith & Wesson M&P Shield, the 9mm, specifically.
- 15 Q. And To your knowledge, that is a firearm that's on the
- 16 | California roster?
- 17 A. That is currently on the California roster, yes.
- 18 Q. Do you have any experience of your own shooting that
- 19 | weapon?
- 20 A. Yes, I do.
- 21 Q. Can you describe your experience using it and what you've
- 22 | observed?
- 23 A. Pertaining to the loaded chamber indicator, when you
- 24 | chamber a round in the M&P Shield, the loaded chamber indicator
- 25 | that's painted red on the side, that's facing the shooter,

- 1 | impinges on the sight picture for the gun. So if you're
- 2 | looking down the sights -- and they typically have what we
- 3 | refer to as a 3 dot sight -- two dots in the rear, one dot on
- 4 | the front sight -- that loaded chamber indicator, that's
- 5 painted red, comes up in front of that front sight.
- 6 Q. Does that mean that the user of that firearm will see an
- 7 | obstruction into what they're looking at through their sights
- 8 | on the firearm?
- 9 A. That would be an accurate way of stating that, yes.
- 10 Q. And that can compromise your ability to use and shoot the
- 11 | gun safely and accurately; correct?
- 12 A. Correct.
- 13 Q. Would you ever teach a student to rely on a chamber load
- 14 | indicator?
- 15 A. No.
- 16 | Q. What would be the safest and most foolproof way to verify
- whether a semi-automatic firearm has a live round of ammunition
- 18 | in the chamber?
- 19 A. For civilian students, we teach them to press check; that
- 20 | is, push the slide back on the top of their firearm of maybe 8
- 21 | to 10 millimeters and visually inspect. There is a piece of
- 22 | brass or a piece of nickel-plated brass in there that indicates
- 23 that the chamber is loaded.
- 24 | Q. Do you know what a magazine disconnect mechanism is?
- 25 A. Yes.

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- 1 Q. Can you please describe?
- 2 A. Magazine disconnect is going to be a mechanical device
- 3 | inside of the semi-automatic handgun that should prevent the
- 4 gun from firing if a magazine has been removed and interrupts
- 5 the firing mechanism.
- 6 Q. And does a magazine safety disconnect impact how you teach
- 7 | the four Cooper Rules of gun safety?
- 8 A. No, it does not.
- 9 Q. And that is -- is that for the same reason that the rules
- 10 | should be followed regardless of --
- 11 A. Rules should be followed regardless, yes.
- 12 Q. Have you ever observed a MDM mechanism fail on a pistol?
- 13 A. Yes.
- 14 Q. Could you please describe?
- 15 A. I personally -- my personally-owned Sig Sauer P226 MK25
- 16 | had the magazine disconnect fail inside of it. The most
- 17 | concerning part of that, that I found, is that, once it had
- 18 | failed, it wouldn't allow the gun to fire; second, it wouldn't
- 19 allow me to put a magazine back in the gun.
- 20 I do use that gun for defensive purposes. Had I found
- 21 | myself in a defensive incident, I would not have been able to
- 22 | get my magazine back in my gun to use it.
- 23 Q. In your experience teaching the -- I believe you said
- 24 | 7,400 or so people that have come to your firearm school over
- 25 | the years, are you able to say what percentage of those people

- 1 | were left-handed?
- 2 A. It's estimated about 10 percent.
- 3 Q. Is there also a certain percentage of people who come to
- 4 | your school who are maybe not left-handed but who would be
- 5 | better off primarily shooting left-handed?
- 6 A. Yes.
- 7 Q. And why is that?
- 8 A. We discovered that some of the students are
- g cross-dominant, through a very simple test. Some students may
- 10 come in, and they're right-handed. And through a simple -- we
- 11 | refer to it as an eye exam. It's not, by definition. But we
- 12 | find that their left eye is dominant, but they are
- 13 | right-handed, meaning they write or handle things with their
- 14 | right hand.
- 15 We do encourage those students, in the interest of
- 16 | marksmanship, to shoot their firearms left-handed, using their
- 17 | left hand as their strong hand.
- 18 Q. Are semi-automatic handguns generally ergonomically
- 19 | configured better for a left-handed shooter or a right-handed
- 20 | shooter?
- 21 A. Right-handed shooter.
- 22 | Q. And why is that?
- 23 A. The controls for the firearm, the slide stop, the magazine
- 24 | release, on some, if it has a mechanical safety that can be
- 25 | engaged and disengaged, it's typically done with the thumb on

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- 1 | the right hand. If that gun is used in the left hand, those
- 2 | mechanical controls are going to be covered up by the hand, the
- 3 strong hand that is now the left hand.
- 4 Q. Now, you just mentioned a few of them, but aside from the
- 5 I trigger on a semi-automatic handgun, would the slide release,
- 6 | magazine release, and the external safety switch be the main
- 7 | controls?
- 8 A. Yes.
- 9 | Q. And, virtually, all semi-automatic handguns are going to
- 10 | have those, for the most part?
- 11 A. Some approximation of that, correct. Yes.
- 12 Q. What have you observed when left-handed shooters come to
- 13 | your school and begin their process of learning firearms with
- 14 | firearms that are generally more optimized for a right-handed
- 15 | shooter?
- 16 A. It's difficult for them. They struggle.
- 17 | Q. What types of difficulties and struggles arise?
- 18 A. Most of what we see is, whether it's a left-handed shooter
- 19 or it's someone that we're encouraging to shoot left-handed,
- 20 | the control is being covered up. Now requires us to take that
- 21 | handgun, sometimes in a loaded condition on the range, and
- 22 | transfer it from the left hand back into the right hand. So
- 23 | we're adding steps of manipulation to the gun that, if we had
- 24 | an ambidextrous firearm or a left-handed firearm, we wouldn't
- 25 | have to do. So they do struggle to get the gun unloaded, to

- 1 | get it reloaded, and, ultimately, handling it safely.
- 2 | Q. In an defensive encounter, is it true that seconds or
- 3 micro-seconds of time can be the difference between being able
- 4 to use your firearm successfully, defensively, and potentially
- 5 | losing your life?
- 6 A. Yes.
- 7 Q. How many different models of semi-automatic handguns have
- 8 you handled in your lifetime?
- 9 A. Incalculable. Numerous. Most. Any adjective we want to
- 10 add to that.

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- 11 Q. Would that include pretty much every model that's on the
- 12 | California roster?
- 13 A. I would be comfortable in saying that.
- 14 Q. Are there ever any off-roster firearms that can allow the
- 15 | main controls to be configured ergonomically for the
- 16 | left-handed shooter?
- 17 | A. Yes.
- 18 | Q. And have you ever recommended those to your clients at
- 19 | your shooting school?
- 20 A. Often.
- 21 Q. What do you tell them about how they might go about trying
- 22 | to acquire one?
- 23 A. That they -- with the unsafe Handgun Act being in place in
- 24 | California, they would have to seek an off-roster handgun
- 25 | through a private party transfer.

- 1 | Q. Do you own any off-roster handguns?
- 2 A. I do.
- 3 Q. Which models do you own?
- 4 A. The Staccato P from STI. The Glock 43 is another that I
- 5 own.
- 6 Q. And did you acquire that in a private party transfer?
- 7 A. Yes.
- 8 Q. Do you recall how much you paid for it?
- 9 A. For the Staccato, 3,000; and for the 43, a thousand.
- 10 Q. And are you familiar with roughly what the manufacturer's
- 11 | suggested retail price is, if you were to walk into a gun store
- 12 | in a state that didn't have a roster, what you would pay for
- 13 those models of firearms?
- 14 | A. The Staccato retails, \$2,100; the 43 about \$450.
- 15 Q. So you paid significant price markups?
- 16 A. Yes.
- 17 Q. And were those firearms in used condition when you
- 18 | acquired them?
- 19 A. And they were used when I purchased them, yes.
- 20 | Q. In your decade-plus of experience of training people, have
- 21 | you trained many state and federal law enforcement officers?
- 22 | A. I have.
- 23 Q. And when they come to your shooting school, they bring
- 24 | their own firearms with them; is that correct?
- 25 A. Yes.

- 1 | Q. Have you ever seen a federal state law enforcement officer
- 2 | bring a firearm equipped with a magazine disconnect mechanism
- 3 | to your school?
- 4 A. No.
- 5 Q. Have you ever spoken with them about their choices of
- 6 | firearms?
- 7 A. I have.
- 8 Q. And have you spoken with them specifically about the
- 9 | California roster and what it requires of guns?
- 10 A. Yes, I have.
- 11 Q. And what have cops explained to you about the various
- 12 problems or issues that they're trying to avoid by not using --
- 13 | A. For those that I talked to --
- MR. SAROSY: Your Honor, I'm sorry. Objection.
- 15 | Hearsay.
- 16 THE COURT: Overruled.
- 17 | THE WITNESS: The ones that I've talked to, the
- 18 | magazine disconnect has always been a concern, that in a
- 19 defensive encounter, if they dropped the magazine and still had
- 20 one in the chamber, what we refer to as a tactical reload, the
- 21 | round in the chamber would be worthless. It wouldn't be able
- 22 | to be fired. So they do not want magazine disconnects on their
- 23 | guns.
- They don't view the loaded chamber indicator as anything
- of value because of the steps that they take while handling

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their own firearms, where they do their own press checks or
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    they will visually or physically inspect the firearm for if
2
    it's loaded or unloaded, whatever the condition may be.
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    BY MR. FRANK:
         Have many FBI agents come to your school?
5
    Q.
         Yes.
6
    Α.
         Are you familiar with what firearms they're issued?
    Q.
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         Currently, the Glock 17M or the Glock 19M, the M models of
8
    those.
9
         Do either of those firearms have a magazine disconnect
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    0.
    mechanism?
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12
    Α.
         No.
              MR. FRANK: Thank you, Mr. Boland.
13
         I don't have any further questions, Your Honor.
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              THE COURT: I just have one, Mr. Boland.
15
              THE WITNESS: Yes, Your Honor.
16
              THE COURT: You said you have some off-roster
17
    handguns and you obtained them through a private party
18
    transaction.
19
         But could you go to a state where they're sold and then
20
    bring that firearm back to California?
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              THE WITNESS:
                             No, Your Honor, I couldn't.
              THE COURT: Is there any law in California that
23
    prohibits you from doing that?
24
              THE WITNESS: I believe it's the law that is going to
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prohibit me from not being a resident of that state and purchasing a firearm in that state.

THE COURT: I guess that is my question. So it would be the state -- if you're going to purchase a firearm in the state, you have to be a resident of that state?

THE WITNESS: Yes, Your Honor.

THE COURT: Gotcha. Okay.

Cross-examination?

## CROSS-EXAMINATION

## 10 BY MR. SAROSY:

- 11 Q. Good morning, Mr. Boland.
- 12 A. Good morning, Counsel.
- 13 Q. My name is Charlie Sarosy. I'm a Deputy Attorney General,
- 14 representing the defendant in this case. Thank you for being
- 15 | here.

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- You were just talking about FBI agents and law enforcement officers who come to your training school; correct?
- 18 A. That's correct.
- 19 Q. Does the average law enforcement officer receive more
- training in firearms than the average civilian? Correct?
- 21 They're required -- law enforcement officers are required.
- 22 before becoming a law enforcement officer, to receive firearms
- 23 | training?
- 24 A. Through the academy, roughly 40 hours. The students that
- I have go through my academy well exceed 40 hours of training.

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- 1 | Q. But students that come to your academy are not required to
- 2 | come to your academy?
- 3 A. If they wish to obtain a CCW in the State of California
- 4 | for Orange County, they are required to go to some type of
- 5 training. My school does provide that.
- 6 Q. Okay. Understood. And you currently own firearms, as you
- 7 | said; correct?
- 8 A. That's correct.
- 9 | Q. And you legally purchased those firearms, I'm assuming?
- 10 A. I have, yes.
- 11 Q. And you store those firearms at your residence or at your
- 12 training school?
- 13 A. Yes.
- 14 Q. And how many total firearms do you own, approximately, as
- 15 of today?
- 16 A. 60, maybe 70.
- 17 | Q. And how many would you say of those are handguns?
- 18 A. Half.
- 19 | Q. And of the firearms that you own, are all of them
- 20 | operable, meaning they can shoot, they can fire?
- 21 | A. Of the ones I am counting, yes. I do have training aids
- 22 | that I'm not counting.
- 23 Q. And of the handguns that you own, are all of them
- 24 operable, the ones that you mentioned?
- 25 A. Yes.

- 1 | Q. So the other half of guns that you own are long guns, such
- 2 | as rifles and shotguns?
- 3 | A. That would be correct.
- 4 Q. So you have about 30 or so, give or take, rifles or
- 5 | shotguns.
- 6 And how many of the handguns that you own are
- 7 | semi-automatic pistols?
- 8 A. Out of the 30 to 35, I would say 25.
- 9 Q. And then how many are revolvers?
- 10 A. The other ten.
- 11 | Q. Okay. And then how many -- I think you said you have two
- 12 | off-roster semi-automatic pistols; correct?
- 13 A. Correct.
- 14 Q. And you mentioned the Smith & Wesson M&P 9 Shield.
- 15 A. Uh-huh.
- 16 | Q. Do you -- is that one of the semi-automatic pistols --
- 17 A. Yes.
- 18 | Q. -- that you own?
- 19 And that firearm is on the roster; correct?
- 20 A. It is.
- 21 Q. And it has a chamber load indicator and a magazine
- 22 | disconnect?
- 23 A. It does.
- 24 Q. And you mentioned CCW is a concealed carry weapons permit.
- Do you have a CCW yourself?

- 1 A. I do.
- 2 | Q. And that allows you to carry handguns in public --
- 3 | correct? -- subject to, you know --
- 4 A. Various regulations and laws, yes, sir.
- 5 Q. Right. And about how many handguns do you have listed on
- 6 | your CCW that allows you to carry them in public?
- 7 A. I believe 11.
- 8 | Q. And you, yourself, are a right-handed shooter; correct?
- 9 A. I am.
- 10 Q. And you were talking about right-handed shooters who could
- 11 be cross-dominant, so that it would be better for them to be
- 12 | left-handed -- or shoot left-handed; correct?
- 13 A. Correct.
- 14 | Q. I mean, the same could be true for left-handed folks who
- 15 come to your school. They could also be cross-dominant and
- 16 | shoot right-handed?
- 17 A. Be left-eye dominant and right-handed, or right-eye
- 18 | dominant and left-handed. It goes both ways, yes.
- 19 | Q. Okay. And when you train your students, does -- is it --
- 20 | the students that you have, are they the firearm owner
- 21 | themselves?
- 22 A. They may be the future firearm owner, meaning that they
- 23 | haven't made a purchase. They're still deciding if they want
- 24 | to purchase, or they're looking for assistance on the right
- 25 | firearm to purchase.

- 1 Q. Okay. But not everyone who will or does have access to a
- firearm comes to your training; correct?
- 3 A. Restate the question.
- 4 Q. Sure. It's only the person who owns a firearm or is going
- to own a firearm who goes to your training school; correct?
- 6 A. I would say the majority would probably fall into that
- 7 | category.
- 8 | Q. Most people do not -- most of your students do not bring,
- 9 | let's say, other people in their household to your training?
- 10 A. That does happen. That does happen, where you have a head
- of household that has decided to purchase or looking for a second
- 12 | future purchase, that will bring all members of their household
- 13 because that gun is going to be in their household. And
- 14 | whether they become the users of it, irrelevant. They want to
- 15 | make sure that they understand what the safety rules are. They
- 16 | want training on it regardless if they're going to become a
- 17 User of that firearm or not.
- 18 | O. Would that include children?
- 19 A. It does, yes.
- 20 Q. And you can't speak to whether a child is actually
- 21 | understanding all of your training; correct?
- 22 A. I have children myself. I have an 8-year-old and a
- 23 | 12-year-old son that live with me.
- 24 Q. But the children that attend your training, you don't --
- 25 | you can't know for sure whether they're understanding the

1 | training that you are providing?

- 2 | A. Well, I can't -- yeah, I'll agree with that.
- 3 Q. And you prefer not to purchase more off-roster firearms
- 4 | via a private party transaction, but, obviously, you are aware
- 5 | that you are legally allowed to do so because you have done so?
- 6 A. At great expense, yes.
- 7 Q. But you have done so; right?
- 8 A. I have done so, yes.
- 9 Q. And since this lawsuit was filed on August 1st, have you
- 10 purchased more semi-automatic pistols from then until now?
- 11 | A. In the interest of my training school, I have, yes.
- 12 | Q. But not for yourself defense?
- 13 A. Not for anything that I've put on my permit, no.
- MR. SAROSY: That's all I have. Thank you,
- 15 Mr. Boland.
- 16 THE COURT: Thank you, Counsel.
- 17 Mr. Boland?
- 18 | THE WITNESS: Your Honor.
- 19 THE COURT: Have ever seen a handgun with
- 20 | microstamping capability?
- THE WITNESS: I have not, Your Honor, no.
- THE COURT: Are you aware of any gun manufacturer
- 23 | that implements a microstamping capability on a firearm?
- THE WITNESS: I am not personally aware, Your Honor,
- 25 no, I'm not.

THE COURT: Do you have any opinion on why that is?

THE WITNESS: Why they don't include it? I have an opinion on it of -- the technology is difficult to implement.

It's unreliable. I have personal opinion on it where I would be concerned of taking a firearm to the range to practice or to train that has microstamping on it in the fear that that brass that is left behind on the floor of the range or on the ground of the range may be picked up and used nefariously. That would be a concern.

THE COURT: Can you explain that a little bit more?

THE WITNESS: If that was dropped at a crime scene and then law enforcement picks that up, that would be concern that now that serial number comes back to me on a crime scene I was definitely not at.

I guess a global concern would be the over-utilization of law enforcement resources tracking people like that down. I have cohorts that are with LAPD, with homicide, that they already show up on scenes and there's multiple forms of brass that have been thrown down for people involved in shootings that contaminate the crime scene with evidence. I believe that this would just lend itself to that.

THE COURT: Okay. Thank you.

Any further questions?

MR. FRANK: Yes, Your Honor. Thank you.

REDIRECT EXAMINATION

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BY MR. FRANK:

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- Q. Mr. Boland, I believe earlier and just now you spoke a little bit about reloading ammunition.
- 4 Can you describe what that means, to reload ammunition?
- 5 A. For reloading ammunition, we pick up expended casings,
- 6 brass or nickel-plated brass, off of the ground at the range.
- 7 We bring that back. It goes through a sorting process to make
- 8 | sure that we have -- for example, we're going to reload 9mm,
- 9 | 9x19, that we would take that -- remove the old primer. I
- 10 | believe the microstamping requirement leaves it on the primer
- 11 and the case, so there is no way to remove that if that
- 12 existed.
- We wash, clean the brass, size it. Then we put a new
- 14 | primer back in, the new powder back in, place a bullet on top
- 15 and reseat it, and then check if for quality control.
- 16 Q. So you -- when you reload ammo, it sounds like you need
- 17 | multiple different components to do that. I believe you
- 18 | mentioned --
- 19 A. Correct.
- 20 | Q. -- you need brass, primer, gun powder, and then a
- 21 projectile, the actual bullet?
- 22 A. That's correct.
- 23 (The court reporter interrupted.)
- 24 BY MR. FRANK:
- 25 Q. What are the components that you need to reload a

- 1 | cartridge?
- 2 A. You would have a piece of brass, referred to as a casing;
- a new primer; powder, gun powder, smokeless gun powder,
- 4 | typically; and a projectile, a bullet.
- 5 | Q. And would you need some tools or some kind of apparatus to
- 6 | actually put those all together?
- 7 A. That's correct.
- 8 Q. And are those easily obtainable? Are they expensive?
- 9 A. They're -- well, there is a range. They start from, maybe
- 10 | a hundred to \$200 to tens of thousands, when we get to
- 11 | commercial level.
- 12 Q. So a basic setup to allow you to reload your own
- 13 | ammunition would cost, maybe, a few hundred dollars?
- 14 A. If that, yes.
- 15 | Q. And you said earlier that you can just pick up brass from
- 16 a range and then you can process that so that you could reuse
- 17 | it to reload your own ammo?
- 18 A. That's correct.
- 19 Q. So, theoretically, if there were a microstamped case at a
- 20 | shooting range that had a serial number on it, anyone could
- 21 | pick that up and take it and reload their own ammunition with
- 22 | it; right?
- 23 A. Yes.
- MR. FRANK: Thank you, Your Honor.
- 25 | THE COURT: Very well.

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1	Anything further?
2	MR. SAROSY: Just one question, Your Honor.
3	RECROSS-EXAMINATION
4	BY MR. SAROSY:
5	Q. Mr. Boland, on the cartridge
6	A. Uh-huh.
7	Q casing issue we were just taking about, your students
8	typically don't go out and pick up their own cartridge cases
9	after firing?
10	A. I would say several of mine do.
11	Q. So the one's that are left behind are left by the other
12	students that do not pick them up?
13	A. Correct.
14	MR. SAROSY: Okay. Thank you.
15	THE COURT: Sir, you may step down.
16	THE WITNESS: Thank you, Your Honor.
17	THE COURT: Next witness.
18	MR. FRANK: Your Honor, the Plaintiffs' next witness
19	is Mr. Reno May.
20	THE COURTROOM DEPUTY: Face me. Raise your right
21	hand.
22	Do you solemnly swear that the testimony you shall give in
23	the cause now before this Court shall be the truth, the whole
24	truth, and nothing but the truth, so help you God?
25	THE WITNESS: Yes, sir.

Please be seated. THE COURTROOM DEPUTY: 1 Please state your name and spell your last name for the 2 record. THE WITNESS: Reno May. Last name, M-a-y. THE COURT: Please proceed. MR. FRANK: Thank you, Your Honor. 6 RENO MAY. called by and on behalf of Plaintiffs, testified as follows: DIRECT EXAMINATION BY MR. FRANK: 10 Mr. May, how many firearms do you own, roughly? 11 Q. 12 Fifteen to twenty, I believe. 13 Q. And how many of those are handguns? 14 I would say, roughly, half of them. Now, are there any off-roster models of handguns that you 15 Q. 16 have been interested in purchasing but have not been able to? 17 Α. Yes, sir. 0. Can you please name those? 18 One of them in specific that I would like to acquire would 19 be either a Staccato, either the C or P series, I believe, and 20 then some Atlas firearms, both of which are 2011-style 21 firearms, and then in addition to that, small subcompact 22 firearms that would be more suitable for concealed carry. 23 24 what would those models that are more suitable for 25 concealed carry be?

- 1 A. Things like the Shield 2.0; the Ruger -- I think it is the
- 2 LCP MAX; and then the Sig Sauer P365.
- 3 | Q. And would those be for concealed carry purposes?
- 4 A. Correct.
- 5 | Q. You have a California-issued concealed carry weapons
- 6 | permit?
- 7 A. Yes. I've had a CCW in Sonoma County for approximately
- 8 | four years now.
- 9 Q. And what efforts have you undertaken to try to locate
- 10 | these models that you mentioned?
- 11 | A. Unfortunately, due to the gray market, it is very
- 12 difficult to find one. You have to go on popular websites like
- 13 | Cal Guns, possibly Armslist, and find someone who currently
- 14 owns one in the State of California. Usually, law enforcement
- 15 | who purchased one. And when you do find one, it is usually
- 16 two, potentially three times the asking price of a brand new
- 17 | firearm in another state.
- 18 | Q. So there is significant price margin markups in the
- 19 | secondary gray market if you are searching for one of these
- 20 types of pistols?
- 21 A. Because of the high demand and the very low supply,
- 22 | usually being supplied by law enforcement or people who move
- 23 | from out of state into this state with one of those firearms,
- 24 | it's hard to come by, and it is very expensive.
- 25 Q. In addition to significant price markups, are there other

1 | issues that arise at times?

- 2 A. There have been times where I found a firearm that I was
- 3 | interested and that I would be interested in purchasing due to
- 4 | the price, but because of the State of California laws, I would
- 5 | have to drive to a store to meet them. California, sometimes
- 6 | the drive can be eight hours, like the drive that I took to get
- 7 | down here. Eight hours there, eight hours back. Ten days
- 8 | later or more, eight hours there, eight hours back. It can be
- 9 | very difficult to acquire, even if it's not just monetarily.
- 10 | Q. And of the models that you mentioned that you would likely
- 11 | carry -- I believe you mentioned there was a model from the
- 12 | manufacturer Ruger, another one from Sig Sauer.
- 13 | A. Uh-huh.
- 14 Q. What is it about those particular models that you prefer
- 15 | to -- or rather, what features of those models are desirable to
- 16 | you?
- 17 A. A lot of them, they are very reliable from the factory. I
- 18 | have owned firearms that are on the California handgun roster
- 19 | that fill a similar role, but the triggers are undesirable, and
- 20 | some of the features on them aren't modern that I would like to
- 21 have on a more modern firearm. Them being much smaller makes
- 22 | them much more suitable to carry as well.
- 23 | Q. So would it be fair to say that, due to distance and price
- 24 | and limited availability, you've been unable to locate these
- 25 | models that you would use for personal defense?

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- 1 A. Correct.
- 2 MR. FRANK: Thank you, Mr. May.
- Thank you, Your Honor. I don't have any further questions.
- 5 THE COURT: Very well.
- 6 CROSS-EXAMINATION
- 7 BY MR. SAROSY:
- 8 Q. Good morning, Mr. May. My name is Charlie Sarosy. I'm a
- 9 Deputy Attorney General representing the defendant in this
- 10 case. Thank you for being here and making the drive.
- 11 A. Good morning.
- 12 Q. You currently own firearms, as you said; correct?
- 13 A. Correct.
- 14 Q. And I'm assuming you legally purchased those firearms;
- 15 | correct?
- 16 A. Yes, sir.
- 17 | Q. And do you store those firearms at your residence?
- 18 A. Correct.
- 19 Q. And I think you said you have about 15 to 20 firearms that
- 20 | you currently own?
- 21 A. Correct.
- 22 Q. And about how many of those are handguns?
- 23 A. I believe about ten of them, about half.
- 24 Q. About ten. Okay.
- 25 And are all of the firearms that you own operable, meaning

- 1 | they can shoot?
- 2 A. Some of them are in disassembled states, but they
- 3 otherwise would function if assembled.
- 4 | Q. And of the handguns that you own, how many of them are
- 5 operable, as in not disassembled?
- 6 A. I would say all of them are operable.
- 7 | Q. Okay. So if they are currently all operable, you could
- 8 use any one of those to defend yourself, if you needed to?
- 9 A. They all do fire bullets, so, yes.
- 10 Q. Of the handguns that you own, how many are semi-automatic
- 11 | pistols?
- 12 A. I believe six, but I would have to spend more time to,
- 13 like, make sure that that's -- six, approximately.
- 14 Q. And the remaining handguns that you have, are they
- 15 revolvers or single shot pistols?
- 16 A. Some of them are single shot pistols.
- 17 Q. Okay. And of the semi-automatic pistols that you own, how
- 18 many are off-roster handguns?
- 19 A. It's hard to say because I believe some of the firearms
- that I own were at one point on the roster but are no longer.
- 21 Q. Okay. About you have previously purchased off-roster
- 22 | firearms; correct?
- 23 A. Correct.
- 24 Q. Through a private party transaction?
- 25 A. Correct.

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- 1 | Q. And you mentioned before that you have on-roster handguns
- 2 | that are similar to the off-roster ones you would like to
- 3 purchase?
- 4 A. Correct.
- 5 | 0. So what are --
- 6 A. Or have had. I have sold them since.
- 7 Q. Okay. What are -- can you -- do you remember what those
- 8 on-roster handguns are?
- 9 A. The one that I sold was the Smith & Wesson Shield, which
- 10 has the magazine disconnect with the loaded chamber indicator
- 11 | and the physical safety, that is currently on the handgun
- 12 | roster in a 9mm.
- 13 Q. The M&P?
- 14 A. The M&P Shield, yeah. I sold that firearm because, at one
- 15 | point, I had the loaded chamber indicator break, and it no
- 16 | longer stuck up anymore because the mechanism that causes it to
- 17 | stick up is a very small sliver --
- 18 Q. I'm good. Thank you. I appreciate it.
- 19 A. Uh-huh.
- 20 | Q. I just wanted to know which ones. Were there other ones?
- 21 A. My memory on which firearms I may have had and don't have
- 22 | anymore that I sold legally, I'm sorry, I don't --
- 23 | Q. But you previously did have ones that are similar to the
- 24 ones that you want to buy?
- 25 A. Correct.

- 1 Q. And you mentioned that you have a CCW?
- 2 A. Correct.
- 3 Q. Meaning you can carry a handgun in public, subject to
- 4 other regulations and laws; correct?
- 5 A. Yes, correct.
- 6 | Q. And about how many handguns do you have listed on your
- 7 | CCW?
- 8 | A. My county allows three, and I have two that are
- 9 | currently -- well, actually I do have three that are currently
- 10 on the CCW.
- 11 Q. And the two or -- sorry. You said two or three?
- 12 A. I'm allowed three, and I currently have three on my
- 13 permit.
- 14 Q. Okay. And those three are not -- are they subcompact
- 15 or --
- 16 A. They are a variety of sizes. Because I was limited to
- 17 | three pistols, I chose a microcompact firearm, a mid-sized
- 18 | firearm, and a much larger firearm that would be suitable for
- 19 | backcountry threats.
- 20 | O. And all three are concealable --
- 21 A. Correct.
- 22 Q. -- because you have them on your CCW?
- 23 | A. Uh-huh.
- 24 | Q. And I think you said two of those are not compact;
- 25 | correct?

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- 1 | A. The Glock 19 is advertised and marketed as a compact
- 2 | firearm, so two of them would be considered compact concealed
- 3 | carry firearms.
- 4 | Q. Okay. And you are a right-handed shooter; correct?
- 5 | A. Correct. I am right-handed, but I am left-eye dominant.
- 6 Q. Okay. And since the lawsuit was filed on August 1, have
- 7 | you purchased any handguns?
- 8 A. Yes.
- 9 Q. And you have manufactured your own single shot pistols;
- 10 | correct?
- 11 A. I have manufactured my own single shot pistols.
- 12 | Q. And you have received serial numbers for those single shot
- 13 pistols from the California Department of Justice; correct?
- 14 A. After about a year, my --
- 15 Q. It's just a "Yes" or "No," Mr. May.
- 16 A. Yes.
- 17 | Q. Thank you. And I understand you prefer not to purchase
- 18 | more off-roster handguns via a private party transaction, but
- 19 | you have done so in the past; correct?
- 20 A. In the past.
- 21 | Q. Okay. All right.
- MR. SAROSY: That's all I have. Thank you, Mr. May.
- 23 | THE COURT: Anything further?
- 24 MR. FRANK: No. Your Honor.
- THE COURT: Sir, you can step down. You are excused.

why don't we give our court reporter a break, and we'll 1 pick back up in ten minutes. 2 (A brief recess was taken.) 3 THE COURTROOM DEPUTY: Please come to order. This Court is again in session. 5 THE COURT: All right. Are we ready to for the next 6 7 witness? MR. DALE: We are, Your Honor. We were having a 8 discussion, though, off the record about the possibility of 9 allowing our remote experts to listen into the other expert's 10 testimony, if the Court would be willing to entertain that. 11 THE COURT: I would. 12 MR. DALE: Okay. Thank you, Your Honor. 13 MR. SAROSY: Thank you. 14 MR. BRADY: Plaintiffs would like to call Mr. Salam 15 16 Fatohi. THE COURT: Very well. 17 THE COURTROOM DEPUTY: Mr. Fatohi, raise your right 18 hand, sir. 19 Do you solemnly swear that the testimony you shall give in 20 the cause now before this Court shall be the truth, the whole 21 truth, and nothing but the truth, so help you God? 22 THE WITNESS: T do. 23 THE COURTROOM DEPUTY: Please state your name and 24 spell your last name for the record. 25

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THE WITNESS:
                             Salam Fatohi. Last name is F, as in
1
    "Frank"; A, as is "apple"; T, as in "Tom"; O, as in "Oscar"; H,
2
    as in "hotel"; I, as in "igloo."
3
              THE COURT: Please proceed.
4
              MR. BRADY:
                          Thank you, Your Honor.
5
         If you have any issues understanding what he's saying,
6
    please let me know. Because it is a little muffled; right?
7
              THE COURT REPORTER: Yes.
8
              MR. BRADY: The sound, right.
9
              THE WITNESS: Sorry about that. I will try to speak
10
    up, too.
11
              MR. BRADY: Yeah, there's a little -- I don't know if
12
    it's muffled or -- so if you could speak slowly and strongly
13
    for the court reporter, we would appreciate that, please.
14
15
              THE WITNESS:
                             Absolutely.
                              SALAM FATOHI,
16
      called by and on behalf of Plaintiffs, testified as follows:
17
                            DIRECT EXAMINATION
18
    BY MR. BRADY:
19
         Good morning. Thank you for joining us, Mr. Fatohi.
20
    Q.
         Can you tell us who your employer is, please?
21
               I work for the National Shooting Sports Foundation.
22
    Α.
         The National Shooting Sports Foundation. Is it also known
23
    Q.
    as NSSF?
24
               It is a mouthful, so that is it for short.
25
         Yes.
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Suzanne M. McKennon, CSR, CRR, RMR
United States Court Reporter
suzanne\_mckennon@cacd.uscourts.gov (213) 894-3913

- 1 | Q. So what is NSSF?
- 2 A. So we are the trade association for the firearm ammunition
- 3 | industry.
- 4 | Q. And what is your job title at NSSF?
- 5 A. I am the manager of research.
- 6 | Q. What sort of work do you do as the research manager at
- 7 NSSF?

Market, i

- 8 A. So I follow very closely the firearm ammunition industry
- 9 | performance and trainings and also keep up-to-date on
- 10 | legislative and policy research.
- 11 | Q. Are you familiar with California's Unsafe Handgun Act?
- 12 A. Yes. It contains a roster --
- 13 Q. I'm sorry. I was going to -- were you about to say
- 14 | something to my last question or -- my question was: Are you
- 15 | familiar with California's Unsafe Handgun Act?
- 16 A. Yes. I'm sorry. Someone started speaking, so I stopped
- 17 | speaking.
- 18 Q. Okay. Was it a, yes, you are familiar with California's
- 19 Unsafe Handgun Act?
- 20 A. Yes. Yes, I am.
- 21 | Q. Can you explain, basically, what your understanding is?
- 22 A. Yes. Absolutely. So from my understanding, California
- 23 | maintains a roster of handguns certified for sale, and those
- 24 | are handguns that are allowed to be commercially sold in the
- 25 | state. In order to be on the roster, the handgun has to either

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- 1 | be grandfathered in or have a -- three different
- 2 characteristics on them which are to be tactile, loaded chamber
- 3 | indicator, magazine disconnect, and microstamping technology.
- 4 | Q. Okay. Do you know what a chamber load indicator is?
- 5 A. Yes, I do.
- 6 Q. Can you explain what your understanding is?
- 7 A. Yes. So a loaded chamber indicator is, when a handgun has
- 8 | a round in the chamber, there will be a mechanical function on
- 9 | the pistol for a feature to designate that there is a round
- 10 | inside that chamber.
- 11 | Q. Okay. Do you know what a magazine disconnect mechanism
- 12 | is?
- 13 A. Yes. It's a feature on the handgun that prevents the
- 14 | firearm from firing unless the magazine is seated flush inside
- 15 | the handgun.
- 16 Q. Do you know what microstamping is?
- 17 A. Yes.
- 18 Q. Can you explain, just basic level, what your understanding
- 19 of microstamping is?
- 20 A. Absolutely. So my understanding of microstamping is that
- 21 | it's a technology implemented into a firearm that, during the
- 22 | firing sequence of that handgun, would leave a marking on the
- 23 expected or -- I'm sorry -- ejected shell casing of that round
- 24 | that was just fired.
- 25 | Q. How did you become familiar with the Unsafe Handgun Act?

- 1 A. So the NSSF on our website keeps a number of fact sheets
- 2 | up-to-date. It is my job to keep those fact sheets up-to-date.
- 3 One of the fact sheets is on microstamping -- one of those fact
- 4 | sheets is a going to be a fact sheet on microstamping. And in
- 5 | review of not only the history of all the ins and outs of
- 6 | microstamping, we also reviewed the legislative actions that
- 7 | have been done of microstamping, which then brought in the UHA.
- 8 Q. So you reviewed the roster as part of your work at NSSF to
- 9 | provide facts about it? Is that accurate?
- 10 A. Yes.
- 11 Q. And what sort of facts --
- 12 A. In review --
- 13 | Q. I'm sorry?
- 14 A. Go ahead. I cut you off. I apologize.
- 15 | Q. It's okay. Do you have anything additional to add or --
- 16 A. Yes. So as part of my duties in reviewing that fact sheet
- 17 to make sure it's up-to-date, we look for any changes that
- 18 | might be available. And one of those is an annual review of
- 19 the UHA. And what I would do is do a thorough analysis of the
- 20 | handguns available for sale in California, just kind of review
- 21 and try to find a true number of how many handguns are actually
- 22 | on the list.
- 23 Q. A true number of how many handguns are on the roster? Is
- 24 | that what you're saying?
- 25 A. Yes.

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Q. Can't you just go look at the roster and see the number of them and count them?

A. So it's a little bit more in-depth than that. So what I will do is, because there isn't an availability to just download a current list, we would go through and manually pull all of the firearms that are on the roster. I then go through a review process that is reviewed typically by major manufacturers in the industry for logic check to see how many of these are actually on there.

The reason why I do that is because the roster has certain rules and regulations surrounding it. And if there are two identical pistols on the roster but one is featured with a certain cosmetic, you know, setup by a certain cosmetic feature, then it's treated as a totally different handgun. And so you could have two of the exact same pistols available on the roster, but it's actually just one pistol with two different cosmetic styles.

And so that's why I go through it manually to try to find the true number of how many handguns are actually on the roster available for sale.

Q. So in making what you consider to be accurate count of how many handguns are on the roster, you are essentially grouping models that are separate, listed as separate models on the roster, as a single model if they are similar or if they're the same other than cosmetic features. Is that fair to say?

1 | A. That's correct. If they differ in any which way

2 | mechanically or by design, say, by a certain barrel length

3 | versus another or different chambering, then they are a

4 different handgun. Or if they are the exact same chambering

5 design, overall length, barrel length, all of those key

6 | features of the design, they only differ based on, say, a

7 | Stericoat, a coloring, applied to one versus the other, then I

8 | would treat those two models as one model in my count.

9 Q. And when is the last time you did this assessment of the

10 | roster?

11 A. The last time we had gone through this -- and I'll admit

12 | it is a little bit out of date -- I believe is fourth quarter

13 | in 2020.

14 Q. And do you recall how many firearms the roster had listed

15 | claimed were separate handgun models at that time?

16 A. To the best of my knowledge, I believe, it was a little

17 over 900 at the time that were reported on the front page of

18 | the website. But during my analysis, I found that only about

19 | half of them were really individual designs.

20 Q. That was my next question. So the roster, when you

21 | reviewed it, had approximately 900 separate handgun models

22 | listed? And after doing your analysis, where you lumped

23 | together models that the roster treated as separately but you

24 determined were, essentially, the same model because they only

25 | were different with respect to cosmetic features like color or

1 | coating, that it was about half that?

- 2 A. That's correct.
- 3 Q. Mr. Fatohi, can you tell me what see on your screen?
- 4 | A. Yeah, that is the decertified handgun model list.
- 5 Q. And what is your understanding of this list?
- 6 A. So these were handguns that were once on the approved
- 7 | handguns-for-sale roster and had subsequently fallen off due to

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- 8 a number of reasons.
- 9 Q. Do you know any the reasons why handguns would come off of
- 10 | the roster?
- 11 | A. So to my knowledge, it can really only be one of three
- 12 | reasons. First and foremost, the manufacturer cannot certify
- 13 that the design has not changed in any which way. Or the
- 14 | manufacturer decides not to recertify and pay the annual fee.
- 15 | I believe it's \$200. Lastly, the State of California can, upon
- 16 | further analysis, declare that the handgun is no longer fit for
- 17 | sale on the handgun-available-for-sale roster.
- MR. BRADY: I would like to enter this as Exhibit 4?
- 19 | THE COURT: Any objection?
- 20 MR. SAROSY: No, Your Honor.
- 21 | THE COURT: Exhibit 4 will be received into evidence.
- 22 (Exhibit 4 was received into evidence.)
- 23 BY MR. BRADY:
- 24 | Q. Mr. Fatohi, you discussed the reasons why handguns fall
- 25 off the roster; right? You gave three separate reasons; is

- 1 | that right?
- 2 A. Uh-huh.
- Q. And are you familiar with any instances of -- recent
- 4 | incidences of firearms falling off the roster for specific
- 5 | reasons? Do you have any examples of a manufacturer who did
- 6 | not want their firearm to fall off the roster and it did?
- 7 MR. SAROSY: Objection, Your Honor. Lacks
- 8 | foundation.
- 9 THE COURT: If you know, sir.
- 10 BY MR. BRADY:
- 11 Q. Do you understand the question, Mr. Fatohi?
- 12 A. I'm sorry. I missed what was said after, and I didn't
- 13 | want to interrupt.
- 14 | Q. If you understood the question, you can answer it;
- 15 otherwise, I could restate.
- 16 A. Yes, please restate.
- 17 Q. Okay. So the question is: Are you aware of any
- 18 | manufacturer whose firearm fell off the roster for any specific
- 19 | reason? Are you aware of the reasons that they actually fell
- 20 off?
- 21 | A. So I'm aware of H&K, which had a number of firearms that
- 22 | we're removed. The explicit reason of why, I can only safely
- 23 | assume that there was improvement to manufacturing and safety
- 24 | that then would disqualify that handgun from staying on the
- 25 roster. The reason why is because the requirement of the

- 1 | roster is that no changes are made whatsoever to any part,
- whether it's manufacturing or sourcing or improvement to that
- 3 design.
- 4 MR. SAROSY: Your Honor, I am going to renew my
- objection. He said, "I assume." I am not sure what the
- 6 | foundation is here.
- 7 | THE COURT: Duly noted. Overruled.
- 8 BY MR. BRADY:
- 9 | Q. So, Mr. Fatohi, have you seen the article that is on your
- 10 | screen?
- 11 A. Yes, I have.
- 12 | Q. And is this what you were referring to when you were
- 13 | saying that H&K had handguns fall off the roster or that it
- 14 | removed models off the roster?
- 15 A. Yes.
- 16 Q. And it was your testimony, correct, that you do not know
- 17 | why they fell off the roster but you would have no reason to
- 18 | believe that they fell off the roster for any other reason
- 19 other than they changed some parts?
- 20 A. Yes. The only thing I could really kind of surmise,
- 21 unless the State decided to -- unless the State decided that,
- 22 | upon further review, they declared them unsafe, which I am not
- 23 | aware of, then the fallback would have to be that H&K had made
- 24 | some sort of manufacturing improvement, which manufacturers
- 25 | routinely do, whether it's for safety or manufacturing

efficiency. A part could have been changed on H&K's line, which then dropped it off of the roster.

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Q. Are you aware of any other specific instances of a manufacturer having their firearm removed from the roster without their desire for it to be removed from the roster? Let me strike that.

I shouldn't say "any other," because we concluded that we don't know if that happened with H&K. But are you aware of any manufacturers where you know the reason that their firearm was removed from the roster involuntarily?

- A. So I am aware of an instance with Ruger, which had a model -- their FNP removed. And in order to be put back on the roster and available for sale, Ruger had to then bring back the original design of that firearm without the manufacturing improvements that were put on to it.
- Q. Do you know what those manufacturing improvements were that Ruger made, that made it -- their handgun fall off the roster, get removed from the roster?
- 19 A. To be honest, at this time, I'm not aware.
- Q. Okay. So you don't know whether it was -- if it was minor changes, major changes?
- A. No. Because of the design -- it's pretty established. I
  would have to assume it was something for manufacturing
  efficiency and not a major contributor to the overall function
  and form of the firearm.

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- 1 | Q. And your review -- actually, strike that.
- I'd like to enter this as Exhibit 5, the article.
- THE COURT: Any objection?
- 4 MR. SAROSY: Objection, Your Honor. Hearsay.
- 5 THE COURT: Sustained.
- 6 BY MR. BRADY:
- 7 Q. In your work as NSSF, do you stay updated about trends in
- 8 | the national firearm marketplace?
- 9 A. Yes, I do. So I routinely, as part of my duty, look over
- 10 | articles, peer-reviewed articles, magazines related to firearm
- 11 | research, and those publications always have the latest,
- 12 greatest firearms, whether it's for advertising or a feature on
- 13 the firearm that is coming out on the market.
- 14 Q. So in doing that work, you've gained a knowledge about
- 15 | what handgun models are being offered commercially on a
- 16 | nationwide level; is that correct?
- 17 A. Yes. I have a -- I would say I have a pretty firm grasp
- 18 on what the latest and greatest is.
- 19 Q. Are there any models that you're aware of that are offered
- 20 | commercially on a national level that are not offered in
- 21 | California?
- 22 A. Yes. So, primarily, I would say, probably, one of the
- 23 | most popular pistols out of there are Glocks 5th Generation
- 24 Offerings. And to my knowledge, only the 3rd Gen is available
- 25 | for sale in commercial markets in California.

- 1 | Q. I'm sorry. Did you say Glock -- what was it? Gen5?
- 2 | A. Yes. The Gen5 is probably the most popular handguns,
- 3 | nationally, right now.
- 4 Q. And the Glock Gen5 is not on the California roster?
- 5 A. Correct. Only the Gen3 is available.
- 6 Q. Was there a Gen4?
- 7 A. Yes.
- 8 Q. Was the Gen4 ever on the California roster, to your
- 9 knowledge?
- 10 A. I do not believe it was.
- 11 | Q. So the Glock Gen3 is on the California roster, but Glock
- 12 | is now making a Gen5 that is available nationally?
- 13 A. Yes. The manufacturer of the Glock has since made
- 14 improvements in manufacturing efficiency that has led to two
- 15 | newer generations being out now. So the Gen3 is still only the
- 16 | latest and greatest ending up on the roster, commercially, in
- 17 | California.
- THE COURT: Counsel, would you follow up on that,
- 19 | what manufacturing efficiencies or if there is any other
- 20 | improvements besides manufacturing efficiencies from the 3rd
- 21 | Gen to the 5th.
- THE WITNESS: I'm sorry. Say it again.
- MR. BRADY: Absolutely, Your Honor.
- 24 | Q. Did you hear His Honor's question, Mr. Fatohi?
- 25 A. Only bits and pieces. I apologize.

1 Q. So essentially what he's asking is: Are you familiar with

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2 | what improvements -- you called them improvements -- were made

3 | from the Gen3 to the Gen5 to cause Glock to make it a newer --

4 | a different Gen, if you will?

5 A. So on the generational differences between the 3, 4, and

5, there are external features, but then also the materials

7 used to make various parts internally and externally are

8 | continuously updated, which is why Glock makes the generations

9 the way that they do. As they get better materials, better

10 ways to manufacturer materials, and also external features,

11 | that is really what separates the Gens 3, 4, and 5 out.

12 Q. And what's the reason for change of materials. You say

13 | "better." Better in what regard?

14 A. So it's really up to kind of the individual part. But,

15 | typically, it's a durability and efficiency to manufacturer

16 that part. So if it costs less money, is as durable, more

17 durable, or able to manufacturer that part faster based on the

18 | material used, those all go into manufacturing efficiency.

19 Q. In your experience in reviewing the national handgun

20 | marketplace, are chamber load indicators popular on

21 | commercially sold handguns outside of California?

22 A. No, they are not.

23 | Q. Are you aware of any popular handgun models, that are

24 | commercially available outside of California, that have a

25 | chamber load indicator?

1 A. So there are some that have a form of -- so, for example,

- 2 | Smith & Wesson M&Ps have a recessed drilled-out hole at the
- 3 | base of the barrel that will allow for visual inspection, but I
- 4 believe that California calls for a tactile load chamber
- 5 | indicator, which is not popular at all on the national market.
- 6 Q. And beyond that, you're essentially saying some
- 7 | manufacturers will have a hole where you can look into the
- 8 action to see if it's loaded. Is that accurate?
- 9 A. That's correct.
- 10 | Q. How, in your estimation -- is that the majority of them?
- 11 Or is that just a few?
- 12 A. I would say for the ones that do have any form of loaded
- 13 | chamber indicator, that is the only form that is available
- 14 | right now.
- 15 Q. And what I'm asking is, in the universe of all handguns,
- 16 | would it be a majority or a minority that have that hole for
- 17 | you to look into the chamber?
- 18 A. A minority. And even less so for a tactile version.
- THE COURT: And why is that, sir? Why is that not
- 20 | popular?
- THE WITNESS: It's simply not something that is
- 22 desired by the market.
- THE COURT: I didn't hear that answer.
- 24 BY MR. BRADY:
- 25 Q. Can you repeat your answer, Mr. Fatohi?

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A. I'm sorry about that. I said, it is simply not something that's desired by the market.

THE COURT: Do you know why it's not desired?

THE WITNESS: I can only assume, which I don't want
to. What kind of leads me to my answer is, because it's not
something that is desired by the market, manufacturers will not
spend the time and money and resources to implement those
designs into their manufacturing process for their pistols.

THE COURT: Am I to assume, then, you are not aware of any reason as far as the structure, the use, or functioning of the firearm why that is not included? If you understand my question.

THE WITNESS: I'm sorry. Could you say that again?

THE COURT: I am just trying to get an understanding of why the market or people don't want a CLI on it, and does it have -- it doesn't sound like it has anything to do with the functioning of the weapon, to your knowledge, as opposed to -- it sounds like it's just a cost or it's a feature that people don't care about.

THE WITNESS: I don't think that it's a feature that is really utilized on a wide margin. From my experience and my exposure in the industry, it's not implemented because the consumer base just doesn't really use it. We don't see a reason for it.

THE COURT: In any of your dealings or experience,

have you heard that the indicator, on occasion, can actually make it difficult for the user of the firearm to focus on the target?

THE WITNESS: With the tactile ones, yes, because it is a physical piece that kind of draws itself up from the top of the slide. And depending on the design of the pistol, it could obscure or distract the shooter, shooter sights.

THE COURT: Thank you.

BY MR. BRADY:

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- Q. Are magazine disconnect mechanisms popular on handguns commercially sold outside of California, to your knowledge?
- 12 A. The only instances of magazine safety, that I'm aware of,
- 13 | are primarily in recreational rimfire handguns. The vast
- 14 | majority of handguns are, of course, centerfire, and centerfire
- 15 | handguns really do not have that magazine safety implement and
- 16 other technology.
- 17 Q. I'm sorry. Did you say that in some "rimfire"? Is that
- 18 | the word you used?
- 19 A. Yes. Rimfire 22 handguns.
- 20 | Q. Okay. And, to your knowledge, rimfire handguns and
- 21 | centerfire handguns are treated differently on the roster? Is
- 22 | that your understanding?
- 23 A. I would say that they are treated differently from a
- 24 | manufacturing standpoint. Primarily, manufacturers, if they do
- 25 | implement a magazine safety, it is almost only for current

1 | market and current products only implemented in rimfire

2 | handguns, which are largely a recreational product, versus a

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- 3 | centerfire product, that is largely duty or self-defense.
- 4 Q. So it's fair to say that semi-automatic centerfire
- 5 | handguns that are sold outside of California generally do not
- 6 come with a magazine disconnect mechanism?
- 7 A. That's correct.
- 8 Q. Do you see am image of a handgun on your screen,
- 9 Mr. Fatohi?
- 10 A. Yes. I am looking at the Shield M&P 9.
- 11 Q. Okay.
- 12 A. I believe this is California-compliant model.
- 13 Q. You just answered my next question. So you are familiar
- 14 | with this handgun model then?
- 15 A. Yes. Yes, I am.
- 16 | Q. To your knowledge -- and you said -- I'm sorry. You
- 17 described it as -- it is the -- what model?
- 18 A. That appears to the California-compliant model.
- 19 Q. The California-compliant model.
- 20 | Sorry. I'm trying to zoom in on this here.
- 21 So under Product Features, it says, "A
- 22 | California-compliant tactile loaded chamber indicator and
- 23 | magazine safety."
- Is that what you're referring to when you say it's the
- 25 | California-compliant version?

- 1 A. Yes, I am.
- 2 | Q. To your knowledge, is this handgun model, the Smith &
- 3 | Wesson M&P 9 Shield, popular outside of California?
- 4 A. The noncompliant ones are.
- 5 Q. Is this one that has the chamber load indicator and
- 6 | magazine disconnect mechanism popular outside of California, to
- 7 | your knowledge?
- 8 A. No. This particular one with the tactile loaded chamber
- 9 | indicator in the magazine M&P is not popular outside of
- 10 | California.

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- MR. BRADY: Okay. I would like to enter this as
- 12 | Exhibit 6, please.
- 13 MR. DALE: Five.
- MR. BRADY: Five. I'm sorry. Exhibit 5.
- 15 THE COURT: Any objection?
- MR. SAROSY: No objection, Your Honor.
- 17 | THE COURT: Exhibit 5 will be received into evidence.
- 18 (Exhibit 5 was received into evidence.)
- 19 BY MR. BRADY:
- 20 Q. Mr. Fatohi, you mentioned a different version of this
- 21 | pistol, of the pistol we just looked at, the M&P Shield.
- Is this, on your screen, the model that you were referring
- 23 to?
- 24 A. Yes. That looks to be the latest M&P Shield that is
- 25 lavailable across the nation.

1 | Q. And it's called the M2.0. So it's the updated version of

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- 2 | the M&P Shield?
- 3 A. Yes.
- 4 | Q. And, to your knowledge, is this firearm model popular
- 5 outside of California?
- 6 A. Yes, it is.
- 7 MR. BRADY: I'd like to enter this as Exhibit 6,
- 8 | please.
- 9 THE COURT: Any objection?
- MR. SAROSY: No objection, Your Honor.
- 11 THE COURT: Exhibit 6 will be received into evidence.
- 12 (Exhibit 6 was received into evidence.)
- 13 BY MR. BRADY:
- 14 | Q. Mr. Fatohi, are you aware of any commercial manufacturer
- 15 | currently producing a handgun with microstamping technology?
- 16 A. No. I am not.
- 17 Q. Are you familiar with a manufacturer that has ever
- 18 | commercially produced a handgun with microstamping technology?
- 19 A. No, I am not.
- 20 Q. Do you have any figures on how many handguns are sold
- 21 | nationwide on an annual basis?
- 22 A. Yes. Actually, if we look to the ATF AFMER, which is the
- 23 | production report --
- 24 Q. I'm sorry. Mr. Fatohi, could you slow down and repeat
- 25 | that. I didn't hear. Did you say the ATF?

- 1 | A. Sorry. I'm sorry about that. The ATF AFMER, which is the
- 2 | Firearms Manufacturing Export Report produced by the ATF on all
- 3 domestic firearm production. And if we looked at that -- I
- 4 believe the latest is the 2020 version. They are always a
- 5 | couple of years behind. And the last time I recall looking at
- 6 | that executive summary, there were somewhere around five and a
- 7 | half million pistols produced in 2020.
- 8 | Q. And -- correct me if I'm wrong -- it's been your testimony
- 9 | that the majority of those are not on California's roster?
- 10 A. That's correct.
- 11 Q. In your work at NSSF, have you learned about the size of
- 12 | the California firearms marketplace?
- 13 A. So NSSF has never done any targeted firearm market size
- 14 | studies of California. But I'm in charge of updating our
- 15 annual economic impact report, which is a national report
- 16 broken out by state on the economic impact of the firearm and
- 17 ammunition industry. And in that report, California is always
- 18 a top performer in the summarized metrics.
- 19 There it is right there.
- 20 Q. Is this the report that you were just referring to --
- 21 A. Yes.
- 22 | Q. -- on your screen?
- I would like to enter this as Exhibit 7, please.
- 24 | THE COURT: Any objection?
- MR. SAROSY: Objection. Hearsay. Lacks foundation.

1 | I don't know where this is from, Your Honor.

- 2 BY MR. BRADY:
- 3 | 0. Mr. Fatohi --
- 4 Sorry about that.
- THE COURT: Do you want to lay the foundation and why
- 6 | it's not hearsay.
- 7 BY MR. BRADY:
- 8 Q. Mr. Fatohi, you work for NSSF; correct?
- 9 A. That's correct.
- 10 Q. And NSSF has produced this report that we're looking at
- 11 here?
- 12 A. So this report, the data that is made from it and included
- in it is generated from economic data provide by global
- 14 economics. And that data is then brought to us, and we make
- 15 | the cosmetic changes to the report, change some of the text in
- 16 the report, do some of the background math, and then produce
- 17 | the finalized version of the report.
- 18 Q. So a third party is conducting the research and generating
- 19 the content and providing it to you all, and you are packaging
- 20 | it -- NSSF is packaging it in a report?
- 21 A. That is exactly right.
- MR. BRADY: I renew my submission of this report.
- 23 | THE COURT: I will allow it, because it sounds to me
- 24 | like it's a summary chart of statistics and information
- 25 | provided by the government, a public record. But if there are

any advocacy or arguments or statements made that are 1 argumentative or hearsay, defense can point that out. But with 2 that understanding, I'll receive it into evidence. 3 MR. BRADY: Thank you, Your Honor. (Exhibit 7 was received into evidence.) BY MR. BRADY: 6 So, Mr. Fatohi, on page 5 of this report, it has tables talking about the economic output, and it breaks down -- it 8 ranks -- why don't you explain page 5, because I think you were --10 No problem. Happy to. So our top ten page -- as you guys 11 can you see here -- we take our metrics that are supplied by 12 that third party, and we rank, based on performance, our 13 various metrics. And particularly in California, to get back 14 to the original question of the market size for California, 15 conclusions can be drawn from the size of it based on its 16 17 performance on this top ten page. Not only is California the number one federal excise tax but also number two in both jobs 18 and economic output for industry activity. 19 And are we seeing that by looking at the table and seeing California is listed as number two on economic output, total

- 20
- 21
- 22 dollars?
- Α. Uh-huh. 23
- And jobs, California is listed as two. And that is how 24 Q.
- 25 you are coming to that conclusion?

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- 1 A. Yes.
- 2 Q. The third table, the excise tax, can you briefly explain
- 3 | it to us. California is number one; is that correct?
- 4 A. That is correct.
- 5 Q. Can you explain what the excise tax means?
- 6 A. Sorry. Yes. So excise tax is paid on the wholesale value
- 7 | of firearms -- I'm sorry. Not firearms. But ammunition, long
- 8 guns, and handguns.
- 9 Q. So this is a tax that manufacturers of firearm-related
- 10 products and ammunition-related products pay to the government
- 11 | based on what they produce?
- 12 A. Yes. When manufacturing firearms for long guns, handguns,
- or ammunition, there is a requirement to pay a federal excise
- 14 tax on those products for the wholesale value.
- 15 Q. And California is number one in paying that tax?
- 16 A. That's correct. Out of all 50 states.
- 17 Q. So is it fair to say, based on this, that California is a
- 18 | fairly large firearm marketplace?
- 19 A. It is a huge marketplace.
- MR. BRADY: Thank you, Mr. Fatohi. That's all I
- 21 have.
- 22 CROSS-EXAMINATION
- 23 BY MR. SAROSY:
- 24 Q. Mr. Fatohi, can you hear me?
- 25 A. Yes, I can.

- Q. All right. Sorry. I didn't want to give you seasickness when I moved to the podium.
- My name is Charlie Sarosy. I'm a Deputy Attorney General representing the defendant in this case.
- You were just talking about -- I think it was Exhibit 6 and the charts of the federal excise taxes.
- 7 A. Uh-huh.
- 8 Q. California has the largest population of those states
- 9 | listed; correct?
- 10 A. I am not exactly sure. It might be. I know it's one of
- 11 | the top ones.
- 12 | Q. Are you aware of California's current population?
- 13 A. Not off the top of my head, sir, no.
- 14 Q. Do you know offhand that California has one of the largest
- 15 populations among the 50 states --
- 16 A. Yes.
- 17 | Q. -- in the United States?
- 18 A. It is certainly one of the largest populations, but I
- 19 | could not put a number to it right now.
- 20 | Q. I think at the beginning of your testimony, you mentioned
- 21 | handgun roster stats from fourth quarter 2020; correct?
- 22 A. Yes, correct.
- 23 Q. So that's over two years ago; correct?
- 24 A. Yes.
- 25 Q. And --

- 1 | A. Those are the fact sheets -- sorry, go ahead. All the
- 2 | fact sheets and all the metrics included in them every year,
- 3 | but sometimes we just don't have the time and bandwidth.
- 4 Q. Understood. Thank you.
- 5 Have you been to the Bureau of Firearms' website before?
- 6 A. The ATF website?
- 7 Q. No. The California Bureau of Firearms' website?
- 8 A. Oh, yes, I have.
- 9 Q. And have you been to the part of the website where it has
- 10 | searchable boxes for the handgun roster?
- 11 A. Yes.
- 12 | Q. And I know there is a difference between similars and, I
- 13 guess, tested handguns. But on the searchable boxes, you can
- 14 | look to see if a handgun is on the roster; correct?
- 15 A. Uh-huh.
- 16 | O. Is that a "Yes"?
- 17 A. Yes. Sorry, sorry, yes.
- 18 | Q. Thank you. And I know you were talking about chamber load
- 19 | indicators not being popular in the firearms industry, but
- 20 | chamber load indicators are something that are feasible;
- 21 | correct?
- 22 | A. I would say they could be feasible.
- 23 | Q. Well, there are handguns that are sold in California, that
- 24 | are on the roster that have chamber load indicators; correct?
- 25 A. Yes, there are.

- 1 Q. So that would mean they are feasible; correct?
- 2 A. To --
- 3 Q. It's feasible for a manufacturer to manufacture a firearm
- 4 | with a chamber load indicator?
- 5 A. Yes.
- 6 | Q. And there are handguns on the roster with a magazine
- 7 | disconnect; correct?
- 8 A. I believe there are some.
- 9 Q. And there are four manufacturers, I believe, that
- 10 | manufacture firearms with chamber load indicators and magazine
- 11 | disconnects: correct?
- 12 A. I am not sure on the specific number of four, but I know
- 13 there are some.
- 14 Q. Which ones do you know?
- 15 A. Smith & Wesson, especially the one that -- the model that
- 16 | we just talked about, the Shield. And I believe Ruger also
- 17 | produces one.
- 18 | Q. I'm sorry. What was the second one you said other than
- 19 | the Smith & Wesson?
- 20 A. Ruger. Sturm, Ruger.
- 21 Q. Ruger. Okay. And does it sound right that Kahr or Kahr
- 22 Arms -- K-a-h-r -- it's probably Kahr, probably not Care
- 23 Arms -- manufactures a firearm with a chamber load indicator
- 24 | and magazine disconnect that is on the roster?
- 25 A. I am not positive on that.

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- 1 Q. Are you aware of a handgun manufactured by Sig Sauer that
- 2 | manufactures handguns with the chamber load indicator, magazine
- 3 | disconnect?
- 4 A. No, I am not.
- 5 Q. And what about FMK Firearms?
- 6 A. I am not.
- 7 | Q. And are you aware that, as of July 1, 2022, microstamping
- 8 | is required in only one internal part of the semi-automatic
- 9 | pistol to comply with the Unsafe Handgun Act?
- 10 A. Yeah. I believe Gavin Newsom signed that September 2020.
- 11 | Q. And it is currently in effect; correct?
- 12 A. Yes. One instance of microstamping on a handgun.
- 13 | Q. And you said that you prepare fact sheets for each state
- 14 | in your role as a research manager; correct?
- 15 A. No, I do not. I prepare fact sheets on topics for the
- 16 | industry.
- 17 Q. Understood. I'm sorry.
- 18 A. Not each state.
- 19 Q. Sure. And are you aware that the National Shooting Sports
- 20 | Foundation previously sued the State of California regarding
- 21 | the microstamping requirement?
- 22 A. I'm aware.
- 23 Q. And you're aware that that case made it to the California
- 24 | Supreme Court; correct?
- 25 A. Yes, I am.

- Q. And are you aware that NSSF filed a brief along with the Sporting Arms and Ammunition Manufacturers' Institute in that case before the California Supreme Court?

  A. I am aware that that one was filed, but I am not aware of the details.
- 6 Q. So you, yourself, have not reviewed the brief?
- 7 A. I could not speak to it in detail right now.
- Q. Are you aware that, in that brief NSSF and the Sporting
  Arms and Ammunition Manufacturers' Institute conceded that
  microstamping was feasible for the firing pin of a
  semi-automatic pistol?
- 12 A. I am not.
- MR. BRADY: Objection. Misstates -- lacks foundation.
- 15 THE COURT: Overruled.
- MR. BRADY: What was the question?
- 17 MR. SAROSY: Your Honor, I have --
- THE COURT: He said he's not aware of it.
- MR. SAROSY: Your Honor, I have a copy of those
  briefs for the Court and Plaintiffs' Counsel, and I can show
  the witness to point him to those statements, if that would be
  helpful to the Court.
- THE COURT: Well, it's your choice. I assume you're going to be submitting into evidence those briefs. They

25 | were --

1 MR. SAROSY: I can.

THE COURT: -- a matter of public record.

I can receive them into evidence. If you want to ask him about it, please feel free to do, but I think your point is this is what they've said.

6 MR. SAROSY: I will at least show the witness the 7 brief.

8 THE COURT: All right.

- 9 BY MR. SAROSY:
- 10 | Q. All right. Mr. Fatohi, if you will give me one moment.
- Mr. Paschal, I think you have to add Mr. Woods as a host as well, or co-host.
- 13 THE COURTROOM DEPUTY: Try it now.
- 14 BY MR. SAROSY:
- 15 Q. All right. Mr. Fatohi, can you see this, copy of this
- 16 | brief?
- 17 A. Yes.
- 18 Q. And do you see the date on there as August 21, 2017?
- 19 A. Yes, I do.
- 20 Q. And do you see the National Shooting Sports Foundation as
- 21 | the party?
- 22 A. Yes.
- 23 Q. And do you see that this brief was filed by the NSSF?
- 24 A. Yes.
- Q. And I'm going to go to page 4, and I'm going to highlight

- 1 | the sentence for you.
- 2 Do you see the sentence -- I will read it.
- 3 A. Uh-huh. Okay.
- 4 Q. It says, "Specifically, while appellants acknowledge" --
- 5 and appellants here are NSSF, and I think SAAMI is the
- 6 | acronym -- "acknowledge that a microstamp imprinted on a firing
- 7 | pin of a semi-automatic pistol will occasionally transfer to
- 8 | the primer located at the rear of a cartridge case upon firing,
- 9 the record contains uncontroverted expert testimony that it is
- 10 | impossible to imprint a microstamp on any other surface or part
- 11 of a semi-automatic pistol that will transfer to the cartridge
- 12 | case when the pistol is fired."
- 13 Do you see that sentence?
- 14 | A. I do see the sentence.
- 15 Q. And that case occurred when microstamps were required on
- 16 | two places within a semi-automatic pistol; is that correct?
- 17 A. I believe so.
- 18 Q. So is it correct that NSSF admitted in the sentence that
- 19 | microstamping on one place is possible?
- 20 | A. You know, I believe the sentence says that it's
- 21 occasional.
- 22 Q. Well, occasional is possible; correct?
- 23 A. I believe so.
- 24 Q. I'm going to go to page 7. I'm going to highlight the
- 25 | sentence again for you. And it says, "Microstamped characters

1 | that identify the make, model, and serial number of a

- 2 | semi-automatic pistol (a "microstamped alphanumeric code") can
- 3 | be etched or imprinted on the tip of the pistol's firing pin,
- 4 | and such a microstamped alphanumeric code will sometimes
- 5 | transfer onto the primer contained within the cartridge case,
- 6 which the firing pin strikes during the pistol's firing
- 7 process."
- 8 Do you see that sentence?
- 9 A. Yes, I do.
- 10 | Q. And that is, again, NSSF admitting that microstamping on a
- 11 | firing pin is possible. Regardless of occasional or not, it is
- 12 | possible; correct?
- 13 A. I do believe that statement makes it so that the -- what
- 14 | you are saying is, yes, it's possible.
- 15 | Q. And that brief was filed in August 2017, so five and a
- 16 | half years ago, about?
- 17 A. Uh-huh.
- 18 Q. Sorry. I need a "Yes" or a "No," unfortunately.
- 19 A. Sorry. Correct, yes. Sorry about that.
- 20 Q. No problem. It's an awkward interaction to testify, so I
- 21 | get it.
- 22 All right. Your Honor, I would like to move into evidence
- 23 | for Defendant's Exhibit 25.
- 24 THE COURT: Is that the brief?
- MR. SAROSY: Yes, that's the brief.

THE COURT: Any objection? 1 No objection. MR. DALE: 2 THE COURT: That exhibit will be received into 3 evidence. 4 (Exhibit 25 was received into evidence.) 5 MR. SAROSY: Thank you, Mr. Fatohi. That's all I 6 have. THE COURT: Mr. Fatohi, just a couple questions for 8 9 you. In your opinion, based on your experience, why is 10 microstamping not popular, since you believe it could be done? 11 THE WITNESS: So while I do think that it could 12 occasionally happen to where microstamping technology works for 13 a one-off instance of supplying a gear code and that then makes 14 a it a possible technology, it is not really a feasible 15 technology based on the studies and also the patent within 16 itself stating, in technical data and studies, that it's not a 17 feasible technology. The sample size is far too large in a 18 laboratory study for the technology to be reliable; therefore, 19 it is not really a usable crime-solving tool, as it is 20 marketed. 21 22 THE COURT: Okay. Anymore questions? 23 MR. BRADY: No further questions, Your Honor. All right. Okay. Thank you, sir. 24 THE COURT: 25 THE WITNESS: Thank you very much.

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1	MR. BRADY: Your Honor, plaintiffs' next witness will
2	be Michael Beddow, and I believe he's awaiting us in the
3	THE COURT: Okay.
4	(A discussion was held off the record between Counsel.)
5	THE COURT: Hello, sir.
6	THE WITNESS: Hello.
7	THE COURT: Could you please come forward. I'm going
8	to have you stand right by our court reporter for a moment.
9	We'll administer an oath to you, and then have you take the
10	witness stand.
11	THE WITNESS: All the way over?
12	THE COURTROOM DEPUTY: Sorry.
13	(A discussion was held off the record between Counsel.)
14	THE COURTROOM DEPUTY: Please raise your right hand.
15	Do you solemnly swear that the testimony you shall give in the
16	cause now before this Court shall be the truth, the whole
17	truth, and nothing but the truth, so you help you God?
18	THE WITNESS: Yes, I do.
19	THE COURTROOM DEPUTY: Please be seated.
20	Please state your name and spell your last name for the
20 21	
	Please state your name and spell your last name for the
21	Please state your name and spell your last name for the record.
21 22	Please state your name and spell your last name for the record.  THE WITNESS: My name is Michael Beddow. Last name

## called by and on behalf of Plaintiffs, testified as follows:

## DIRECT EXAMINATION

3 BY MR. BRADY:

- 4 Q. Thank you, Mr. Beddow. Can you explain to us your
- 5 | background?
- 6 A. Absolutely. I have a bachelor's degree in chemistry from
- 7 Northern Arizona University. I have a master's degree in
- 8 | forensic science from the University of California at Davis.
- 9 Post graduation, I worked as a laboratory technician for the
- 10 | Sacramento County District Attorney's Crime Lab in Sacramento,
- 11 | California for a short stint, prior to being hired on as a second
- 12 | forensic scientist with the City of Phoenix Police Department
- 13 | Crime Laboratory. I've been there for approximately 15 years.
- 14 Also, beginning in 2015, my wife and I started a private
- 15 | forensic consulting firm known as Forensic Review and
- 16 | Consulting.
- 17 | Q. And that last bit, that is the capacity in which you are
- 18 here testifying today? Your company?
- 19 A. That is correct.
- 20 | Q. But you are a forensic scientist for the Phoenix Police
- 21 Department, currently?
- 22 A. That is correct.
- 23 | O. Does your forensic work ever involve firearms?
- 24 A. Yes. it does.
- 25 | O. Often?

- 1 A. All of it. My title is a forensic firearms examiner.
- 2 | Q. Okay. To be a forensic firearms examiner, did you receive
- 3 | any training?
- 4 A. Absolutely. That training involved not only having a
- degree in a physical science but also extensive on-the-job
- 6 | training by senior members within the forensic community as
- 7 | well as training from firearms manufacturers and other
- 8 | individuals to include academia associated with forensic
- 9 science.
- 10 Q. Did you receive any certifications or anything of that
- 11 | nature, credentials to be a forensic firearms --
- 12 A. No. Only successful completion of the training program
- 13 within the agencies that I worked for.
- 14 Q. Okay. Outside of the agencies, are you a member of any
- 15 | groups that do firearm examining?
- 16 A. Yes. I'm a member of the Association of Firearm and
- 17 Toolmark Examiners. It is a worldwide organization specific to
- 18 | studying firearms and toolmark examination and the science
- 19 behind it. And I also am a member of the FBI's technical
- 20 | working group on the application of 3D topographical systems
- 21 | into the firearms community.
- 22 | Q. Going back to the first one you mentioned, what was it?
- 23 A. The Association of Firearm and Toolmark Examiners.
- 24 Q. Can you --
- 25 A. Also known as AFTE.

- 1 Q. AFTE. I'll do that. Thank you. A-F-T-E?
- 2 A. Yes, sir.
- 3 Q. Can you, just briefly, surmise what it is that AFTE does?
- 4 A. AFTE is an organization of not only firearms examiners
- 5 | from around the world but also technical advisors from
- 6 | academia, firearms manufacturers, and other disciplines
- 7 | interested in studying and promoting the field of firearm and
- 8 | toolmark examination.
- 9 Q. And do they produce any materials?
- 10 A. Yes. We have a scientific journal that is published
- 11 quarterly as well as we host an annual training conference,
- 12 that moves around the United States annually, to provide
- 13 up-to-date training on new ideas and research within our
- 14 discipline.
- 15 Q. Have you ever been published in an AFTE Journal?
- 16 A. Yes, I have.
- 17 Q. How many times?
- 18 A. Twice.
- 19 Q. And then you said a second one after AFTE. Was it FBI?
- 20 A. I'm a member of a technical working group that is hosted
- 21 by the FBI on the application of 3D topographical technologies
- 22 to firearms and toolmark analysis.
- 23 Q. Can you briefly -- most of us probably won't be smart
- 24 | enough to follow you. I know at least I won't be. So can you
- 25 | just briefly, 30,000-foot level, explain what that is?

- 1 A. Yes.
- 2 | Q. What you all do?
- 3 A. One of the new technologies being deployed within the
- 4 | firearm and toolmark industry on the forensic side is the use
- of specialized 3D surface scanning instruments. So these
- 6 instruments scan the surface and render a three-dimensional
- 7 | image of that surface for us to perform our comparisons in a
- 8 | virtual capacity, so on a computer screen, as opposed to
- 9 | looking at them through a conventional microscope.
- 10 Q. Thank you. Are you familiar with the term
- 11 | "microstamping"?
- 12 A. Yes, I am.
- 13 Q. And can you explain what your understanding of
- 14 | microstamping is?
- 15 A. Microstamping is the application of microscopic
- 16 characters, typically, laser-engraved or etched onto working
- 17 | surfaces in a firearm for their potential subsequent transfer
- 18 onto the fire casings.
- 19 Q. And how did you learn about microstamping?
- 20 | A. I learned about microstamping during my tenure as a
- 21 | graduate student at the University of California at Davis. I
- 22 was approached by the director of our graduate program to
- 23 participate in the research project studying microstamping
- 24 | technology.
- 25 Q. And when was that?

- 1 A. That would have been in 2005.
- 2 Q. Okay. 2005. And what did that study entail, basically?
- 3 | A. The study -- so the original proposal was written up by
- 4 | one of our -- one of the engineering professors associated with
- 5 the program as well as the program director. And funding was
- 6 | received through the California Policy Research Center, which
- 7 is a division of the University of California. That funding,
- 8 and original proposal was to study the concept of microstamping
- 9 as well as longevity of the characters and their ability to
- 10 transfer to fired cartridge casings.
- 11 | Q. And did you conduct a study to determine those questions
- 12 | that were raised?
- 13 A. Yes, I did.
- 14 Q. Okay. And it was a written study?
- 15 A. Yes.
- 16 | Q. Was it published?
- 17 A. Yes, it was.
- 18 | Q. By whom?
- 19 A. It was published as my thesis, through my master's thesis,
- 20 | through the University of California. It was also published as
- 21 | a paper written to the California Policy Research Center. And
- 22 then, subsequently, I published a version of that in the AFTE
- 23 Journal.
- 24 Q. Was your study ever peer reviewed?
- 25 A. Yes, it was.

1 Q. By whom?

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- A. At all three levels, it was, indeed, peer reviewed. My thesis was reviewed by my thesis chair, which would have been the program director, a mechanical engineer with UC Davis, and
- 5 | a criminal justice professor through UC Davis.

The paper written for the California Policy Research

Center was reviewed by an external private forensic firearms

examiner as well as two criminal justice professors from UC

Irvine.

And then my paper published in the AFTE Journal was peer reviewed by members of the AFTE Editorial Committee -- or AFTE Journal Editorial Committee.

- Q. In conducting your study, did you form any opinion on whether the microstamping technology that you evaluated in that study could be successfully implemented to or by -- sorry -- by
- 16 | the commercial handgun industry?
- 17 A. Yes, I did.
- 18 Q. And what was your opinion?
- 19 A. My opinion was the technology, as I evaluated it for this
- research, was not suitable for mass implementation at that
- 21 | time.
- 22 Q. Was not suitable for mass implementation.
- In other words -- can you explain what you mean "by not suitable for mass implementation"?
- 25 A. What I mean by that is that the technology, as I evaluated

1 | it, could not be directly implemented into every make and model

- 2 of new firearms or semi-automatic handguns without additional
- 3 research to determine if it would work in those firearms.
- 4 | Q. Okay. So in other words, is it your testimony that, after
- 5 | your study, it's your opinion that the microstamping technology
- 6 | that you studied is not universally implementable to
- 7 | semi-automatic handguns that are being -- in other words, a
- 8 | manufacturer can't just take the technology as it currently
- 9 exists and plug it into their firearms? Is that your position?
- 10 A. That is correct.
- 11 | Q. To your knowledge, is there any other microstamping
- 12 | technology that purports to be viable beyond the one that you
- 13 evaluated in your study?
- 14 A. Not that I'm aware of, no.
- 15 | Q. Do you have a reason to believe that the microstamping
- 16 | technology that you evaluated in your study has progressed and
- 17 been made better to address any issues than from when the time
- 18 | you evaluated it in 2005?
- 19 A. I have not seen any publications to support that, no.
- 20 Q. Based on your conducting the study and seeing the issues
- 21 | that you found with microstamping, whatever they are, as to why
- 22 | it's not implementable universally, do you think it's possible
- 23 | to develop a microstamping technology that can be universally
- 24 | implementable for all handguns?
- 25 A. I think it would be very difficult to develop a

differences that exist between the mechanical design of the 2 firearms and the differences in metallurgy of the different 3 brands of ammunition to include finishing processes such as 4 primer, lacquer, things of that nature in combination together. 5 Can you explain that a little bit. I'm sorry. So you are 6 saying that the technology depends on or can be altered by 7 certain factors such as metallurgy? Is that what I heard you 8 say? 9 Α. Yes. 10 Can you explain that? I'm sorry. 11 Q. So a firearm is a mechanical component. So just like any 12 other mechanical component, there is tolerances within -- or 13 between the inner workings of each of the pieces of that 14 mechanism. And every firearm has its own mechanical design and 15 tolerances from each manufacturer. As well as there's 16 variances within the metallurgy that makes the primers, so the 17 type of metal, the hardness of the metal, as well as variations 18 in the metallurgy of the ammunition. Also, there are 19 variations within the pressures produced by different 20 cartridges of different calibers. And all of these things can 21 have an effect on how the characters have the ability to 22 transfer. 23 Did I hear you say that the type of ammunition that is 24

one-stop-shop technology, if you will, because of the vast

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receiving the mark can play a role in whether or how well the

1 | mark transfers?

- 2 A. That is correct.
- Q. Would there be any way in your -- to your knowledge, to
- 4 | account for that variable of ammunition on the firearms side of
- 5 things -- firearms side of things? In other words, could there
- 6 be technology made on the firearms side to address -- to
- 7 | account for the variable of the ammunition?
- 8 A. I do not believe so.
- 9 | Q. In conducting your study, did you form any opinion on
- 10 whether microstamping technology --- the microstamping
- 11 | technology that you evaluated could be overcome, like, defeated
- 12 by a person who has that -- possesses the firearm?
- 13 A. Yes.
- 14 Q. And what was your opinion?
- 15 A. As part of my research, I chose two of my firing pins to
- 16 | intentionally deface or attempt to deface those characters that
- were laser-etched onto the firing pins. One of the firing
- 18 pins, I rubbed across the surface of a household sharpening
- 19 | stone for a short period of time. It was, like, 15 to 30
- 20 seconds. I would have to go back and look at the study for the
- 21 time. That successfully removed sufficient material off the
- 22 | tip of the firing pin for the alphanumeric code that was on the
- face to be completely removed. And then reinstalled that in
- the firearm. And I successfully discharged the firearm, so I
- 25 | did not remove enough material to render the firearm

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inoperable.

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The second method as opposed -- that I wanted to test, as 2 opposed to physical removal of material, was to damage, 3 physically damage, the characters. So I took the firing pin 4 and a hammer and went onto the anvil side, or the flat side of 5 a bench vise, and lightly tapped the characters for approximately 15 seconds per set of characters, so the ones 7 that were on the side, known as the radial bar code, and then 8 the one's on the tip, which were the alphanumeric. And this 9 sufficiently deformed the characters to the point that they 10 were no longer legible. 11

- Q. So you said -- correct me if I'm wrong, you said you removed the firing pins from the handguns?
- 14 A. That is correct.
- Q. So could you replace -- how difficult was it to remove the firing pin from the handgun?
- 17 A. The majority of semi-automatic handguns' firing pins are
  18 not extremely difficult, to include some that are very easy, to
- 19 remove/replace. There are some that are more difficult than
- 20 others. Once again, going back to that design; however, there
- 21 | is sufficient information for most all firearms to figure out
- how to replace it, as it is a component that can indeed break
- 23 and need replacing.
- Q. So an end-user, the owner of a handgun could, at least in
- 25 | some instances, easily replace a firing pin that does not have

- 1 | microstamping technology on it?
- 2 A. That is correct.
- 3 Q. Do you have any reason to believe, as you sit here today,
- 4 | that the technology that you evaluated has become more
- 5 difficult to defeat or overcome since the time you evaluated
- 6 | it?
- 7 A. No.
- 8 Q. Have you ever seen a firearm with microstamping outside of
- 9 the study you conducted?
- 10 A. No, I have not.
- 11 Q. Never in your work as a forensic firearms examiner?
- 12 A. No, sir.
- 13 | Q. How many firearms do you examine on a given week?
- 14 | A. It really depends on the type of case that I've been
- assigned. Typically, most cases only have one to, maybe, five
- 16 guns associated with them. So any given week would be a
- 17 | handful.
- 18 | Q. How many firearms have you examined over the course of
- 19 your career, if you could probably say a ballpark?
- 20 A. Ballpark would be thousands.
- Q. And you've never seen any of them with microstamping?
- 22 A. That is correct.
- Q. Have you ever heard of a firearm with microstamping being
- 24 used as evidence in a case?
- 25 A. No.

1 | Q. In a criminal case? No.

Are forensic professionals like yourself trained on identifying microstamping?

- 4 A. No, we are not.
- Q. So I assume, then, they're not trained to decipher it
- 6 either?

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- 7 A. That is correct.
- 8 Q. Does somebody need to be trained to decipher microstamping
- 9 | technology, the one that you evaluated?
- 10 A. The firing pins that I evaluated possessed three different
- 11 | types of encoding. One was an alphanumeric code, which was
- written on the very tip of the firing pin, the second was
- 13 referred to as a gear code, which was a circular gear-shaped
- 14 | structure that went around those alphanumeric characters, and
- 15 then a radial barcode which was a series of lines in a barcode
- 16 | format that went around the circumference of the firing pin.
- 17 As far as alphanumeric, that was fairly straightforward.
- 18 | They're just alphanumeric characters. But I was not provided
- 19 by the manufacturer any method or fashion in which to decode
- 20 | the gear code and radial barcode.
- 21 | Q. So for that version of the microstamping, you were unable
- 22 | to determine whether the microstamping imprint successfully
- 23 | transferred?
- 24 A. I could determine whether it -- the features themselves
- 25 | visually transferred, but I could not decipher what the

- characters meant or if any spatial arrangements in that
- 2 transfer affected their interpretation.
- 3 | Q. And is it your understanding that the purpose, the
- 4 | theoretical purpose, of microstamping is to leave an imprint on
- 5 | the casing that can be read to connect it to a specific
- 6 | firearm?
- 7 A. That is correct.
- 8 Q. And so if you were unable to read or decipher that code,
- 9 | that would defeat the purpose of the microstamp?
- 10 A. Yes.
- 11 Q. Is microstamping considered an actual tool by professional
- 12 | forensic examiners like yourself?
- 13 A. No.
- 14 Q. Outside of studies like the one you conducted, have you
- 15 | ever heard of a firearm having microstamp technology?
- 16 A. Outside of other research, no.
- MR. BRADY: Thank you, Mr. Beddow.
- THE COURT: I just have one question. I know it's
- 19 going to be repetitive of your answer.
- But in your original study, you indicated it wasn't
- 21 | feasible or possible to implement the microstamping in the
- 22 | industry. Why?
- THE WITNESS: At that time, per communication with
- 24 | the inventor/manufacturer, a process that was referred to me
- 25 known as "optimization" of those firing pins needed to be

completed for every make and model of firearm and design a 1 2 firing pain. So basically, some level of research and development had to be conducted for every different shape of 3 firing pin in conjunction with that particular make and model's 4 firing mechanism. 5 So it couldn't be uniform? THE COURT: 6 THE WITNESS: So it wasn't a universal application. 7 And that was in my recommendation to the paper I wrote back to 8 the California Policy Research Center, was an additional, a 9 larger scale study needed to be done to determine if such mass 10 implementation could be done or if it was truly still going to 11 be on a make-and-model dependent and with that applied R&D 12 13 necessary. THE COURT: And I take it from your testimony, even 14 if you identified one model that you could microstamp, a person 15 could easily obliterate or modify? 16 Knowing the location, yes. THE WITNESS: 17 Thank you. THE COURT: 18 MR BRADY: Thank you, Mr. Beddow. 19 Cross-examination? THE COURT: 20 CROSS-EXAMINATION 21 22 BY MR. SAROSY: Good morning. I think it's still morning. Is it Beddow? 23 Q. Beddow. 24 Α.

Beddow.

I'm sorry.

Beddow.

25

Q.

1 | My name is Charlie Sarosy. I'm a Deputy Attorney General.

- 2 I'm representing the defendant in this case. Thank you for
- 3 | being here. I have a few questions for you.
- 4 So microstamping is not required for rifles or shotguns
- 5 | sold in California; correct?
- 6 A. To my understanding, correct.
- 7 Q. And it is only required -- it's not required for
- 8 revolvers; correct?
- 9 A. To my understanding, yes.
- 10 Q. It's required only for semi-automatic pistols?
- 11 A. Yes.

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- 12 Q. And your study was, I think you said, published in 2008;
- 13 | correct?
- 14 A. The final publication was 2008, that is correct.
- 15 Q. And microstamping was required for handguns to be added to
- 16 | the roster not until 2013; correct?
- 17 A. Those dates, I was unaware of.
- 18 Q. At the time of your study, microstamping was not a
- 19 requirement for handguns to be added to the roster; correct?
- 20 A. Correct.
- 21 | Q. Okay. And are you aware that, as of -- and I understand
- 22 | you're from Phoenix -- or you currently reside in Phoenix. But
- 23 | are you aware that, as of July 1, 2022, microstamping for
- 24 | handguns out of the roster is required in only one internal
- 25 | mechanism within a semi-automatic pistol?

- 1 A. I have been made aware of that, correct.
- 2 Q. Okay. And are you aware that, under California law, the
- 3 | type of microstamp required uses alpha and/or numeric
- 4 | characters?
- 5 A. Yes.
- 6 Q. And are you aware that is called a Firearm Identification
- 7 | Number, or a FIN?
- 8 A. I was unaware of the term that's been given to it.
- 9 Q. And are you aware that the FIN is something that would
- 10 | consist of at least eight, but no more than 12, unique alpha
- 11 | and/or numeric characters?
- 12 A. I did not know the requirements regarding the number of
- 13 | characters.
- 14 Q. Are you aware, based on current California regulations,
- 15 | that the manufacturers -- the intent for microstamping is that
- 16 | manufacturers would report to that Firearm Identification
- 17 Number, or FIN, to the Department of Justice so that there can
- 18 | be a matching between the FIN and the serial number of the
- 19 | firearm?
- 20 A. That was my understanding for the purpose of the
- 21 microstamping, yes.
- 22 Q. Right. And, obviously, in your study, you said you did
- 23 | not do that. If you look at an alphanumeric code, you couldn't
- 24 | match what firearm it was; correct? Because it's not like you
- 25 | had a database of --

A. That is correct. The firearms that were selected for my research were chosen in conjunction with my thesis advisers and individuals from the California Criminalistics Institute, who were assisting me, as well as providing me access to their firearms library. That is where the firearms came from.

And then firing pins for those firearms were purchased through a secondary vendor. Those firing pins were shipped to the manufacturer of the microstamping, and it subsequently laser-engraved for my process.

- Q. So the study that you did on microstamping was not a

  full-scale recreation of how microstamping was intended to work

  in the State of California, meaning there is not -- you didn't

  have a database of matching pins with serial numbers; correct?
- 14 A. That is correct. It was a very limited scale.
- Q. And your name was on the study that you mentioned, in 2008; correct?
- 17 | A. That is correct.

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- Q. And I believe you said that alphanumeric code was the
  easiest to read of the three microstamping types you said. You
  said alphanumeric, gear, and radial. The alphanumeric was the
  easiest: correct?
- A. It is the only one, because of it being alphanumeric, that
  I could decipher. The others, I had no method in which to
  determine what those features could be interpreted to mean, so
  I wasn't provided with any method to decipher.

1 Q. Right. So for an alphanumeric code, you don't need a

- 2 | secret -- a decipher or some kind of secret device to
- 3 understand what the letters and numbers mean; correct?
- 4 A. That is correct.
- 5 | Q. Okay. And do you recall interviewing with journalists
- 6 about your microstamping study?
- 7 | A. To my recollection, during my research and while I was in
- 8 Davis, I had only met with one journalist through a paper from
- 9 UC Davis.
- 10 | Q. Was that newspaper called *The Aggie*?
- 11 A. I believe so, yes.
- 12 | Q. And was that journalist -- do you remember her name? --
- 13 | Wendy Wang?
- 14 A. I don't recall the name.
- 15 Q. Totally fair.
- Do you recall saying in that interview that microstamping
- 17 | is feasible?
- 18 A. Yes.
- 19 Q. Do you recall saying that -- and I can provide you a copy
- 20 of the article.
- If that is okay, Your Honor?
- THE COURT: Sure.
- 23 BY MR. SAROSY:
- 24 Q. Sorry. It's double-sided.
- 25 A. Thank you. That's quite all right.

Q. And I'm going to point you to -- admittedly, this is my first time using this, but --

Mr. Paschal, how do I adjust the Zoom?

THE COURTROOM DEPUTY: It's right there, plus/minus.

MR. SAROSY: Oh, I see. Thank you.

THE COURTROOM DEPUTY: You're welcome.

7 BY MR. SAROSY.

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- B | Q. Okay. I assume you can hear me, Mr. Beddow?
- 9 A. Yes, sir.
- 10 | Q. I am looking at this paragraph that starts with "The
- 11 | alphanumeric code, " "alphanumerical code." It's near the
- 12 | bottom of the page.
- 13 A. Yes.
- 14 Q. Can you read that paragraph for me?
- 15 A. "'The alphanumerical code provided the best quality of the
- 16 | numerical codes. The quality of forgeability of the
- 17 | impressions ranged from firearm to firearm. Every gun shoots
- differently and functions different, so the legibility was
- 19 different,' Beddow said. 'Bottom line is, the technology is
- 20 | feasible; however, it does not function equally.'"
- 21 Q. Does that sound like an accurate quote?
- 22 A. Yes.
- 23 Q. So you don't disagree with that quote; correct?
- 24 A. No.
- MR. SAROSY: Your Honor, I would like to move that

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    article into evidence.
               THE COURT: Any objection?
2
                          No objection.
               MR. DALE:
3
               THE COURT: The article will be received into
    evidence.
5
               MR. SAROSY: I will mark that as Defendant's
6
    Exhibit 26.
7
          (Exhibit 26 was received into evidence.)
8
9
               MR. SAROSY: Mr. Paschal?
10
               THE COURTROOM DEPUTY: Thank you, sir.
    BY MR. SAROSY:
11
         All right. And your study was from 2008; correct?
12
    Q.
         The final paper published was in 2008, that is correct.
13
         And that is almost 15 years ago; correct?
14
    Q.
         That is correct.
15
         So almost 15 years ago, you said that microstamping was
16
    Q.
    feasible; correct?
17
         That is correct.
18
    Α.
         And if I handed you a copy of your study, I assume you
19
    Q.
    would recognize it; correct?
20
21
    Α.
         Yes.
               MR. SAROSY: May I approach, Your Honor?
22
23
               THE COURT:
                           You may.
```

Suzanne M. McKennon, CSR, CRR, RMR
United States Court Reporter
suzanne\_mckennon@cacd.uscourts.gov (213) 894-3913

Sorry. This one is also double-sided.

24

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Q.

BY MR. SAROSY:

I'm just going to ask you a few questions about some of the findings in your study.

- 3 A. Absolutely.
- 4 Q. Does that look like an accurate copy of your study?
- 5 A. Yes. This is the paper submitted to the California Policy
- 6 Research Center.
- 7 Q. Okay. And was this -- is this the published version?
- 8 A. This was the one published to the California Policy
- 9 Research Center. My thesis, which was just published through
- 10 | the UC system, is very similar to this, outside of format.
- 11 | Q. So when you say, "Published to the California Policy of American
- 12 | Research Center," is that a journal?
- 13 | A. It is a division of the University of California --
- 14 Q. Okay.

La spraga a service

- 15 A. -- that funds research projects that could potentially be
- 16 associated with or affect policy. I don't know very much about
- 17 | all of their inner workings. I just know that they are
- 18 affiliated with the University of California.
- 19 Q. Okay. And I think you testified something along the lines
- 20 of -- but correct me if I'm wrong. But you said microstamping
- 21 | was not commercially feasible. That was one of the findings of
- 22 your study?
- 23 A. Widespread implementation at a commercial level, I did not
- 24 deem to be feasible at that time.
- 25 Q. Okay. Can you turn to page --

I'm sorry, Your Honor. I can provide you a copy right now, if that would be helpful.

THE COURT: Thank you.

MR. DALE: Thank you.

MR. SAROSY: Sorry. Here is the copy of the article.

I am sensitive to the time, Your Honor. So I can keep going, or I can --

THE COURT: How much longer do you anticipate in your examination?

MR. SAROSY: I would say 10 to 15 minutes, perhaps.

THE COURT: All right. Why don't we keep going, and

- 12 then we'll just break for lunch a little bit later.
- 13 BY MR. SAROSY:

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- 14 Q. Sure. Can you turn to page 13?
- 15 A. Yes. One moment, please.
- 16 Q. And do you see there that it says, under Subsection 4,
- 17 | Heading 4, "Implementation strategies be developed
- 18 | collaboratively"?
- 19 A. Yes, sir.
- 20 Q. Do you see the first two sentences of that paragraph?
- 21 A. Yes.
- Q. Can you read those first two sentences, please?
- 23 A. "The development of a viable commercial implementation
- 24 strategy for the technology is a necessity. This must be
- completed in collaboration with officials from the State of

- 1 | California, firearms manufacturers, and ID Dynamics."
- 2 | Q. And you said you are not aware of efforts by firearm
- 3 | manufacturers to work in collaboration with the California
- 4 Department of Justice?
- 5 A. I have no knowledge of that.
- 6 Q. Okay. But you are not aware of manufacturers trying to
- 7 | implement microstamping; correct?
- 8 A. That is correct.
- 9 Q. I'm sorry to go backwards, but can you go to page 10? And
- 10 I'm looking at the last paragraph, second sentence, that begins
- 11 | with "At the current time."
- 12 A. Yes.
- 13 Q. Can you read that sentence and the following sentence,
- 14 | please?
- 15 A. "At the current time, only the alphanumeric and coding
- 16 format has the potential to reliably transfer information from
- 17 | the firing pin to the cartridge case, thereby facilitating the
- 18 identification of crime guns outfitted with microstamping
- 19 technology. If any numbering system has the future potential
- to handle a large database and have some survivability, it is
- 21 | the alphanumeric system."
- Q. Going back to what I asked you before, the alphanumeric
- 23 | system is what is -- at least as far as you know, what is
- required -- is the system that would be required in California?
- 25 A. It is my understanding, yes.

- 1 Q. So based on this quote, you are saying, 14 years ago, that
- 2 | the system that California uses for microstamping is the one --
- 3 or was the one that has the best chance at being adapted on a
- 4 | widescale; correct?
- 5 A. Correct. Of the three different types of encoding
- 6 | structures that were on the firing pins that I tested.
- 7 Q. Correct. And the other ones were radial and gear?
- 8 A. That is correct.
- 9 Q. And I believe you talked about the firing pin being able
- 10 | to be defaced; correct?
- 11 A. That is correct.
- 12 Q. If you look at a semi-automatic pistol, just from the
- outside, would you know that the firing pin has a microstamp?
- 14 A. Not without magnification.
- 15 | Q. Without firing it or without magnification?
- 16 A. Even if you fired it, it would still require magnification
- 17 to see the potentially transferred characters.
- 18 Q. So you would really need a microscope or you would need to
- 19 know ahead of time that the handgun or the semi-automatic
- 20 | pistol has microstamping in order to know that you need to
- 21 deface it: correct?
- 22 A. That is correct.
- 23 | Q. And are you aware that defacing a microstamp is a
- 24 | violation of California law?
- 25 A. I was not aware of that.

1 Q. Okay. And can serial numbers -- I'm assuming you're aware

- 2 of and familiar with serial numbers of firearms; correct?
- 3 A. That is correct.
- 4 | Q. And can serial numbers also be easily defaced?
- 5 A. Yes, they can.
- 6 Q. Can they be defaced in the same manner that you described
- 7 | the defacement of microstamps?
- 8 A. Yes.
- 9 Q. And to do that, to deface a serial number, do you need to
- 10 disassemble a firearm before doing so?
- 11 | A. It depends on the location of that serial number, but
- 12 | typically, no.
- 13 | Q. Because serial numbers are on the external part of the
- 14 | firearm; correct?
- 15 A. Yes.
- 16 Q. Rather than -- the firing pin is an internal part of the
- 17 | firearm; correct?
- 18 A. That is correct.
- 19 Q. I'm going to move you to page 18 and just kind of a higher
- 20 | level here, to make sure I understand your study correctly,
- 21 | because I read it and I am not a scientist and I don't have
- 22 | your background, so I just want to be sure I understand
- 23 | correctly.
- I understand that you tested six Smith & Wesson
- 25 | semi-automatic pistols that were fired by CHP officers, 2,500

1 | rounds each; is that correct?

- 2 A. That is correct.
- 3 Q. And then you also tested, I believe, five semi-automatic
- 4 | pistols in addition to those six Smith & Wesson. And the five
- 5 | were each from a different manufacturer?
- 6 A. Yes.
- 7 Q. And one was rimfire, and the other four were centerfire;
- 8 | is that correct?
- 9 A. That is correct.
- 10 Q. And then you also tested a couple of rifles and a shotgun,
- 11 | I believe; correct?
- 12 A. Yes.
- 13 | Q. I am not going to talk about the rifles or the shotgun
- 14 because that is not relevant here.
- So The bottom of page 18, I am looking at the very -- the
- 16 | last paragraph, the last sentence that goes on to the next
- 17 page, it starts with, "In this test."
- 18 Do you see that?
- 19 A. Yes, sir.
- 20 Q. Can you read that sentence?
- 21 | A. "In this test, only the alphanumeric encoding performed
- 22 | well on the new CHP Smith & Wesson pistols. The radial
- 23 | barcodes and the dot codes being illegible."
- 24 Q. And, again, California has the alphanumeric coding, is
- 25 | your understanding?

1 A. Correct. And just for clarification, on these ones, since

- 2 they had the different type of encoding listed as dot codes,
- 3 these particular pins provided by the manufacturer, he,
- 4 | apparently, was testing a different coding structure as opposed
- 5 | to the gear code, which was called a dot code, and it was small
- 6 circles placed in varying positions in the clock orientation
- 7 | from 12:00 to 12:00. But they were extremely small. And so I
- 8 | am not sure if that had some reason why he went away from that
- 9 to the gear code, but those were the only pins that I worked
- 10 with that had the dot code.
- 11 | Q. The dot code is not something that is required or is even
- 12 | now envisioned by California's microstamping requirement?
- 13 A. To my understanding, correct.
- 14 Q. Okay. And then, I think I said this before, you tested
- 15 | five other semi-automatic pistols of different -- by different
- 16 | manufacturers: correct?
- 17 A. Correct.
- 18 Q. And for the centerfire, the five centerfire pistols, do
- 19 | you recall the manufacturers?
- 20 A. Not off the top of my head, but they're on the following
- 21 page of my report, on page 20.
- 22 Q. Does Seecamp, AMT Backup, Sig Sauer, and Colt 1911 --
- 23 (The court reporter interrupted.)
- 24 BY MR. SAROSY:
- 25 Q. Does Seecamp, AMT Backup, Sig Sauer, and Colt 1911 sound

1 | familiar?

- 2 A. Yes.
- 3 Q. And I'm going to move you to page 27, directly under the

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- 4 | subheading that says, "Seecamp."
- 5 A. Yes.
- 6 Q. And can you read that first sentence for me?
- 7 A. "The alphanumeric characters on the Seecamp firing pin
- 8 | showed negligible degradation over the course of test-firing
- 9 394 rounds of ammunition."
- 10 | Q. And I'm going to have you read a couple more sentences.
- 11 But just to take a step back, these findings are about the
- 12 | condition of the engraved microstamp on the firing pin itself;
- 13 | correct?
- 14 A. Just to clarify what section we are in, this one was --
- 15 this particular section and those statements are not about the
- 16 | legibility of the transferred characters but the durability and
- 17 | legibility of the characters on the firing pins themselves?
- 18 Q. All right. I just want to be sure.
- 19 A. Yes.
- 20 | Q. We'll get to legibility of the transfer momentarily.
- I am going to take you to the next page, page 28, looking
- 22 | at subheader "AMT Backup."
- 23 And can you read that entire paragraph, that entire first
- 24 paragraph, please?
- 25 A. Yes. "The appearance of the alphanumeric characters was

1 | softened after firing ten rounds. Both the A and the 3 showed

- 2 | slight deformation after the completion of test-firing 600
- 3 | rounds of ammunition. The left side of the A began to collapse
- 4 | toward the center of the character, and the number 3 was
- 5 | slightly flattened and gained in height by approximately 28
- 6 | microns. Both of these characters were still legible."
- 7 Q. So despite the deformation, they were -- like you said in
- 8 | that last sentence, they were still legible; correct?
- 9 A. Yes.
- 10 Q. And I am going to move you to the next section of the
- 11 | Sig Sauer.
- Can you read the first two sentences of that section,
- 13 | please?
- 14 A. Yes. "The alphanumeric characters on the Sig Sauer firing
- pin showed signs of softening after ten rounds of ammunition
- 16 | had been fired. Throughout the remainder of 1,000 rounds
- 17 test-fired, no major signs of character degradation or
- 18 deformation were noticed."
- 19 Q. Can I move you to page 29, in the Colt 1911 section?
- 20 A. Yes.
- 21 Q. And the second paragraph, can you actually read that
- 22 | entire paragraph?
- 23 A. Yes. "The softening of the appearance of the alphanumeric
- 24 | characters on the Colt 1911 firing pin was not noticed until
- 25 | 100 rounds of ammunition were fired. At this point in the

1 | test-firing sequence, a large quantity of foreign debris had

- 2 been deposited around the alphanumeric characters. By
- 3 | completion of test-firing at 750 rounds fired, no major
- 4 degradation of the alphanumeric characters was noticed;
- 5 | however, a large quantity of foreign debris was present around
- 6 | the characters, making the number 3 difficult to visualize."
- 7 Q. And so despite the softening and the foreign debris, it
- 8 | was -- the firing -- or the microstamp on the firing pin was
- 9 | still legible; correct?
- 10 A. That is correct.
- 11 Q. And I believe for the rimfire pistol, the Ruger -- sorry.
- 12 | I am going to turn you back to page 26. I believe that was the
- 13 | rimfire one.
- 14 A. Yes.
- 15 Q. Does that sound familiar?
- 16 A. That is correct.
- 17 | Q. And I think for that rimfire one, there were signs of
- 18 degradation; correct?
- 19 A. That is correct.
- 20 Q. But you also said that the quality of the alphanumeric
- 21 | characters on the firing pin were inferior to those found on
- 22 | the rest of the firing pins tested?
- 23 A. Yes.
- 24 Q. Is that correct?
- 25 A. That is correct.

Q. Okay. I want to be sure I can get this done in five minutes. I think I can.

- But we can take a break, Your Honor.
- THE COURT: No. Let's complete this witness before we take our lunch break.
- 6 BY MR. SAROSY:

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- 7 Q. Okay. So we talked about the firing pins themselves. I
- 8 am going to talk about the part of your study that looked at
- 9 the legibility of the microstamp when it was transferred to the
- 10 | cartridge case. That was also part of your study; correct?
- 11 | A. That is correct.
- 12 | Q. And I want to look at page 23 -- well, I'll just ask you,
- 13 | actually. For something to be counted as a positive transfer
- 14 | from the firing pin to the cartridge case, it had to be fully
- 15 | legible; is that correct?
- 16 A. Yes.
- 17 Q. That was your criteria or your method, right, --
- 18 A. Yes.
- 19 | Q. -- for determining legibility?
- 20 A. My criteria had to be that it looked as the character it
- 21 was intended to be.
- 22 | Q. Right. So an A looked like an A; a C looked like a C?
- 23 | A. That is correct.
- 24 Q. And I am going to turn you to page 32. And you also
- 25 | looked at the transfer for the six Smith & Wesson pistols;

1 | correct?

- 2 A. That is correct.
- 3 Q. And if you are looking at that section on 32, page 32,
- 4 | that is entitled Smith & Wesson model 4006, can you look at the

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- 5 | second paragraph and read those first three sentences, please?
- 6 A. Yes, sir. "The alphanumeric characters for the cartridge
- 7 | cases from all six firing pins showed an average overall
- 8 | transfer rate of 90 percent. The percent transferred for any
- 9 one cartridge case ranged from a complete transfer of
- 10 100 percent to as low as 38 percent transfer. The crispness of
- 11 | the alphanumeric characters' impressions were diminished
- 12 | through continued firing."
- 13 Q. To make sure I understand that, that means that, on
- 14 average, over 90 percent of the cartridge cases had a legible
- 15 | microstamp on them, based on this?
- 16 A. That meant that, if there were, let's just say, ten
- 17 | characters, that, on average, nine of them were legible. So
- 18 90 percent of the characters that were present on the firing
- 19 pin transferred.
- 20 | Q. Okay. And is it true that for the other, for the Seecamp,
- 21 | the AMT Backup, the Sig Sauer, and Colt 1911, the overall
- 22 | transfer rate was, at least, 76 percent? Ballpark, it was 76
- 23 percent or more for the four centerfire semi-automatic pistols?
- 24 A. That is correct.
- 25 | Q. And for three types of those pistols -- so it was --

1 | sorry. Including the six Smith & Wessons. So for the six

- 2 | Smith & Wessons, the AMT Backup, and the Sig Sauer, the overall
- 3 | transfer rate was at least 90 percent; correct?
- 4 A. That is correct.
- 5 Q. And if you can look at page 43 --
- 6 These will be the last couple questions, Your Honor.
- And I am looking at the second complete paragraph on that page that starts with "The concept of laser machines."
- 9 A. Yes.
- 10 Q. Do you see that?
- 11 Can you read the second sentence of that paragraph, that
- 12 | starts with "Overall"?
- 13 A. "Overall the alphanumeric characters and the gear code
- 14 | structures proved to be capable of withstanding repeated
- 15 | firing; however, some degradation of the structures was seen
- 16 | with specific firearms."
- 17 Q. And does that finding of some degradation with specific
- 18 | firearms, does that include the rifles and shotguns that you
- 19 | tested?
- 20 A. That is correct. That is an overall statement for the
- 21 firearms tested within my research.
- 22 Q. That statement is not limited to the semi-automatic
- 23 | pistols that you tested; correct?
- 24 A. That is correct.
- 25 | Q. And can you turn to page 44, please. And I am looking at

1 | the last paragraph on that page that starts with the

- 2 | "Alphanumeric encoding."
- 3 A. Yes.
- 4 Q. Can you read that sentence, please?
- 5 A. "The alphanumeric encoding format is currently the only
- 6 one of the three encoding structures utilized on the 2nd
- 7 Generation firing pins that will allow for potential
- 8 | identification of a firearm."
- 9 Q. And so your study concluded, in 2008, that the
- 10 | microstamping of alphanumeric characters from a firing pin was
- 11 | technologically feasible; is that correct?
- 12 A. With the firearms tested, correct.
- 13 Q. And you tested, like we said, six Smith & Wessons and then
- 14 one rimfire semi-automatic pistol and then four centerfire
- 15 | semi-automatic pistols from a few manufacturers; correct?
- 16 A. Correct.
- 17 MR. SAROSY: Okay. That's all I have, Your Honor.
- Actually -- I'm sorry -- I would like to move that study
- 19 | into evidence as well.
- 20 | THE COURT: Any objection?
- 21 MR. DALE: No objection.
- MR. SAROSY: I'll put that as Defendant's Exhibit --
- 23 | I think we're at 27.
- THE COURT: Very well. Exhibit 27 will be received
- 25 linto evidence.

1 MR. SAROSY: Thank you, sir.

(Exhibit 27 was received into evidence.)

THE COURT: Redirect?

MR. BRADY: Thank you, Your Honor.

REDIRECT EXAMINATION

BY MR. BRADY:

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- Q. So, Mr. Beddow, you testified that microstamping technology that you studied was, quote, "feasible." You used that word; right?
- 10 A. That is correct, yes.
- 11 | Q. Is microstamping that be can adopted and implemented by
- 12 | commercial manufacturers of handguns -- is that feasible? A
- 13 | technology that can right now be taken, like a software that
- 14 can be downloaded onto any computer, various different types of
- 15 | computers, is there a microstamping technology that is feasibly
- 16 able to just be taken by a manufacturer today, that you could
- 17 | send it to them, they could drop it into their handgun?
- 18 A. I do not believe so without the applied R&D to the
- 19 | specific mechanism for those firearms. Conceptually, the idea
- 20 of the transfer works and was proven by my research, but the
- 21 | application to every combination of firearm and mechanism needs
- 22 to be further looked into or further researched.
- 23 Q. So am I understanding that, when you say it's feasible,
- 24 | are you saying that there have been studies, including yours,
- 25 | where a microstamp has successfully transferred to a shell

casing, to an ammunition casing. But that's what you mean by "feasible," that it can be done.

That, for example, a car could be made to levitate, right, in a prototype, but are there floating -- elevating cars able, ready to be put out on the market?

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So my question is: Are you saying that it's feasible in the sense that it is conceptually feasible to make a microstamp transfer?

9 A. Yes.

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- Q. But it is not practically, as we sit here today, a
- 11 | technology that is capable of being taken by a manufacturer and
- 12 | implemented into their handguns right now, without further
- 13 development for their specific handgun?
- 14 A. That is correct.
- Q. Does the fact that only one microstamp is now required versus when you -- well, let me ask you this.
- There was no two-stamp requirement when you performed your study; correct?
- 19 A. To my recollection, no.
- 20 | Q. You were only looking for a single --
- 21 A. I only researched the location of the microstamping on the
- 22 | firing pin and no subsequent locations.
- 23 Q. So does the fact that California has retracted its
- 24 | two-stamp requirement and now only requires one, does that
- 25 alter your conclusions that you testified here today in any

- 1 | way?
- 2 | A. No. As long as that location is the firing pin, since
- 3 | that's the only area which I performed any research. That is
- 4 | all I can testify to.
- 5 | Q. In your study, did you use a single source of ammunition
- 6 | to stay constant with all the firearms you used?
- 7 A. No. I tried varying brands.
- 8 Q. You tried varying brands?
- 9 A. Yes.
- 10 | Q. And that made a difference in the legibility?
- 11 A. Yes.
- 12 Q. So some -- so ammunition can be a factor in whether a
- 13 | microstamp transfers; correct?
- 14 A. That is correct.
- 15 Q. Other -- of the firearms you evaluated, did you testify
- 16 | that there were issues with wear on the firing pin on some of
- 17 | them?
- 18 A. Yes.
- 19 Q. And was that firearm-dependent or ammunition-dependent, to
- 20 | your knowledge? Or did you not control for that?
- 21 A. I don't believe there was any way for me to test if the
- 22 | wear that was -- that the firing pins incurred was a result of
- 23 | a mechanism of the firearm or the ammunition. The wear or
- 24 | softening, as I read in some of the statements previously, that
- 25 | would have only been able to be incurred through the impact

1 | with the ammunition. Whereas the wear that I noticed on the

- 2 | radial barcodes, that was a function of the firing pins
- 3 | impacting the firearm itself.
- 4 | Q. Okay. And did the wear happen at different rates on the
- 5 different firearms?
- 6 A. Yes.
- 7 | Q. Is it accurate that, in your study, the majority of the
- 8 | firearms that you evaluated with microstamping technology did
- 9 | not provide adequate or satisfactory transfer of microstamping?
- 10 A. There was no criteria set forth of what was a satisfactory
- 11 or what would be listed as a successful transfer. It was
- 12 | purely given in a numerical format of percent of transfer.
- MR. DALE: Understood. Thank you very much. No
- 14 more.
- 15 | THE COURT: Anything further?
- 16 MR. WOODS: Your Honor, I have two or three more
- 17 questions.
- 18 RECROSS-EXAMINATION
- 19 BY MR. SAROSY:
- 20 | Q. I think I heard a question about flying cars. Just to be
- 21 | sure I understand correctly, in your study, the firing pins
- 22 | that you tested actually had alphanumeric codes laser-engraved
- 23 on the firing pins; correct?
- 24 A. Yes.
- 25 Q. Which then transferred alphanumeric characters to

- 1 | cartridge cases; correct?
- 2 | A. That is correct.
- 3 | Q. This is not -- you actually tested microstamping. This is
- 4 | not a theoretical thing that we are talking about; correct?
- 5 A. Correct.
- 6 Q. And the firing pins were not provided to you by firearm
- 7 | manufacturers; correct? They were provided by -- I forget from
- 8 | who. I guess, who were the firing pins provided to you by?
- 9 A. The individual's name was Todd Lizotte. He, to my
- 10 understanding, is the co-inventor of the technology through a
- 11 | company known as ID Dynamics, at the time.
- 12 Q. Okay.
- 13 A. He is the one and his business were those ones who
- 14 | conducted the laser-engraving for me.
- 15 Q. Okay. The microstamp laser-engraved on a firing pin is
- 16 | something that is physically possible; correct?
- 17 A. Correct.
- 18 Q. And it is physically possible for that microstamp or the
- 19 alphanumeric characters to be physically transferred to a
- 20 | cartridge case; correct?
- 21 A. Correct.
- 22 Q. Because you actually saw that in your study?
- 23 A. Yes.
- 24 Q. Did any firearm manufacturers ever approach you about the
- 25 | findings of your study based on your comment that firearm

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manufacturers should work collaboratively with the California 1 Department of Justice? 2 No. 3 Α. Are you aware of any California law saying that the 4 microstamp cannot be placed on the firing pin? 5 6 Α. No. MR. SAROSY: All right. That's all I have. 7 Thank 8 you. Sir, you may step down. You are excused. THE COURT: 9 All right. It is 12:20. We'll take an hour lunch break. 10 Can you give me a sense of how much longer you think we're 11 going to need with witnesses? 12 MR. DALE: We have one more witness. He's probably 13 going to take about ten minutes on Direct. I don't know about 14 But then he may have a little bit of rebuttal testimony 15 after their two witnesses testify. 16 THE COURT: All right. And defense just has two 17 witnesses? 18 MR. SAROSY: Correct, Your Honor. 19 How long do you think they'll be? 20 THE COURT: MR. SAROSY: I think for the first witness, which is 21 Special Agent Supervisor Sal Gonzalez, I would say 30 to 45 22 minutes, perhaps. He's our roster expert. 23 And then for Dr. Cornell --24 I would say 10 to 20 minutes.

MR. WOODS:

1 THE COURT: Okay. I have another matter at 4:00. 2 You don't think we'll run into any problem with that? 3 MR. DALE: I don't anticipate that. MR. WOODS: I don't think so. I know that Your Honor 4 5 had mentioned you wanted some argumentation as well. THE COURT: Well, we'll see where we're at. Okay. 6 All right. Sounds good. Have a nice lunch break, and we'll 7 pick back up at 1:20. (Lunch recess was taken.) THE COURTROOM DEPUTY: Please come to order. 10 This Court is again in session. 11 THE COURT: All right. I think we're still in the 12 Plaintiffs' case. Next witness. 13 MR. DALE: Yes, Your Honor. We're going to call 14 Clayton Cramer. 15 THE COURT: Very well. 16 THE COURTROOM DEPUTY: Mr. Cramer, please raise your 17 right hand. 18 Do you solemnly swear that the testimony you shall give in 19 the cause now before this Court shall be the truth, the whole 20 21 truth, and nothing but truth, so help you God? 22 THE WITNESS: I do. 23 THE COURTROOM DEPUTY: Please state your name and spell your last name for the record. 24 25 THE WITNESS: Clayton Carl Cramer. My last name is

1 | spelled C-r-a-m-e-r.

THE COURT: Please proceed.

CLAYTON CARL CRAMER,

4 | called by and on behalf of Plaintiffs, testified as follows:

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5 DIRECT EXAMINATION

- 6 BY MR. DALE:
- 7 | Q. Good afternoon, Mr. Cramer. Thank you for joining us
- 8 today.

- 9 A. Hey. No problem.
- 10 Q. All right. Can you tell me what is your current
- 11 profession, sir?
- 12 A. I'm retired, but I also teach at Community College of
- 13 | Western Idaho, a community college here in Boise.
- 14 | Q. And what subjects do you currently teach?
- 15 A. I teach American History first semester and World History
- 16 | this semester. I also have written nine books. And my work is
- 17 | cited in D.C. versus Heller and McDonald versus Chicago and a
- 18 dozen or more decisions by lower courts.
- 19 | Q. All right. You said you've written book. Let's talk
- 20 about some of those books.
- 21 Did you write a book called *Lock, Stock, and Barrel*?
- 22 A. Yes.
- 23 | O. And what's that book about?
- 24 | A. Well, the book was published several years ago that made
- 25 | claim that guns were pretty much only widespread ownership

after Samuel Colt figured out how to make handguns cheap and reliable. So this is a claim that's been made before, some years -- about 20 years ago, which turned out to be false at the time.

And I went through this new book by Pamela Haag, called the *Gunning of America*. And I eventually checked all of her references and discovered many of her claims turned out not to be true. Many issues cherry-picking her evidence. For some reason, you read something on one page and go over on what was on the previous page.

But what I was doing was basically how American gun culture developed and all the evidence of which guns were in existence.

- Q. So is *Lock*, *Stock*, *and Barrel* the only book you've written regarding gun culture?
- 16 A. No.

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- 17 Q. Did you write a book called, *Armed America: The*
- 18 Remarkable Story of How and Why Guns Became as American as
- 19 | Apple Pie?
- 20 A. Yes, I did. That was in response to a book called *Arming*
- 21 | America, which was, briefly, a very popular, illusory,
- well-known book by a guy named Michael Bellesiles, which made
- 23 | the claim that guns were rare in America and Mexico, that
- 24 Americans did not hunt. And for the most part, that's been
- 25 tightly regulated.

It was such an astonishing and amazing book, but the fact is that it turned out to be largely fabrication, no one bothered to actually check that except for me and a few other people. And eventually Mr. Bellesiles lost his position as a member of the faculty at Emory University after they investigated the claim and found that, in fact, he had lied about a lot of stuff in the book.

So I also wrote another book called *For the Defense of Themselves and the State*, which I examined in detail all of the decisions of the state courts and some of the federal court decisions about the meaning of the right to arm positions in both the Federal Constitution and in the State Constitutions.

- Q. Did you write a book called Concealed Weapon Laws of the
- 14 | Early Republic: Dueling, Southern Violence, and Moral Reform?
- 15 A. Yes. That was my master's thesis, and it examined in
- detail exactly why concealed weapon laws first appeared in
- 17 | mostly southern states.
- Q. All right. I am going to show you a document here. Hang on for a quick second while I figure this out.
- Thank you. All right. Can you see that document,
- 21 Mr. Cramer?

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- 22 A. Yes, I can. It looks like my resume.
- Q. Okay. And just to make this process, hopefully, a little
- 24 | shorter for everybody, I am just going to take you through it
- really quick. I want to make sure that this identifies your

- 1 | history in terms of teaching.
- Does that accurately reflect your history as a teacher?
- 3 A. Yes, does.
- 4 | Q. Okay.
- 5 A. The one thing I might add is I taught History of the
- 6 | Fourteenth Amendment a couple sessions back in the College of
- 7 | Western Idaho.
- 8 | Q. Okay. And going a little bit further down, we see a list
- 9 of books. I'm assuming -- is this a document you prepared,
- 10 Mr. Cramer?
- 11 A. Yes, it is.
- 12 Q. Okay. And this list of books here, does this accurately
- 13 | reflect the books that you've published?
- 14 A. Yes, it does.
- 15 | Q. Okay. And then below that, in your CV, it lists selected
- 16 | publications.
- 17 | Are these law review articles you've written?
- 18 A. Yes. Those are entirely law review articles.
- 19 Q. Okay. And what topics have you written law review
- 20 larticles on?
- 21 | A. I've written law review articles about --- well, obviously,
  - 22 | the first one about the problem of fraudulent claims being made
  - 23 by some historians who are attempting to revise American
  - 24 | history when it doesn't match with the facts.
  - 25 One of these articles was about the problems of mental

illness and what are the limits of the right to bear arms with respect to people with mental illness problems.

- And a little further down, this one is co-authored with Nicholas Johnson and George Mocsary. This was cited in McDonald v. Chicago, 2010.
- 6 Q. Go ahead.

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- 7 A. McDonald v. Chicago here we made the argument that the
- 8 | Fourteenth Amendment was intended to impose oppose the Bill of
- 9 Rights through the privileges and immunities clause of the
- 10 Fourteenth Amendment on to the states.
- 11 Q. And you said it was cited. Are you talking about the
- 12 | Supreme Court Case, McDonald v. Chicago?
- 13 A. Correct, yes.
- 14 | Q. And was it cited in the majority opinion?
- 15 A. Yes, the majority opinion, yes.
- 16 Q. Has any of your work been cited in any other appellate
- 17 | court opinions that you're aware of?
- 18 | A. I know it has -- I can pull it up, briefly. Yeah. But,
- 19 yes, my work is cited in quite a few decisions.
- 20 | Q. Okay. Well, I don't want you to pull anything up. Let's
- 21 just work off the documents we have at hand.
- But let's go down a little further. I just want to make
- 23 | sure I have everything.
- Does this list accurately reflect the law review articles
- 25 and other articles you've authored?

1 A. There is probably -- I think there is a couple that are

2 | probably not present there. Basically, I've generally tried to

avoid adding too much stuff there, because it makes the CV get

4 | too long.

5 Q. Understood. Understood. And below that, you have a

6 | section that you wrote called "Conferences and Expert

7 | Testimony." And these were presentations that you gave, at

8 | some point?

9 A. Yes. As various states were considering -- were

10 discussing revisions of the concealed weapons gun laws. I

11 | went, and I spoke about what my research had found about the

12 | what happened to the murder rate as a result of the states that

13 | have adopted shell issues for weapon and gun laws. And for the

most part, murder rates would have fallen, and those states

15 | shouldn't have done that.

16 Q. All right. And then, finally, you wrote a section that we

17 were just discussing work cited in court decisions.

Does this accurately reflect the appellate court decisions

19 | in which your writings in one form or another have been cited?

20 A. Yes.

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21 | Q. All right. And what are the topics upon which your

22 | writings have been cited in those appellate court decisions?

23 A. Well, in many cases, they've been cited to demonstrate

24 | that certain categories of prohibitions on possession of

25 | firearms are actually Constitutional. In particular, the --

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1 some of the cases that involved people convicted of domestic 2 violence misdemeanors. Courts have heard challenges to those and cited work by -- I can think to myself -- arguing that 3 these sort of limitations on possession are not unreasonable. 4 They're not unconstitutional. They're consistent with the 5 values and the laws that were present at the time of the 6 ratification of the Constitution. 7 MR. DALE: All right. At this time, I would like to 8 offer and move into evidence Plaintiffs' Exhibit 8. 9 THE COURT: Any objection? 10 No objection. 11 MR. WOODS: All right. Exhibit 8 will be received THE COURT: 12 into evidence. 13 (Exhibit 8 was received into evidence.) 14 BY MR. DALE: 15 All right. Well, thank you for that. 16 Let me ask you just one more question with regards to your 17 background. Have you ever been designated an expert witness in 18 any other case involving the interpretation of firearms laws? 19 Barrett v. Bonta in 2021, another District Court 20 case. And I gave a deposition on an expert declaration in 21 Oregon Firearms Federation last week. 22

- Q. All right. And in the Barrett v. Bonta case, what was
- 24 | your area of expertise you were designated for?
- 25 A. Well, it was the history of laws regulating the carrying

- 1 of firearms. California had, I guess, recently passed a
- 2 | requirement that you had to have a license to carry openly,
- 3 | which is really quite dramatic changes. Until 1967, you can
- 4 | carry openly, even in the cities, a loaded firearm.
- 5 | Q. So let me ask you: In providing expert testimony, in
- 6 | writing books, in preparing law review journals, where do
- 7 | you -- what training or what experience do you draw upon to
- 8 | create these writings or to give the testimony?
- 9 A. Well, my bachelor's degree is in history and my master's
- 10 degree is in history. And I have spent, I would say -- from
- 11 | 1989 forwards, I've spent just about all of my spare time
- 12 reading and researching issues related to the history of
- 13 | weapons regulations in America.
- 14 Q. Going back how far, sir?
- 15 A. To 1989.
- 16 | Q. No. I mean, the history of regulation. How far back have
- 17 | you researched in terms of the history of America?
- 18 A. To the settlement of Jamestown in the Plymouth.
- 19 Q. All right. And have you actually researched past laws and
- various colonies or the early founding states?
- 21 A. Absolutely. I have -- at one point, I someone paid me
- 22 | to -- I might have been done it for free, if he'd asked right.
- 23 | I read through every session law adopted during the
- 24 Revolutionary and Articles of Confederation period in all the
- 25 | states plus Vermont.

Q. Have you've used this information as part of forming opinions that you have put into law review articles?

- 3 A. Yes.
- 4 Q. Okay.

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- A. In some cases, my research has led me to throw away
  distant hypotheses and come up with an entirely new theory for
  why things happened.
- 8 Q. Can you give me an example of that, sir?
  - A. Well, I started working on my master's thesis, Concealed Weapon Laws of the Early Republic. I assumed that, at least part of why these laws were adopted, when they were largely in the United States, was related to the issue of slavery and race. But the more I got into it, the more I discovered that it actually had an entirely different origin, and it was tied to the fact that an honor, culture, and development had transcended from Scotland into the back hills area of the South.

And then, in a fairly complicated way, the attempt to suppress dueling led to an attempt to ban concealed carry weapons because, if you got into an argument with someone, if you knew they were armed, you weren't going to go ahead and continue to be confrontational. You don't know if they were armed. They might draw a weapon or knife on you. And so this led to a big problem with dueling.

If someone insulted you or took liberties with your wife,

or whatever, you might challenge them to a duel. Of course, dueling was a big problem. So many states went ahead and made -- required you to swear an oath that you would not duel or be involved in any way or, like, carry out a challenge or something, usually have to think through things.

And what would happen is, every few years, someone would get elected to the Legislature, and they would have to revise that day forward, because this guy had -- didn't want to perjure himself about having participated in a duel.

And so we had this weird situation where people were more willing to kill someone than to perjure themselves about whether they had participated in dueling or something like that. As I said, it was completely not what I was expecting to find.

- And that caused you to change your opinion on that 15 particular issue? Is that what you are saying today? 16
  - Yes. That particular set of laws, the concealed weapon laws that were adopted before the Civil War, had a different origin than I expected.
- All right. Do you understand what you are here to testify 20 about today?
- 22 Α. Yes.

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- And do you understand what the California Unsafe Handgun 23
- Act is? 24
- I have read a bit about it. It has a drop-test 25 Α.

1 | requirement, and it also has a microstamping requirement with a

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- 2 | firing pin, and it also has a loaded chamber indicator
- 3 | requirement on firearms. And there's this complicated roster
- 4 | scheme, whereby, as I understand it, for every one gun that
- 5 | gets added to the roster, -- and, therefore, it's legal to sell
- 6 | in California -- two have to be taken off.
- 7 | Q. Okay. So let's talk about that last part. Explain to me
- 8 | what you mean by, two have to come off if one is added?
- 9 A. My understanding was that, if the manufacturer wanted to
- 10 | have one added to the roster, that two additional ones would
- 11 | have to age off or in some way cease to be on the list.
- 12 | Q. Would that include new guns on the roster or grandfathered
- 13 guns? Do you have any understanding of that?
- 14 A. It's been so long since I read the law. I do not remember
- 15 | the details of how they decided which ones should go away.
- 16 Q. Okay. And in your work, have you ever come to an
- 17 | understanding of the tests for measuring the constitutionality
- 18 of a law that was identified in the case of New York State
- 19 Rifle and Pistol Association versus Bruen?
- 20 A. I, of course, have read the Bruen decision. And
- 21 | generally, the work I've been doing the last few months, I've
- 22 | been looking at what laws were in effect in 1789 when the Bill
- 23 of Rights was passed by Congress and also what laws were in
- 24 effect before 1868 when the Fourteenth Amendment was ratified.
- 25 | Basically, the Bruen decision went ahead and, basically,

set those magic dates, to a large extent, actually to find
whether some law or analogue was constitutional was under the
Second Amendment.

- Q. All right. Were you asked by us to determine whether or not there were any laws you could find that were historical analogues to the drop-testing feature -- or the drop-testing requirement of the Unsafe Handgun Act?
- A. Well, I would say, the closest to that would probably be the proofing laws, that some states adopted, requiring firearms -- firearm barrels had to be proof verified they were safe before they could be assembled into guns. Although those are not exactly equivalent.
- Q. Well, as part of the work you've done, did you research proofing laws in the various jurisdictions during the founding or thereafter?
  - A. Well, what I found was, in the 17th century in England, the role of gunmakers, Guttea [sic] chartered to authorize them to, basically, go searching anywhere they wanted to look for guns that had not been proofed. But they, of course, were in town to make sure that only the guns that they made, which had been tested and stamped with their mark of approval, would be lawful for people to possess or to sell.
  - Q. And in doing your research, did you ever learn any information or come to any conclusions as to why these laws were enacted?

A. In the case of England, the sensible claim was that it was to make the guns safer. It's certainly possible, although both throughout the medieval and in the modern period have just released partially a string of associations for the purpose of limiting the competition.

There is one case that I ran into. I was in New York at Colonial Records where shoemakers had a guild in New York City. They were complaining that a new guy is coming into town, He was not a member of the guild, and he was making shoes. They went to the Governor and said, "You've got to stop this guy."

The Governor's response was, "Under our mercantile laws, we're not supposed to be making shoes in America. We're supposed to be shipping leather to England so they can make shoes and sell them back to us." And he said, "Do really you want to go ahead and appeal this to London?"

And the shoemakers said, "Ah, never mind."

- Q. So let me ask you, other than a potential safety analogue for the drop test, are you aware of any other laws that are analogous to the drop-testing requirement based on different factors other than safety?
- 21 A. I am not aware of any, no.

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- Q. Okay. And then features that show that a firearm is
- loaded with ammunition, are you aware of any laws that existed
- 24 back at the founding or up through the adoption of the
- 25 | Fourteenth Amendment that, where a state or a locality required

that there be some device on a firearm, that would indicate if there was ammunition in the chamber?

- A. I have never seen anything like that. In the long shot, I think there were people who have enough intelligence to realize you need to check the chamber or check the -- open up the holder on the revolver to see if there is ammunition in there or not. If someone can't be trusted with that, they probably shouldn't own a gun. They probably shouldn't, also, be driving a car because I'm not sure I would trust them to make good decisions on that either.
- Q. But there is no law or regulation you're aware of that required that in any locality?
- 13 A. No.

- Q. Are you aware of any law or regulation during that time period that is important in the Bruen test where the law or the regulation required that features be put on a firearm so that it wouldn't fire in certain positions, such as if it didn't have a magazine?
- MR. WOODS: Objection, to the extent it goes to the ultimate issue.

THE COURT: Overruled.

THE WITNESS: I have never seen any such law before. Part of it is the magazine disconnectors that were mentioned this morning are a fairly recent innovation, and I would not say a particularly good one. I can't remember his name, the

guy that testified first this morning. He mentioned about the trigger.

I can tell you the Browning Hi-Power that I own, the magazine disconnector uses an eight-and-a-half-pound trigger to a four-and-a-quarter-pound trigger pull, which makes it a vastly more accurate. As far as I'm concerned, if you are more accurate with the gun, that makes it much safer with that gun for everyone around you.

9 BY MR. DALE:

- Q. And when you are talking about trigger pull, you are talking about the amount of pressure that a person needs in order to pull the trigger to get the firing pin to strike the primer; correct?
- 14 A. Exactly.
  - Q. Okay. And then, in looking at the laws that you've studied from the periods that are important to Bruen, from the founding up through the adoption of the Fourteenth Amendment, did you find any laws that required that a unique registration mark be put on the ammunition of a firearm?
    - A. No. And part of it is that I don't think technology at the time would have even made that possible. These very small numbers that are stamped onto the firing pin, that conform to the microstamping requirement, are actually really tiny. Try to imagine making it with tools that were readily available in the 19th century.

Q. What about registration marks on the firearm itself? Were there any laws during that period that required that?

A. No. I got an e-mail from the Henry Rifle Company. They

A. No. I got an e-mail from the Henry Rifle Company. They are the -- they have -- there is a museum Back East associated with the Henry Rifle Company that made many rifles in the United States in the late 18th to early 19th century.

And the curator of the museum told me that serial numbers were fairly uncommon on firearms in the U.S. until the Civil war period and later.

If you go onto websites that sell antique guns, you'll see a lot of them marked "NSN," no serial number.

- Q. Let me ask you about -- let's go back to registering pieces of ammunition or boxes of ammunition. Has there ever been a law, other than the current California law regarding ammunition registration, that you're aware of where individual boxes of ammunition would be registered?
- A. Well, I can tell you, when I first bought handgun ammunition in Orange County about 1985, at the time there was a still a federal law that required that you had to fill in a disposition slip of some sort at the gun store, where they would identify who you were, what your age was, and that you were buying ammunition of a particular caliber. But it was not registration. There was no number on the box. There was nothing to uniquely identify the ammunition in the box.

And I believe that law disappeared, because I have never

1 | had to show my ID again after that. I believe the Firearm

No.

- 2 Owners' Protection Act of 1986 might have removed that
- 3 | requirement.
- 4 Q. Okay. Do you know when that requirement for registering
- 5 ammo federally came into effect?
- 6 A. I am not exactly sure.
- 7 | Q. Was it at any period during the founding or up through the
- 8 adoption of the Fourteenth Amendment?
- 9 A. It was most unlikely, because -- I feel like I'm
- 10 | struggling a little. I had a stroke in 2014, and there are
- 11 I times that it shows.
- 12 The first federal firearms law that I'm aware of is the
- 13 | Nonmailable Firearms Act of 1927. I am not aware of any
- 14 | federal law regulating gun ownership or possession or anything
- of the sort before that Act was passed.
- 16 Q. 1927?
- 17 A. Yes.
- 18 | Q. Okay. And, finally, I want to ask you, in doing the task
- 19 | we asked you to do, looking for laws that were potentially
- 20 | historical analogues, did you find any state or local laws that
- 21 required that features be put on firearms such that residents
- 22 of one state or locality could not obtain those firearms but
- 23 the rest of the states or the rest of the colonies, their
- 24 | citizens could get those?
- 25 A. Not firearms. They had the period or issue where some

1 | states have banned or in some cases engaged in extraordinarily

2 | high taxes to discourage using Arkansas toothpicks, which was

two types of fighting knives that were unfortunately a little

- 4 bit too popular in the period before the Civil War.
- 5 Q. So let me ask you: How many jurisdictions were you aware
- 6 | that put that sort of restriction on, at least, those fighting
- 7 knives?

- 8 A. Six or seven. If I had to, I could probably think about
- 9 | it for a while and give you a complete list of all of them.
- 10 These bans were never terribly widespread.
- 11 Q. Do you recall reading the outlier language in the Bruen
- 12 | decision?
- 13 A. There is the outlier language that indicates that some of
- 14 | these laws were present in a few cities and a few territories
- 15 | that represented a very small percentage of the U.S. population
- 16 | are not terribly indicative of what we should consider to be a
- 17 | prevailing view of what those laws were at the time. These
- 18 were a very tiny minority of jurisdictions, and many of these
- 19 | laws did not survive for very long.
- I can tell you that -- unknown territory had restricted
- 21 | gun-carrying laws, and the territorial period did not survive
- 22 | into statehood. The United States Supreme Court ended up
- 23 | striking down some of those laws in a case called *In Re*
- 24 | *Brickey*, 1902.
- 25 Q. And, for example, you cited Bowie knife laws. Based on

1 | your understanding of the outlier language you just described,

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- 2 | have you formed an opinion as to whether the Bowie knife laws
- 3 that prohibited certain places from their citizens from having
- 4 Bowie knives but allowed a lot of other places to have them,
- 5 | whether or not that would be considered an outlier, under your
- 6 | understanding of Bruen?
- MR. WOODS: Objection. Goes to the ultimate issue.
- 8 THE COURT: Overruled.
- THE WITNESS: May I go ahead and answer that?
- MR. DALE: Yes.
- 11 THE COURT: You may.
- 12 | THE WITNESS: I don't consider those to be outliers.
- 13 | I mean, this was not -- these were not remote parts of the
- 14 United States. These were familiar -- a number of states that
- 15 | had significant populations in them, so they were not ruled the
- 16 outliers for Bruen.
- 17 BY MR. DALE:
- 18 | Q. Let me ask you about some other laws. We previously
- 19 | provided you some exhibits that were produced to us by the
- 20 Department of Justice.
- 21 And do you recall reviewing those exhibits?
- 22 A. You mean the ones showing the firing pin? That one?
- 23 Q. No, no, no. I'm talking specifically about the exhibit
- 24 they provided that included copies of historical laws.
- 25 | A. Right, Exhibit 24. Yeah. I got it in front of me.

- Q. Go ahead and take it off your screen, please, because I don't want you to testify from it yet.
  - A. Okay.

- Q. Thank you. So one of those laws in there is a powder law.

  Do you recall that law?
  - A. Gunpowder storage laws. There are a number of those, including a number that are not in the exhibits, that I have found.
    - Q. And would you consider gunpowder storage laws, under your understanding of the Bruen test, to be analogous to any of the requirements of the Unsafe Handgun Act?
    - A. No. What's interesting is that many states and localities have gunpowder storage laws not so terribly different from these. When I lived in California, the northern part, before I purchased ammunition, I wanted to verify with the police department if there was any limitation on the amount that I could have. The only limitation was I could not have more than -- I think it was 30 pounds of black powder in my house, which I considered an unreasonable amount to have in your house in any case.

It turns out that many of the gunpowder storage laws that were adopted in the period immediately before and after the Revolution said you could not have more than, typically, 28 or 30 pounds of gunpowder in your home. It has to be stored in a public magazine because of the safety issues involved.

Q. Well, but wouldn't that be analogous, for example, with the drop-safety test, because there is a safety purpose behind that to protect members of the public.

Do you disagree with that?

- A. I guess I disagreed because the drop-safety test is one of these things -- there is a more indirect, sort of, risk involved there. If the gunpowder goes, the risks involving a fire. And even if you don't drop a gun or do anything like that, the gunpowder will still be extremely a hazard.
- Q. All right. And then there were also -- you previously touched on it, but part of the defendant's exhibits included some laws regarding proofing.

Do you believe that those fit the historical analogue test, as you understand it?

A. They're closer, but not quite. The big difference is that, there is proofing laws to verify the barrels can withstand the fire buildup, usually larger barrel loaded with gunpowder. Those are primarily for the safety of the person who is going to be purchasing the gun.

If a barrel bursts, the person could be hurt, but it is just the person that is actually holding the gun whereas the -- a lot of these other requirements that are in the California law are really intended to protect other people as opposed to these proofing laws, which, I said, are primarily to protect the person who is holding the gun.

Q. All right. 1 They're similar, but they're not quite the same. Based on your research, your review of the history, are Q. 3 you aware of any law that existed at the time of either the founding up through and including the adoption of the 5 Fourteenth Amendment that had the restrictions on firearms 6 ownership that California's Unsafe Handoun Act has? 7 None that I can think of, no. There might be out there 8 somewhere, but I have not seen any of them. I have spent an 9 awful lot of years going through dusty law books at the 10 UC Hastings Law Library. 11 MR. DALE: All right. Very good. Thank you for your 12 time today. 13 I'll tender the witness. 14 MR. WOODS: I have no questions for this witness. 15 THE COURT: Okay, sir. Thank you. You are excused. 16 THE WITNESS: Thank you. 17 MR. DALE: Tell him, if he can stick around, because 18 we will offer him for rebuttal for Professor Cornell's 19 testimony. 20 THE COURT: All right. 21 THE COURTROOM DEPUTY: He left. Tell him to log back 22 in. 23

MR. DALE: Thank you, Judge. I appreciate you

accommodating all of this today.

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1	THE COURT: No problem.
2	Is that the last witness?
3	MR. DALE: That is our last witness.
4	THE COURT: Defense.
5	MR. SAROSY: Yes, Your Honor. I'll go get
6	THE COURT: Great.
7	MR. SAROSY: I'll get Special Agent Supervisor
8	Gonzalez.
9	THE COURTROOM DEPUTY: Just as a heads-up, I am
10	muting it for this witness. Okay? Or do they need to listen?
11	MR. DALE: No. It's fine for this witness. He just
12	needs to listen to Professor Cornell.
13	THE COURTROOM DEPUTY: Okay. So if they reach out to
14	you, just tell them that they can see us, but it's muted.
15	MR. DALE: All right. I appreciate that. Thank you.
16	THE COURTROOM DEPUTY: You're welcome.
17	THE COURT: Good afternoon, sir.
18	THE WITNESS: Good afternoon.
19	THE COURT: Can you please come forward? Stand right
20	by our court reporter for a moment. We're going to administer
21	an oath to you and then have you take the witness stand.
22	THE COURTROOM DEPUTY: Just right there.
23	THE WITNESS: Right here?
24	THE COURTROOM DEPUTY: Raise your right hand.
25	Do you solemnly swear that the testimony you shall give in

1 the cause now before this Court shall be the truth, the whole truth, and nothing but truth, so help you God? 2 THE WITNESS: Yes, I do. 3 THE COURTROOM DEPUTY: Please be seated. THE WITNESS: Please state your name and spell your 5 last name for the record. 6 THE WITNESS: My name is Salvador Gonzalez. 7 Last name is G-o-n-z-a-l-e-z. 8 THE COURT: Please proceed. 9 SALVADOR GONZALEZ, 10 called by and on behalf of Defendant, testified as follows: 11 DIRECT EXAMINATION 12 BY MR. SAROSY: 13 Good afternoon, Mr. Gonzalez. Thank you for being here. Q. 14 Can you please tell me what your educational background 15 is? 16 My education, I have a Bachelor's of Arts in ethic 17 studies, a Bachelor of Science in criminal justice from 18 California State University, Sacramento. 19 And where are you currently employed? 20 Q. I am currently employed with the Department of Justice. 21 Α. And how long have you been employed at the Department of 22 Q. Justice? 23 I am going on my ninth year. 24 Α. And are you at a specific bureau within the Department of 25 Q.

- 1 | Justice?
- 2 A. Yes.
- 3 Q. And what is that bureau called?
- 4 A. The Bureau of Firearms.
- 5 Q. And what roles have you -- or how long have you been with
- 6 | the Bureau of Firearms, specifically?
- 7 A. I have been with the Bureau of Firearms eight years now.
- 8 | Q. And what roles have you had at the Bureau of Firearms?
- 9 A. I've been a Special Agent with the Bureau of Firearms
- 10 where we -- through the firearm familiarization, also
- 11 enforcement firearms, enforcement regarding either noncompliant
- 12 | firearms or prohibited people.
- 13 Q. And what is your current role at the Bureau of Firearms?
- 14 A. My current role within the last -- what is it? -- four
- 15 | years, going on four years now, I do classes in regards to
- 16 | firearms familiarization, also contact, you know, prohibited
- 17 | people. I also do -- I also have duties that include -- I'm
- 18 over the roster of firearms.
- 19 Q. And --
- 20 A. California handgun roster.
- 21 | Q. And what is your current title?
- 22 A. Special Agent Supervisor.
- 23 Q. And are you based in Sacramento?
- 24 A. Yes.
- 25 | Q. And do you cover certain areas, or are you just restricted

- 1 to Sacramento?
- 2 A. I pretty much cover anywhere from Kern County up to the
- 3 Oregon border.
- 4 | Q. And as a Special Agent Supervisor, do you have additional
- 5 duties that other Special Agent Supervisors in the Bureau of
- 6 | Firearms do not have?
- 7 A. Yes.
- 8 Q. And what are some examples of those duties?
- 9 A. I do expert reports for district attorneys, local
- 10 agencies. I go over facts regarding firearms, do some
- 11 familiarization courses for peace officers, property
- 12 | technicians, other agents, other law enforcement. I've
- 13 | conducted training with local DA's and ATF in regards to
- 14 | privately-made firearms, assault weapons, and other types of
- 15 | firearm familiarization courses.
- 16 Q. And do you -- other special agents and other staff in the
- 17 | Bureau of Firearms, do they come to you for expertise as on
- 18 | firearms and whether something is classified as an assault
- 19 | weapon or a machine gun?
- 20 A. Correct.
- 21 | Q. Do other law enforcement agencies also come to you for
- 22 | your expertise on firearms?
- 23 A. Correct.
- 24 Q. Would you consider yourself a firearms expert for the
- 25 | Bureau of Firearms?

- 1 A. Yes.
- 2 Q. And I forgot to bring you an exhibit binder, so just give

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- 3 | me one second.
- 4 Your Honor, may I?
- 5 THE COURT: You may.
- 6 BY MR. SAROSY:
- 7 | Q. We'll get to your CV in a second, or we'll show it in a
- 8 | second. But your CV, I think, mentions that you've made or
- 9 assisted in the arrest of over 100 people for illegal weapons
- 10 possession and participated in over 30 search warrants.
- 11 | Can you estimate how many firearms you've handled during
- 12 | those investigations?
- 13 A. Hundreds, over 500 or more. I mean, it depends. Some
- 14 cases that you deal with 100 firearms per case, so it's over,
- 15 probably, a thousand.
- 16 | Q. So you are saying, in one search, you could come across
- 17 | 100 firearms?
- 18 A. Yes, correct.
- 19 Q. And I'm assuming that number would include long guns and
- 20 | handguns?
- 21 A. Correct.
- 22 Q. And you mentioned that you oversee the handgun roster.
- 23 | And as you know, the handgun roster is what is required under
- 24 the Unsafe Handgun Act.
- 25 Does that sound right to you?

A. Yes.

- Q. And what are your responsibilities in overseeing the handgun roster?
  - A. Well, when we receive applications from the certified lab indicating that a manufacturer wants to introduce a pistol to the roster, I take a look at the firearm and compare it. If it's a certain firearm that we just received, they call it, like, a tested firearm, which we just received it, I take a look and make sure we follow requirements.

Initially, it'll come, and the compliance report will state and be checked off if it's gone through the drop-safety test; has a positive manual of safety or some type of safety, if it is a revolver; if it has gone, like I said, through 600 rounds of firing; if it has a chamber load indicator or magazine disconnect or -- at this time, I guess, there are no microstamping -- firearms with microstamping. But we just go over all those requirements, if they've been met.

If it's similar, of course, if it's similar findings except for -- depending on when the firearm was introduced, if it was introduced prior to the microstamping or -- not the microstamping but the chamber load indicator or magazine disconnect, then we just verify that the new similar matches that tested firearm and make sure that all the parts are identical to the originally submitted firearm.

So then after that, we get the application plus the fee,

1 | which is a \$200 fee, to get the firearm listed. We then have

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- 2 | what's called -- we determine if the firearm meets all the
- requirements and if it's approved or not.
- 4 | Q. And in your role in overseeing the handgun roster, how
- 5 | many handguns do you think you've handled in doing those
- 6 | responsibilities?
- 7 A. Hundreds.
- 8 Q. Do you know how to -- sorry.
- That number, does that number include -- or what are the
- 10 types of handguns, I guess, that that would include?
- 11 A. There is a single-action revolver, double-action
- 12 | revolvers, semi-automatic pistols, semi-automatic pistols with
- 13 chamber load indicators, semi-automatic pistols with chamber
- 14 | load indicators and magazine disconnects, single shot firearms
- 15 or handguns. I think that's about it.
- 16 Q. Do you know how to disassemble all of those different
- 17 types of firearms and handguns?
- 18 A. Yeah. Well, I've had to learn legally, yes.
- 19 Q. So you can identify the parts within all those types of
- 20 handguns?
- 21 A. A lot of the parts.
- 22 | Q. And have you disassembled semi-automatic pistols with a
- chamber load indicator and a magazine disconnect?
- 24 A. Yes.
- 25 Q. And have you fired semi-automatic pistols with a chamber

1 | load indicator and a magazine disconnect?

- 2 A. Yes.
- 3 Q. And are you familiar with how -- you don't need to
- 4 describe yet how a chamber load indicator works, but are you
- 5 | familiar with how a chamber load indicator works?
- 6 A. Yes.
- 7 | Q. Are you familiar with how a magazine disconnect works?
- 8 A. Yes.
- 9 Q. And are you familiar with how microstamping is intended to
- 10 | work under California law?
- 11 A. Yes.
- 12 Q. And if you can turn to Exhibit 1, which is just tab
- 13 | number 1. Is this an accurate and up-to-date copy of your CV?
- 14 A. Yes, it is.
- MR. SAROSY: Your Honor, I would like to move Exhibit
- 16 | 1 into evidence.
- 17 | THE COURT: Any objection?
- 18 MR. DALE: No objection.
- 19 | THE COURT: Exhibit 1 will be received into evidence.
- 20 (Exhibit 1 was received into evidence.)
- MR. SAROSY: Thank you.
- 22 | Q. And does your CV list all of the firearms-related
- 23 | trainings that you have attended?
- 24 A. Yes.
- 25 | Q. I am not going to have you go through all of them but just

for our benefit, can you just highlight some of the trainings relating to the identification and use of firearms?

- 3 A. I've gone to Colt Armory School provided through Colt.
- 4 I've gone to the Glock Armory School provided through Glock;
- 5 also, the Benelli. Benelli was provided through another -- not
- 6 the actual manufacturer, but it a Benelli shotgun armory
- 7 | course. I also had submachine gun classes, where we took apart
- 8 our firearms just to familiarize ourselves with what we use.
  - I've also been a Range Master, which is the AR-15-type rifles in order to train and shoot and train other people.
- Q. And what trainings did you have to do to become a Special Agent at the Bureau of Firearms? Firearms -- I'm sorry.
- What firearms training have you had to do to become a Special Agent?
- 15 A. Well, I had -- I would have to go through firearms
- 16 | familiarization courses in the past. I've had to go through,
- of course, POST -- I had POST through Golden West Academy here
- 18 | in Huntington Beach, also had numerous trainings with our old
- 19 expert which he conducted certain trainings that I went
- through. I went through the private manufactured firearms
- 21 | training with ATF as well. I think that is a lot of what I
- remember right now.

- Q. When say, "Our old expert," who are you referring to?
- 24 A. Blake Graham.
- 25 | Q. And what was his role at the Bureau of Firearms?

- 1 | A. He was an expert. His last role was deputy district --
- 2 | not district. He was Assistant Director for the Bureau of
- 3 | Firearms. But he also started as a Special Agent, moved to be
- 4 | an expert over the roster himself.
- 5 Q. And he was the Bureau's firearms expert before you?
- 6 A. Correct.
- 7 Q. And can you estimate how many hours of firearms training
- 8 | you've gone through to date?
- 9 | A. Probably hundreds. I don't know exactly. I never really
- 10 | counted.
- 11 | Q. Would you say over a thousand?
- 12 | A. I would say so.
- 13 Q. And have you given testimony in court before relating to
- 14 | firearms identification?
- 15 A. Yes.
- 16 Q. Were those criminal or civil cases?
- 17 A. Criminal.
- 18 Q. And that would be criminal prosecutions --
- 19 A. Correct.
- 20 Q. -- by district attorneys?
- 21 So do you consider your areas of expertise here to be to
- 22 | include firearms identification?
- 23 A. Yes.
- 24 Q. Do you consider yourself an expert in the handgun roster?
- 25 A. Yes.

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And do you consider yourself an expert in the requirements 1 of the handgun roster? 2 Yes. 3 MR. SAROSY: All right. Your Honor, I would like to 4 offer Special Agent Supervisor Sal Gonzalez as an expert in the 5 6 areas he just described. He will be so designated. THE COURT: 7 8 MR. SAROSY: Thank you. 9 Q. We are going to start with talking about how the handgun 10 roster -- what it is and how it works, and then we'll move on to the specific requirements of the roster. 11 And, obviously, Your Honor, if you have follow-up 12 13 questions, feel free. Can you briefly explain -- I know we've heard testimony 14 about what the handgun roster is, but can you explain, from 15 16 your perspective, what the handgun roster is? 17 Well, back in -- what was it? -- 1968, the Gun Control Act passed which put kind of a hold on foreign importation of 18 19 truly-made firearms. So because of that, there was, like, five 20 distributors out of the Los Angeles area that started making 21 these what they call, "Saturday Night Specials," which is kind of termed "the ring of fire," right, because they were located 22 in kind of a circular area in L.A., the Los Angeles area. 23 So because of that, the roster was started where they 24

tried to get certain safety devices, safety -- bring firearms

- 1 | up to compliance and make sure that firearms weren't
- 2 discharging without, you know, the barrel blowing up or the
- 3 | firearm blowing up in a user's hand.
- 4 | Q. So were those some of the safety issues with the "Saturday
- 5 | Night Specials"?
- 6 A. Correct.
- 7. Q. Were there other safety issues that you're aware of with
- 8 | handguns described as "Saturday Night Specials"?
- 9 A. Not that I recall.
- 10 Q. And, generally, can a California resident purchase a
- 11 | handgun that is not listed on the roster?
- 12 A. A California resident? No.
- 13 Q. And can a California resident possess a handgun that is
- 14 off-roster?
- 15 A. Yes.
- 16 Q. And is there -- is the roster publicly available, a copy
- 17 of the handgun roster?
- 18 A. Yes, it's publicly available online.
- 19 Q. And is the publicly available list, is that a searchable
- 20 list, or is it like an Excel spreadsheet?
- 21 A. It's a searchable list.
- 22 Q. Can you turn to Exhibit 2, or tab 2.
- 23 Is that an accurate screenshot of the searchable boxes
- 24. on -- for the handgun roster?
- 25 A. Yes.

1 Q. And is this a screenshot of -- I guess, what is this a

- 2 | screenshot of? Like, which website?
- 3 A. It's Office of Attorney General's Handguns Certified for
- 4 | Sale. It's the roster, what we term the "roster."
- 5 Q. And it seems like there -- do you see two searchable boxes
- 6 here?
- 7 A. Yes.
- 8 | Q. And can you describe how -- do you know how those work,
- 9 | the searchable boxes?
- 10 A. Yes. So the first one where it states -- it just says,
- 11 | "Manufacturer," it's kind of a drop-down menu that lists all
- 12 | the manufacturers in alphabetical order.
- In the search, you can search by manufacturer and model,
- 14 | Just type it in, and it will pull up the type of manufacturer
- 15 or firearm that you are looking for.
- MR. SAROSY: All right. Your Honor, I would like to
- 17 | move Exhibit 2 into evidence.
- 18 THE COURT: Any objection?
- 19 MR. DALE: No objection.
- THE COURT: Exhibit 2 will be received into evidence.
- 21 (Exhibit 2 was received into evidence.)
- 22 BY MR. SAROSY:
- 23 Q. And what are the types of handguns that are on the roster?
- 24 A. Handguns, like I said before. There are revolvers, some
- 25 | semi-automatic pistols. We have some single shots. We have

- 1 | semi-automatics with chamber load indicators, semi-automatic
- 2 | with chamber load indicators and magazine disconnect. That's
- 3 | all we have there on the roster.
- 4. Q. And does the Bureau of Firearms keep a sample of every
- 5 | handgun that has been added to the roster?
- 6 A. We keep one sample, yes.
- 7 | Q. And for this case, did you take some photographs of some
- 8 of those samples --
- 9 A. Yes.
- 10 Q. -- that were maintained by the Bureau of Firearms?
- 11 If you can turn to Exhibit 3, is this an accurate picture
- 12 of a revolver that is currently on the roster?
- 13 A. Yes.
- 14 | Q. What is the model name for this revolver?
- 15 A. This is the North American Arms, what they call -- it
- 16 | would be NAA-22MS.
- 17 | Q. And can you describe what a revolver is and how it
- 18 operates? Can you describe what a revolver is and how it
- 19 | fires?
- 20 A. So in this one, it's a single shot revolver, so you would
- 21 have to set the hammer back and then pull the trigger in order
- 22 | for it to discharge a round.
- Q. I am just going to show you Exhibit 3, real quick. This
- 24 | is very bright, but can you see that?
- 25 A. Yes.

Can you just circle on the screen where the hammer is, 1 that you were describing?

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- Here (indicating). This little thing here. 3
- And is this a single-action revolver or a double-action? 4 Q.
- It's a single-action. 5

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- what is the difference between a single-action and a 6 double-action revolver? 7
- 8 Well, with the single-action, like I said, you would have to pull the hammer back before you could fire the trigger or 9 put your finger on the trigger before it fired. 10

The double-action, it would happen automatically depending on the type; right? But the double-action, once you put your finger on the trigger and pull it, it will fire on the first round. After the second round, it can either go to single-action, where it will fire after the hammer is already cocked back. So there is differences, little differences.

> I will take this off. MR. SAROSY:

Your Honor, can I move Exhibit 3 into evidence, please?

THE COURT: Any objection?

Is that exhibit going to reflect the mark MR. BRADY: that the witness just made on it?

> MR. SAROSY: I don't believe so, no.

MR. DALE: That's fine. No objection.

THE COURT: Exhibit 3 will be received into evidence.

(Exhibit 3 was received into evidence.)

Suzanne M. McKennon, CSR, CRR, RMR United States Court Reporter suzanne\_mckennon@cacd.uscourts.gov (213) 894-3913

- 1 BY MR. SAROSY:
- 2 | Q. And, Mr. Gonzalez, the circle you made, was that of the
- 3 | trigger or the hammer?
- 4 A. I made the trigger; right?
- 5 Q. No. Sorry. I was asking about the hammer.
- 6 A. Oh sorry.
- 7 Q. No. I'm sorry.
- 8 A. I'm sorry.
- 9 Q. Yeah, no worries.
- 10 Can we do it again? Can you circle where the hammer is?
- 11 A. For some reason I thought "trigger." But, yeah, here is
- 12 | the trigger.
- 13 | Q. Is that --
- 14 A. Here is the hammer. Here is the trigger.
- 15 Q. So you would have to -- for a single-action revolver using
- 16 what you're describing right now, can you describe again what
- 17 | you would have to do?
- 18 A. So for a single-action, you would have to cock the hammer
- 19 back, and then you pull the trigger. And that's the only way
- 20 to discharge the firearm in this sense.
- Q. So you have to pull the hammer back every time?
- 22 A. Yes.
- 23 Q. Okay.
- 24 A. Like you see in the cowboy movies where they use one hand
- to try to manipulate it to fire faster.

1 | Q. Can you turn to Exhibit 4? Is that an accurate picture of

- 2 | a revolver on the roster?
- 3 A. Yes.
- 4 Q. And what is the model name for that revolver?
- 5 A. This is a KSP-321X.
- 6 Q. And who is the manufacturer?
- 7 A. It's a Sturm, Ruger.
- 8 Q. I am going to show you Exhibit 4.
- 9 Is this a single-action or a double-action revolver?
- 10 A. This is what we call "double-action."
- 11 | Q. And can a double-action revolver typically be fired faster
- 12 | than a single-action revolver?
- 13 A. Yes.
- 14 Q. And how many cartridges or bullets does a revolver
- 15 | typically hold?
- 16 A. Well, it all depends. Some can go five to six, depending
- 17 on the type of revolver it is.
- 18 Q. And how does the shooter reload a revolver?
- 19 A. You have to open up the cylinder, pull up the pin up out
- 20 of the cylinder, and load it manually.
- 21 Q. Can you circle where the cylinder is just for everyone's
- 22 | benefit?
- 23 A. (Witness complies.).
- 24 Q. Thank you.
- 25 Your Honor, I would like to move Exhibit 4 into evidence.

THE COURT: Any objection? 1 MR. DALE: No objection. THE COURT: Exhibit 4 will be received into evidence. 3 (Exhibit 4 was received into evidence.) 4 BY MR. SAROSY: 5 All right. Let's talk about semi-automatic pistols. Ο. 6 Can you turn to tab 5. Is this an accurate picture of a semi-automatic pistol 8 that is currently on the roster? 9 10 Α. Yes, it is. And what is the manufacturer and model for this 11 semi-automatic pistol? 12 The manufacturer is Kahr Arms, model M9098A; 13 And does this semi-automatic pistol have a chamber load 14 Q. indicator or magazine disconnect? 15 This one does not. Α. 16 And can you describe what a semi-automatic pistol is and 0. 17 how it operates compared to a revolver? 18 well, a semi-automatic pistol will have a magazine 19 inserted into the magazine well. Once you load it, pull the 20 slide back, load the chamber, a round, by pulling the trigger, 21 it automatically will feed another round while the other one 22 extracts -- well, the cartridge extracts, and the bullet goes 23 24 out.

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MR. SAROSY: Okay. Your Honor, can I move Exhibit 5

1 | into evidence?

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THE COURT: Any objection?

MR. DALE: No objection.

4 THE COURT: Exhibit 5 will be received into evidence.

(Exhibit 5 was received into evidence.)

6 BY MR. SAROSY:

- 7 | Q. Can you explain how semi-automatic pistols without a
- 8 | chamber load indicator and magazine disconnect are still on the
- 9 | roster after the law required chamber load indicators and
- 10 | magazine disconnects and microstamping?
- 11 A. Yes. Well, these firearms were introduced prior to --
- 12 | what was it? -- 2006 before the chamber load indicator was
- 13 | required. It was a requirement before the magazine disconnect
- 14 in 2007 was required.
- So if they keep these on the roster, if they do the fee,
- which is an annual fee or maintenance fee for \$200, and they
- 17 keep on renewing it, they remain on the roster.
- 18 Q. And can you turn to Exhibit 6, or tab 6. And this is an
- 19 | accurate picture of a semi-automatic pistol that is currently
- 20 on the roster?
- 21 A. Yes.
- 22 Q. And what is the manufacturer and model name for this
- 23 | firearm?
- 24 A. This is Smith & Wesson M&P 9 Shield.
- 25 Q. And does this pistol have a chamber load indicator and a

- 1 | magazine disconnect?
- 2 A. This one does.
- 3 Q. I am going to show you Exhibit 6, and we'll talk more
- 4 | specifically about chamber load indicators and magazine
- 5 disconnects.
- But can you just circle, using your screen, the general
- 7 | area where the chamber load indicator and the magazine
- 8 | disconnect would be?
- 9 A. Well, on a Smith & Wesson, on this model, it be on here.
- 10 | It's kind of flush, so you won't see it. It's here on the
- 11 | slide, chamber load indicator.
- 12 | Q. And then the magazine disconnect?
- 13 | A. The magazine disconnect, it's internal, so it's inside the
- 14 | magazine well. It's somewhere in here. It's inside the
- 15 | magazine, so you can't see it with this picture.
- MR. SAROSY: All right. Your Honor, can I move
- 17 | Exhibit 6 into evidence?
- 18 | THE COURT: Any objection?
- 19 MR. DALE: No objection.
- THE COURT: Exhibit 6 will be received into evidence.
- 21 (Exhibit 6 was received into evidence.)
- 22 BY MR. SAROSY:
- 23 Q. Can you turn to tab 7, Mr. Gonzalez? Do the photos in
- 24 | front of you -- I guess, what do they show?
- 25 A. This was a chamber load indicator on the Smith & Wesson.

1 Q. Is this a close-up of the chamber load indicator from the

- 2 | same Smith & Wesson M&P 9 Shield that we were just looking at?
- 3 | A. Yes.
- 4 Q. And can you briefly describe what a chamber load indicator
- 5 | is?
- 6 A. A chamber load indicator is supposed to let the user know,
- 7 | or somebody that comes in contact with the firearm, that there
- 8 | is a round chambered in the barrel.
- 9 Q. Actually, I'll hold off for now.
- 10 Can we move Exhibit 7 into evidence, Your Honor.
- 11 THE COURT: Any objection?
- MR. DALE: No objection.
- THE COURT: Exhibit 7 will be received into evidence.
- 14 (Exhibit 7 was received into evidence.)
- MR. SAROSY: Thank you.
- 16 Q. Can you turn to tab 8, Mr. Gonzalez?
- 17 A. (Witness complies.).
- 18 Q. And what is this a picture of?
- 19 A. This is, like, the same, a firearm, Smith & Wesson M&P 9.
- 20 | It shows -- well, one thing when the chamber load indicator is
- 21 down. It also shows the magazine disconnect mechanism. If you
- 22 | look at toward the center, you see a little silver blade or tab
- 23 | towards the center, and that's the magazine disconnect.
- 24 Q. And what is the -- we'll get more into magazine
- 25 disconnects mechanisms in a second. But what is the function

(dept)

- 1 | of the magazine disconnect?
- 2 A. So when the magazine disconnect -- when the magazine is
- 3 out of the weapon, it won't allow a round to be fired, even
- 4 there's a live round in the chamber.
- 5 Q. And, currently, in order for a new handgun, not a similar
- 6 | handgun, in order for a new handgun to be added to the
- 7 | roster -- sorry -- a semi-automatic pistol to be added to the
- 8 | roster, would it need to have a chamber load indicator and a
- 9 | magazine disconnect/mechanism?
- 10 A. Correct.
- 11 | Q. Do revolvers need to have a chamber load indicator or
- 12 | magazine disconnect mechanism to be added to the roster?
- 13 A. No, they do not.
- 14 Q. Can you turn to tab 9?
- 15 A. (Witness complies.)
- 16 Q. What is this a picture of or photograph of?
- 17 A. This is a Franklin Armory CA320. It's a single shot
- 18 pistol.
- 19 Q. And is this an accurate picture of that single shot
- 20 | pistol?
- 21 A. Correct.
- 22 | Q. And is this pistol on the handgun roster currently?
- 23 | A. Yes, it is.
- 24 Q. And can you describe what a single shot pistol is?
- 25 A. A single shot pistol technically needs to be manually

1 | loaded every time you let off a round. So you shoot one round,

- 2 | the slide remains open load, and you load another round and
- 3 then go ahead and shoot. It has to be manually loaded every
- 4 | single time.
- 5 Q. The manual reload, is that the main difference between a
- 6 | semi-automatic pistol and a single shot pistol?
- 7 A. Correct.
- 8 Q. When you fire a semi-automatic pistol, how does a
- 9 | semi-automatic pistol typically reload?
- 10 A. Well, essentially, you fire from a semi-automatic pistol,
- 11 | but like I said, you have to have -- you have a magazine inside
- 12 the pistol. It would -- the magazine would cause the next
- 13 | round to go up into the chamber and fire. It lets you fire
- 14 again while the other cartridge ejects.
- 15 Q. So with the pull and then the release of the trigger, does
- 16 | it fire and then reload in that one action?
- 17 A. So when you pull the trigger, it will fire. The slide
- 18 goes back. Then, it causes it to extract, the cartridge to
- 19 extract. Another round will go up, slide up and reload the
- 20 | firearm.
- 21 Q. And are there single shot pistols on the roster that do
- 22 | not require a manual reload of ammo?
- 23 A. Single shot pistols? Let me think.
- 24 Q. I guess -- let me strike that.
- 25 | When you a "manual reload," what is an example of a manual

- 1 | reload?
- 2 A. Manually, you would get it with your hands and pick it up.
- 3 | The slide would be open. You lay it on the inside of the --
- 4 | where the extractor is at; right? You lay it in there, and let
- 5 the rack -- the slide go forward, and then you would go ahead
- 6 and pull the trigger, and the round would go off.
- 7 Q. And do single shot pistols need to have a chamber load
- 8 | indicator or magazine disconnect?
- 9 A. No, they do not.
- MR. SAROSY: Okay. Your Honor, can I move Exhibit 9
- 11 | into evidence?
- 12 | THE COURT: Any objection?
- MR. DALE: No objection.
- 14 THE COURT: Exhibit 9 will be received into evidence.
- 15 (Exhibit 9 was received into evidence.)
- 16 BY MR. SAROSY:
- 17 | Q. Let's talk about how many handguns are currently on the
- 18 | roster. Do you know how many total handguns are currently on
- 19 the roster, approximately?
- 20 A. As of January 1st, there's 829 on the roster.
- 21 | Q. And of those 829, do you know about how many revolvers?
- 22 A. Approximately, like, 314.
- 23 Q. And about how many single shot pistols are on the roster?
- 24 | A. Single shot pistols, there is 60.
- 25 Q. And about how many semi-automatic pistols are currently on

- 1 | the roster?
- 2 | A. There is 499.
- 3 Q. And of those 499, how many of those are similar or similar
- 4 to semi-automatic pistols?
- 5 A. Similar to 499? I am trying to remember. It's about 300,
- 6 approximately 300. I cannot recall.
- 7 | Q. Are similars, or are new?
- 8 A. I cannot recall. I cannot tell you. I cannot recall.
- 9 Q. And about how many total semi-automatic pistols are on the
- 10 roster with the chamber load indicator and a magazine
- 11 | disconnect?
- 12 A. There is 32.
- 13 Q. And are there any semi-automatic pistols on the roster
- 14 | with microstamping?
- 15 A. No. there are not.
- 16 Q. And in the past five years, so, I guess, since about 2018,
- 17 | has the number of handguns on the roster gone below 800?
- 18 A. In the past five years, no.
- 19 | Q. And are you aware of the law that would require any time a
- 20 | new handgun -- a new semi-automatic pistol is added to the
- 21 | roster that three must be removed from the roster?
- 22 | A. Yes. If a new handgun was added, I believe, with
- 23 | microstamping, then one handgun model would be removed.
- 24 | Correct? Is that way you phrased it?
- 25 | Q. All right. Is it three that would be need to be removed

1 or one?

- 2 | A. It was -- actually, yeah, it's three. Three that would be
- 3 | removed, but it was of the similar, I believe, model. Or it
- 4 goes by expiration dates.
- 5 Q. And have any handguns to date been removed from the roster
- 6 | because of that provision?
- 7 A. No.
- 8 | Q. And I think you talked about this generally in the
- 9 | beginning but -- actually, I'll skip it, because you actually
- 10 | talked about the process for getting a handgun added to the
- 11 | roster.
- 12 And that -- the process you described for getting a
- 13 | handgun added to the roster, that was for a new handgun?
- 14 A. Correct.
- 15 Q. Was that for a new handgun?
- 16 A. Correct. I could reemphasize or restate how similar it
- 17 | would be added.
- 18 Q. Actually, can you walk us through the process again, just
- 19 | generally how, starting from the lab?
- 20 A. Yeah. So, like I said, the manufacturer would send three
- 21 | samples to the lab. The lab would then make sure it would meet
- 22 | certain requirements such as it would have to have -- if it's
- 23 | semi-automatic, it would have to have positive safety, which is
- 24 | something that could be a trigger, a trigger blade, a manual
- 25 | thumb safety, a firing pin block. They check that off seeing

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it does have one.

And then it would have to have -- pass certain drop-testing, which is six tests in all. They have some kind of little -- like a rate that they have that they would -- when they place the firearms to fall in certain directions and there's discharges.

It would have to go through 600 rounds of firing. If it fails within the first 20 rounds, then they consider it failing. Or if it fails between anywhere -- in more than the six rounds or six malfunctions within those 600, then it fails as well.

But if they all pass, it passes all of these tests, then one of the firearms that are part of the samples gets sent back to the Department of Justice along with certified lab test report and a check for \$200.

- Q. And what is generally the process for a similar handgun to be added to the roster?
  - A. Similar handguns, basically the same thing. The same amount is charged, \$200. The only difference is, when it's tested, there is a sample we could refer back to which we have in our vault in Sacramento. So we take a similar, look at the tested model, make sure that there had been no physical mark and internal changes. If we notice that there has been some type of internal change with some type of mechanism, some type of part, then we basically -- I'll review it and then decide if

it's going to pass or not. If it's an external change,
something cosmetic, we also go through the same process,
depending on what the change is. We decide if it's going to
pass or not.

when it's more of a physical change, then it's more likely that it won't pass because we don't know, because of that physical change, if a drop test or something else would cause it to misfire, so that would -- a physical change would require to go get it retested.

- Q. A similar handgun is not sent to a lab; right?
- 11 A. Correct.

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- Q. And when you talk about cosmetic differences, what are examples of cosmetic differences?
- 14 A. They'll change, like, stripling on the grip. They'll say
- 15 | that they put, maybe, like a rail or something on the frame.
- 16 They make some type of -- they change their font. Little
- changes that, if they notify us, they tell us, "Hey, we did
- 18 | this type of change on the external side that is not going to
- 19 the impact the workings, internal workings, of the firearm,"
- then that is when it gets reviewed. And that is when a
- decision is made if it's going to go through or not.
- Q. And when a manufacturer sends a firearm to be added that
- 23 is similar, do they sign a statement under oath stating that
- 24 | the only differences are cosmetic differences?
- 25 A. Correct. They'll send us something. If there are

1 | changes, they'll let us know ahead of time, these are the

- 2 | changes, external changes. And if we have further questions,
- we talk back to them and ask them, "Does this in any way affect
- 4 | the workings of the firearm?"
- They'll give us a brief explanation, if we need more. And then we make our decision based on the explanation.

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- 7 Q. And can you look at tab 10, please? And can you describe
- 8 | what that is photograph of?
- 9 A. Yes. This is Smith & Wesson M&P Shield. It's the Robin's
- 10 | Egg Blue, like Tiffany Blue.
- 11 | Q. Is this an accurate photo of a handgun that's on the
- 12 roster?
- 13 A. Correct.
- 14 Q. And is this a similar handgun?
- 15 A. Yes.
- 16 Q. And what is it a similar handgun of?
- 17 A. Of the one we saw prior, the black M&P Shield.
- 18 Q. Would that be Exhibit 6?
- 19 A. I believe -- yes.
- 20 MR. SAROSY: Your Honor, can I move Exhibit 10 into
- 21 evidence.
- THE COURT: Any objection?
- MR. DALE: No objection.
- 24 THE COURT: Exhibit 10 will be received into
- 25 | evidence.

(Exhibit 10 was received into evidence.) 1 2 BY MR. SAROSY: 3 And you were talking earlier about firing tests that a lab does. Can you describe what -- you know, what labs conduct these 5 tests? Α. Yeah. There is currently two labs that conduct the tests. 7 There is one in -- was is it? -- Baltimore, Maryland area; another one, I believe, in Illinois. I haven't been to the second lab. I've only been to the first lab. 10 Like I said, you go there. They have the three samples. 11 They run the tests. They -- based on, like I said, 600 rounds, 12 13 if there is a malfunction within the first 20, then they'll fail the firearm. As long as -- they make sure that it's 14 not -- it doesn't have anything to do with ammunition or the 15 cartridge, so they take that into consideration. They'll 16 change out the magazines, and they'll use different ammunition. 17 And if that is the case, they proceed to retest it and 18 fire it again, and then they'll proceed. But if it has a total 19 of six or more malfunctions within those 600 rounds, then they 20 kill it, the firearm. 21 What you described is that the firing test? 22 Q. Correct. 23 What kind of malfunction is the lab looking for during the 24 Q. firing test? 25

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- 1 A. It's able to -- it doesn't discharge. Typically, just not
- 2 discharging, not firing off a round.
- 3 Q. So what is the importance of making sure there is no
- 4 | malfunction during a firing test?
- 5 A. Well, if you purchase a firearm, you want to make sure it
- 6 works.
- 7 Q. And if a firearm failed a firing test, what are some of
- 8 | the things that could happen to it if you continued to fire it?
- 9 A. Sometimes it will cause the barrel to either get damaged
- 10 | or either the handgun to, basically, blow up in your hand by
- 11 | missing the two rounds at the same time. Just different things
- 12 | could happen.
- 13 Q. And if a handgun malfunctioned during a lab test, could it
- 14 | also malfunction outside of a lab?
- 15 A. Correct.
- 16 Q. And what is the public safety benefit of doing the firing
- 17 | test?
- 18 A. Well, you know you have a good product that has been
- 19 tested.
- 20 Q. And the two labs that you've described, do they have to go
- 21 | through any kind of certification process?
- 22 A. Yes.
- 23 | Q. And can you briefly just describe what that certification
- 24 process is?
- 25 A. Yes. So you'll have people that go out there. They go

1 | over the test. They just follow through what their testing is.

- 2 They make sure that the process is followed. They review the
- 3 drop-testing. They'll review the firing test. And they make
- 4 | sure that they have all the proper documentation, the documents
- 5 and everything has been gone through. They go through over the
- 6 | compliance test report with them as well.
- 7 Q. And I think you mentioned earlier about something called
- 8 | the drop test. And what is involved in the drop test?
- 9 A. Well, the drop test, they'll take what they have -- it's
- 10 | kind of like a little sling, which is manipulated to place the
- 11 | firearm in different positions. Maybe once when it faces to
- 12 the rear. So they drop it with the slide facing backwards to
- 13 | the ground.
- 14 Another one where they'll drop it from the front, which is
- 15 the barrel facing forward. They'll drop it from different
- 16 langles. So it's different -- six different types of drops.
- 17 | Q. What is the lab looking for when it conducts a drop test?
- 18 A. They want to make sure that the firearm does not cause a
- 19 discharge, an accidental discharge.
- 20 Q. And if a handgun fired during a drop test in a lab, could
- 21 | it fire if it was dropped in real life as well, outside of a
- 22 | laboratory?
- 23 A. Yes.
- 24 Q. What do you see as the public safety benefit of the drop
- 25 test?

1 | A. Well, like I said, it's just to make sure that the firearm

- 2 | you are receiving does not accidentally discharge when there is
- 3 | improper handling of a firearm.
- 4 | Q. And if a handgun -- or once a lab considers that a handgun
- 5 has passed the test, what does the lab send to the Bureau of
- 6 | Firearms?
- 7 | A. They send one of the samples, one of the three samples
- 8 | will be sent to the Department of Justice along with the test
- 9 | results, and then -- along with a fee of \$200.
- 10 | Q. Are those test results reported in a certain type of form?
- 11 A. Yes.
- 12 Q. And what is that form called?
- 13 A. It's Compliance -- what's it called? I always forget.
- 14 It's a Compliance Report. Department of Justice Compliance
- 15 Report.
- 16 Q. Can you turn to tab 11. Is that an accurate copy of a
- 17 | blank Compliance Test Report?
- 18 A. Yes.
- MR. SAROSY: Your Honor, I'd like to move Exhibit 11
- 20 linto evidence.
- 21 | THE COURT: Any objection?
- 22 MR. DALE: No objection.
- THE COURT: Exhibit 11 will be received into
- 24 evidence.
- 25 (Exhibit 11 was received into evidence.)

- 1 BY MR. SAROSY:
- 2 | O. Let's talk about chamber load indicators more
- 3 | specifically. If you can turn to tab 7, which I believe are
- 4 | close-up photos of the chamber load indicator.
- Now, does every handgun that has a chamber load indicator
- 6 on the roster -- do they put the chamber load indicators in all
- 7 | the same place?
- 8 A. No, they do not.
- 9 Q. So is Exhibit 7 just one example of where a chamber load
- 10 | indicator could be?
- 11 A. Yes.
- 12 | Q. And for this Smith & Wesson M&P 9 Shield, can you describe
- 13 the location of the chamber load indicator on this handgun?
- 14 A. Yes. It's on the slide, on top of the slide, right behind
- where the extractor -- or the barrel and the slide meet.
- 16 | Q. And are there specific requirements for what a chamber
- 17 | load indicator must look like?
- 18 A. Yes. It has to be seen from as close distance as far away
- 19 as 24 inches, so a minimum of 24 inches. It has to be
- 20 | contrasting in color. If it has any wording, it has to say
- 21 | either in plain English -- you know, has to say that it's
- 22 | loaded or have a pictorial diagram indicating to a reasonable
- 23 | person that they would understand it's loaded.
- 24 Q. Is this the -- and I think you said already this is not
- 25 | the only way, then, to do a chamber load indicator?

1 A. Correct.

Q. I am going to show you the next page of Exhibit 7. It shows up pretty poorly on this, I think.

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- 4 THE COURTROOM DEPUTY: Counsel, press the light.
- 5 MR. SAROSY: Brightness?
- THE COURTROOM DEPUTY: No.
- 7 (A discussion was held off the record.)
- 8 BY MR. SAROSY:
- 9 Q. What is this a photo of?
- 10 A. This is a top view of the slide. It shows the chamber
- 11 | load indicator towards the center.
- 12 Q. Is this the view of a chamber load indicator from a
- 13 | shooter's perspective?
- 14 A. No. It would have to be higher, in a sense. To get that
- accurate line of sight, it would have to be centered, a little
- 16 | bit centered.
- 17 So lift it up higher. This is a little off.
- 18 | Q. Okay. In your opinion, does a chamber load indicator --
- 19 does this chamber load indicator disrupt the shooter's sight in
- 20 any way?
- 21 | A. Based -- you know, I know that seeing -- people state
- 22 | that, because of the white lettering, it kind of impedes their
- 23 | line of sight. It does fall -- it still does fall below the
- 24 | dot on -- towards the front. It does fall below. So if you
- 25 | had a similar position with your firearm, you would know where

your line of sight was.

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So I don't think it impedes or stops you from having a good aim or correct aim. But I know there is arguments out there.

- Q. And does the lab or does the Department of Justice determine whether a semi-automatic pistol has a chamber load indicator?
- A. The Department of Justice suggests that it should have a chamber load indicator.
- Q. And what is the benefit of a chamber load indicator -- I guess, what is the public safety benefits of a chamber load indicator?
- A. Well, for anybody that is unfamiliar with a firearm, comes into contact with a firearm, they know that a round is present.

  Also, for people that either tend to forget that they, you know, either release the magazine from the magazine well or
- forgot to rack the slide, it'll let, you know, hey, there's still a round present.
- Q. And if the owner of a handgun is trained in how to use their handgun, is that training enough to prevent an accidental discharge?
- A. This is not meant to be -- to take over certain training.

  It's more to help you along, assist you. There is other ways

  to press check what mostly trained people will do. They'll do

  a press check. They'll rack -- you know, pull the slide back a

little bit. They'll see a little silver -- something silver shining or something. They'll know that there is a round in the chamber.

But this is not only to help along -- just like a camera in a vehicle; right? The rearview camera helps you. I mean, you still are required to look behind you at your blind spots. You just don't rely solely on the rearview camera.

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- Q. Is the chamber load indicator supposed to be relied upon instead of one's training, or is it a complement to one's
- 10 | training?

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- 11 A. It's more of a complement.
- 12 Q. And if someone who is not trained in using the firearm
- 13 gets ahold of the gun, what is the benefit of the chamber load
- 14 | indicator?
- 15 A. I'm sorry. What was your question?
- 16 | Q. So if someone who is not the owner of the firearm, say a
- 17 | child, were to get their hands on the gun, what is the benefit
- 18 | of a chamber load indicator?
- 19 A. Well, they would be able to read, if they were capable of
- reading -- right? -- either by looking at what it said -- it
- 21 | said, "Loaded." Or if there was a pictorial -- a picture, they
- would be able to decipher the picture. Or even look at the
- color of it, even if it's a contrasting color like that. Well,
- 14 here is, like, a bright orange or red and get a sense maybe
- 25 | that's not a good thing to do.

1 Q. Have you encountered a situation where reliance on a

- 2 | chamber load indicator caused an accidental discharge?
- 3 A. No, I have not.
- 4 | Q. And can a chamber load indicator be useful for somebody
- 5 | who is using a firearm to engage in self-defense?
- 6 A. Yes.
- 7 | Q. Can you explain how?
- 8 | A. Well, if you use it during self-defense, you go, and
- 9 | you're basically firing your weapon -- sometimes when you are
- 10 | firing a weapon, you kind of lose track of how many rounds are
- 11 | out there. So by simply either looking or sliding your hands
- 12 over the slide, you'll know, okay, there is still a round
- 13 | remaining. That would be one instance.
- 14 Q. And let's talk about magazine disconnect mechanisms. Go
- 15 | to -- if you can turn to tab 8, back to tab 8. You already
- 16 described that the purpose of the magazine disconnect mechanism
- 17 | is -- can you, using Exhibit 8, kind of describe internal -- or
- 18 how a magazine disconnect works in this photograph?
- 19 A. Yes. If you look at the top towards the center, the
- 20 | little -- like I said, the little blade that is sticking out.
- 21 | When it's down this way, that means it won't allow a round to
- 22 | go off. It basically connects to a little tab which impedes
- 23 | this little lever that stretches out from the trigger to the
- 24 | firing pin. It kind of blocks it off so it won't allow a round
- 25 | to go off if you do pull the trigger.

The other one is a little darker, but once you started inserting the magazine, that magazine disconnect mechanism starts lifting up towards the back of the firearm, which then allows you to fire off a round.

- Q. Does the third picture help? Is there anything in this third picture that --
- 7 A. Yes. You can see it a little bit better. You can see it
- 8 kind of lifting up. It's not fully inserted yet, but you can
- 9 | still see the movement. I don't know if I can show you, too.
- 10 | It kind of lifts up.
- 11 Q. It's the insertion of the magazine that pushes up?
- 12 A. Correct.

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- 13 Q. The magazine disconnect mechanism?
- 14 A. Correct.
- 15 Q. What is the benefit of a pistol having a magazine
- 16 disconnect mechanism?
- 17 A. Well, when you have a magazine disconnect -- and,
- 18 typically, manufacturers, even Smith & Wesson, has it all over
- 19 | their pamphlet, the recommendation -- even with the NRA --
- 20 | is that you should store your firearm unloaded and in separate
- 21 locations. But a lot of people that get these firearms use
- them for protection, and they seem to always store them loaded.
- So if you were to unload it and have the magazine release
- 24 | without a magazine -- the magazine, even if you kept a round in
- 25 | the chamber, by having the magazine out, you wouldn't be able

1 to fire off a round. If you forgot, you know -- it's been so

- 2 | long that you held onto your weapon or you put it down and
- forgot to rack the slide or tried to do some kind of, like, dry
- 4 | firing, which is training, to try to train your finger to --
- 5 | you know how the trigger mechanism knows the weight of the
- 6 trigger. And you can accidentally do an accidental discharge.
- 7 If you have the magazine out of the magazine well, then
- 8 | the magazine disconnect would help you avoid an accidental
- 9 discharge.
- 10 | Q. And is the magazine disconnect mechanism intended to be
- 11 | relied upon instead of one's training?
- 12 A. It's -- like I said, it's only a complement to somebody's
- 13 | training. It's not always -- you are not always going to rely
- 14 on the internal mechanism. It is always the owner's
- responsibility to check if there is a round in the chamber.
- 16 Q. And if someone were to get a hand on the firearm, say, a
- 17 | child again, what is the benefit of a magazine disconnect
- 18 | mechanism?
- 19 A. Like I said, it would not allow them to fire off a round
- 20 | if they were to place their finger on the trigger.
- 21 Q. If the magazine was --
- 22 A. If the magazine was out.
- 23 | Q. -- out of the gun?
- 24 A. Yes.
- 25 | Q. Have you encountered a situation where reliance on a

1 | magazine disconnect mechanism caused an accidental discharge?

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- 2 A. No.
- Q. And is it possible for one to -- for a semi-automatic
- 4 | pistol without a magazine disconnect mechanism -- is it common
- 5 or -- let me rephrase that.
- 6 Can a shooter for a semi-automatic pistol without a
- 7 | magazine disconnect mechanism fire the gun while discharging
- 8 the magazine and inserting a new magazine?
- 9 | A. Yes. What we typically call kind, like, a tactical
- 10 reload.
- 11 Q. And what would be a situation when they would do that?
- 12 A. Well, same thing. When you're either -- well, for law
- 13 | enforcement, right, you're out shooting, either to train -- you
- 14 | are out at the range and you are training, you fire off all of
- 15 | your rounds. Like I said, you lose count. You drop the
- 16 | magazine. Well, you don't drop that during the tactical
- 17 | reload, but what you do is you hold onto the magazine while you
- 18 | are replacing it with another magazine you have on yourself,
- 19 | put in another magazine, and you can still continue to fire,
- 20 | even though the magazine had been released.
- 21 Q. And that would happen in a situation where you fired all
- 22 of the rounds in the first magazine?
- 23 A. Well, technically, you don't have to fire all the rounds,
- 24 | because you sometimes lose track. Either you lose track of the
- 25 | rounds, and you want to make sure you still have enough to stay

- 1 | in the fight; right? Or if your magazine happens to
- 2 | malfunction, there is a jam, you pull the magazine out. You
- 3 | want to put a fresh one in there just to make sure that the
- 4 | last one is not -- you know, might possibly be damaged, so you
- 5 | want to replace it with a good magazine.
- 6 Q. How many rounds are typically in a magazine versus
- 7 | semi-automatic pistol in California?
- 8 A. For California, for the roster, the firearms, there would
- 9 be 10.
- 10 | Q. And can a magazine disconnect mechanism be useful for
- 11 | somebody who is engaging in self-defense?
- 12 A. It could be useful, yes.
- 13 Q. Do you know of any situations where it could be useful?
- 14 A. Yes. I spoke to a CHP officer that indicated, a few years
- ago, that they were out conducting a traffic stop. He got into
- 16 an altercation. The person tried to reach for his firearm. He
- went ahead and disconnected the firearm from the magazine well.
- 18 It came out. So the suspect could not go ahead fire it and
- 19 | shoot the officer.
- 20 | Q. And have you ever tried to remove a magazine disconnect
- 21 | mechanism from a firearm?
- 22 A. I have not.
- 23 Q. And would removing a magazine disconnect mechanism from a
- 24 | roster handgun -- would that be a violation of the Unsafe
- 25 | Handgun Act?

1 A. Technically, if you consider the manufacturer, it would be

- 2 | 3200 -- Penal Code Violation 32000, 32,000.
- 3 Q. And, in your opinion, do chamber load indicators and
- 4 | magazine disconnects enhance public safety by preventing -- or
- 5 helping to prevent accidental discharge?
- 6 A. Yes.
- 7 | Q. And do you believe that firearms training alone is enough
- 8 | to provide the same level of benefit as a chamber load
- 9 | indicator and a magazine disconnect?
- 10 A. Do I what -- can I have that question again?
- 11 Q. Sure. Is firearms training alone enough to provide the
- 12 | same level of benefit provided by chamber load indicators and
- 13 | magazine disconnect mechanisms?
- 14 A. I would think they're the same if it was a good training
- 15 that focused on, like I said, if the people stuck with, you
- 16 know, keep your firearm away from your ammunition in a separate
- 17 | location and people follow through in that sense, training
- 18 | would be good enough. But also, like I said, this complements
- 19 | that training as well because it's an improvement in the sense
- 20 | that it makes guns a little safer.
- 21 Much like older cars are to newer cars; right? You have
- 22 | the accident avoidance. And you have, like, the rearview
- 23 camera, so it's more of -- to help you and complement what you
- 24 | already know.
- 25 Q. And you mentioned earlier that you made or assisted in the

- 1 | arrest of over 100 people. Of those arrests, did you come
- 2 | across firearms that were safely secured in those residences?
- 3 A. I came across at lot of firearms that weren't safely
- 4 secured.
- 5 | Q. And in those -- where those firearms were not safely
- 6 | secured, were there minors residing in that same residence?
- 7 A. Yes.
- 8 Q. And were those firearms easily accessible --
- 9 A. Yes.
- 10 Q. -- to anyone in that residence?
- 11 A. Well, yeah. We came across minors and prohibited people,
- 12 | mostly, who had access to these firearms.
- 13 | Q. And are you aware of any studies regarding accidental
- 14 | firearm shootings?
- 15 A. Yes.
- 16 Q. Did you review those studies?
- 17 A. Yes.
- 18 | Q. And did you rely on those studies in forming your expert
- 19 | opinion?
- 20 | A. Yes.
- 21 Q. And, in general, what would you say those studies show?
- 22 | A. It shows an increase in unintentional death and injuries
- 23 as a result of having one, two, three of these safeties placed
- 24 | in a firearm or a handgun.
- 25 Q. Increase or a decrease?

- 1 A. Increase.
- 2 Q. Increase in accidental --
- 3 A. No. I mean, decrease. Yeah. Decrease in accidental and

- 4 deaths.
- 5 Q. Okay. So, generally, the studies show a decrease in
- 6 | accidental deaths because of these safety devices?
- 7 A. Correct.
- 8 Q. Can you look at exhibit -- or tab 12.
- 9 And is this one of the studies you reviewed, the column,
- 10 | "Accidental Shootings, Many Deaths and Injuries Caused by
- 11 | Firearms Could be Prevented"?
- 12 A. Correct.
- 13 Q. Is this an accurate copy of the study?
- 14 A. Yes. It appears to be.
- 15 Q. And was this study part of a report given to Congress?
- 16 A. Yes.
- 17 | Q. And you don't have to describe the methodology, but does
- 18 | the study describe how it reached its conclusions?
- 19 A. Yes.
- 20 | Q. And are there any findings from this study that support
- 21 | your opinion that chamber load indicators enhance public
- 22 | safety?
- 23 A. Yes.
- 24 Q. And what would one of those findings be?
- 25 A. They say that -- I believe in this case it was that

23 percent of -- what was it? -- chamber load indicators 1 decreased the amount of accidental shootings and deaths. 2 Can I turn you to the bottom -- let's see, page 3. Where, 3 Q. I guess, it just says, "Page 3." 4 Α. Yes. 5 MR. SAROSY: And, Your Honor, under Federal Rules of 6 Evidence 803(18), for statements and treatises, periodicals, 7 pamphlets, statements can be read into evidence; that the 8 studies themselves cannot be admitted, so long as certain 9 requirements are met. And I believe we've met those 10 requirements. 11 THE COURT: I am looking at the rule. Why isn't it 12 803(8)? 13 MR. SAROSY: Sorry, Your Honor. Let me take a look 14 at that rule as well. 15 THE COURT: Take your time. The concern I am having 16 is 803(18) usually deals with treatises. 17

MR. SAROSY: Right. I'm sorry. This one

specifically could fall under 803(8) as well. Because the next

20 two, I don't think --

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THE COURT: They call it a report.

MR. SAROSY: I would be happy to move that under 803(8).

THE COURT: All right. Any objection? 803(8)?

MR. DALE: No objection.

Suzanne M. McKennon, CSR, CRR, RMR
United States Court Reporter
suzanne\_mckennon@cacd.uscourts.gov (213) 894-3913

THE COURT: The report will be received in evidence.

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MR. SAROSY: Thank you, Your Honor.

(Exhibit 12 was received into evidence.)

MR. SAROSY: Thank you, Your Honor.

- 5 Q. Mr. Gonzalez, on the bottom of page 3, can you read the
- 6 | last sentence of that page?
- 7 A. Yes. This states, "A safety device that indicates whether
- 8 | a firearm is loaded could have prevented another 28 percent of
- 9 the deaths."

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- 10 Q. And, sorry, can you read the next sentence?
- 11 A. Yeah. "Many accidental deaths caused by firearms, other
- 12 | than those affecting children, involve uncertainty about
- 13 | whether the weapon is loaded."
- 14 | Q. And then can you go to -- actually that's fine.
- 15 And do you remember some of the examples that were
- 16 discussed in the shooting when a death resulted from an
- 17 | accidental discharge?
- 18 A. If this one is the one where -- there was one where, I
- 19 | believe, a brother took a firearm that he believed was unloaded
- 20 | and shot his sister.
- Is that this one?
- 22 | Q. If that is what you recall from reading this study.
- 23 All right. I am going to move on to tab 13.
- Is this one of the studies that you reviewed?
- 25 A. Yes, it is.

1 Q. Is it called "Unintended Shootings in a Large Metropolitan

- 2 | area: An Incident Based Analysis"?
- 3 A. Yes.
- 4 | Q. And do you know if this study was published in a journal?
- 5 A. This one was published in a journal.
- 6 Q. And do the authors of the study have either a medical
- 7 degree or a master's in public health?
- 8 A. These are doctors that have medical degrees.
- 9 Q. And does this appear to be an accurate copy of the study?
- 10 A. Yes.
- 11 | Q. And does the study describe how it reached its
- 12 | conclusions?
- 13 A. Yes.
- 14 Q. And are there any findings from the study that support
- 15 | your opinion that chamber load indicators and magazine
- 16 disconnects enhance public safety?
- 17 | A. Yes.
- 18 Q. And do you recall what one of those findings is?
- 19 A. It says that approximately one third of all unintended
- 20 | shootings could be reduced by having magazine disconnect,
- 21 | chamber load indicator, or a firing pin block.
- MR. SAROSY: And, Your Honor, I would ask to move
- 23 | this into evidence under Federal Rule of Evidence 803(18) and
- 24 | have Mr. Gonzalez read a specific statement -- or, I guess,
- 25 | read a specific statement into evidence, not move the study

1 | itself.

- 2 | THE COURT: Any objection to that?
- MR. DALE: No.
- 4 THE COURT: You may do so.
- 5 BY MR. SAROSY:
- 6 Q. Can you turn to page 15 of the study? I think it's on the

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- 7 | left-hand column, and it is, let's see, the bottom of page 15.
- 8 And it's the paragraph that says, "We found evidence"?
- 9 A. Yes.
- 10 Q. Can you read that sentence, please?
- 11 A. "We found evidence that loaded chamber indicators,
- 12 | magazine safeties, and firing pin blocks might have prevented
- 13 | as many as one third of the unintended shootings in our
- 14 | series."
- 15 Q. Do you remember what set of shootings this study looked
- 16 | at?
- 17 A. This one, I believe, was Atlanta Metropolitan area.
- 18 Q. Can you turn to tab 14?
- 19 Is this another one of the studies that you reviewed?
- 20 A. Yes.
- 21 Q. And is this study called, "Unintentional and Undetermined
- 22 | Firearm-related Deaths: A Preventable Death Analysis for Three
- 23 | Safety Devices"?
- 24 A. Correct.
- 25 | Q. And was this study published in a journal?

Suzanne M. McKennon, CSR, CRR, RMR
United States Court Reporter
suzanne\_mckennon@cacd.uscourts.gov (213) 894-3913

- 1 A. Yes.
- 2 | Q. And are the authors of this study affiliated with a public
- 3 | health school or medical school?
- 4 A. Yes, they are public health officials.
- 5 | Q. And does this appear to be an accurate copy of the study?
- 6 A. Yes.
- 7 | Q. And does the study describe how it reached its
- 8 | conclusions?
- 9 A. Yes, yes.
- 10 Q. And are there any findings from the study that support
- 11 | your opinion --
- 12 A. Yes.
- 13 Q. -- about chamber load indicators and magazine disconnect
- 14 | mechanisms?
- 15 A. Yes.
- 16 | Q. And what is one -- or what are those findings?
- 17 | A. That it would be a decrease by 20 percent with a chamber
- 18 | load indicator of unintentional or accidental shootings and a
- 19 | 4 percent decrease with magazine disconnects.
- MR. SAROSY: And, Your Honor, I would like to take
- 21 | the same approach with this exhibit as I did with Exhibit 13.
- 22 THE COURT: Any objection?
- MR. DALE: No objection.
- 24 THE COURT: You may do so.
- 25 BY MR. SAROSY:

1 | Q. Mr. Gonzalez, can you read on the front page -- I think

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- 2 | there is -- in the summary, there's the "Results" paragraph.
- 3 Do you see that?
- 4 A. Yes.
- 5 | Q. And can you just read that first sentence, please -- or
- 6 I'm sorry. Can you read the first two sentences?
- 7 A. "There were a total of 117 firearm-related deaths in our
- 8 | sample. 95, which is 81 percent, involving handguns; 43
- 9 deaths, which is 37 percent, were classified as preventable by
- 10 personalized guns; 23, which is 20 percent, by a loaded chamber
- 11 | indicator; and 5, which is 4 percent, by magazine safety."
- 12 Q. And in reading this study, do you believe that a magazine
- 13 | safety is the same as a magazine disconnect mechanism?
- 14 A. Yes.
- 15 | Q. All right. Let's move to microstamping?
- 16 A. Yes.
- 17 Q. Can you describe what microstamping is?
- 18 A. Yes, microstamping is a process where, with California,
- 19 | alphanumeric or numerals are embedded, the way that California
- 20 | is going, from a firing pin into a cartridge.
- 21 Q. And I believe in the -- well, I'm going to show a
- 22 demonstrative exhibit to help you explain that.
- Do you recognize this?
- 24 A. Yes.
- 25 Q. This page or these diagrams?

A. Yes.

Q. And so, using these diagrams, can you walk us through how a microstamp would be placed on a cartridge?

A. So, like, a shooter would pull on the trigger, slide goes back -- well, before that, the shooter would pull on the trigger, and it would cause the firing pin to go forward. It would imprint the casing on the round, which would be either -- if it's centerfire, it would imprint it on the primer itself in the center. If it's a rimfire, it would imprint towards the edge of the round or the cartridge. And then it goes off. And then it would extract the cartridge onto anywhere in the scene and then later on be collected.

The way California is going, what they call this is a Firearm Identification Number would be imprinted or embedded into the cartridge. The FIN, that would be our system, which is the automated firearm system, which would also have the listing of what the Firearm Identification Number an who -- what firearm it would be tied to, in order to track and trace the owner of that firearm.

- Q. And I'm going to show you another demonstrative exhibit.

  Do you recognize these photographs?
- 22 A. Yes.
- 23 Q. And can you describe what that they show?
- A. The top photograph is the tip of a firing pin. It has protruding alphanumeric and numerals here, in there, and the

1 | center. And the bottom is a separate type of -- where it's

2 embedded on to the actual cartridge. It is just an exploded

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- 3 view of the center here.
- 4 | Q. And is the cartridge case something that a shooter
- 5 | typically would pick up after shooting?
- 6 A. I wouldn't think so. I mean, there is not enough time if
- 7 | it's a crime. They're not going to stick around to pick up the
- 8 | cartridges.
- 9 Q. Is it easy to tell where your cartridges drop after
- 10 | firing?
- 11 A. Not typically, no.
- 12 Q. And how is a microstamp different from the firearm serial
- 13 | number?
- 14 A. For California, what -- the intention is to have kind of,
- 15 like, you look at a frame of a vehicle, you know, they have a
- 16 cross-reference number. So the cross-reference number would be
- 17 | the make, which would be part of the FIN, the Firearm
- 18 | Identification Number, along with a serialized number at the
- 19 | end.
- 20 So it's only, I believe, 10 to 12 numbers that are -- that
- 21 | are going to imprint on the firing pin, because they, I guess,
- 22 | estimated that's the most clear way to -- or the most amount of
- 23 | numbers you could do to clearly see when you put it under a
- 24 | microscope. It would, like I said, have a link and partial
- 25 | serial number in the actual Firearm Identification Number.

- 1 | Q. So is the intent to have a database -- I guess, the intent
- 2 to have a database where the Firearm Identification Numbers can
- 3 be matched to the serial numbers?
- A. Correct.
- Q. And what is the intended purpose of placing a microstamp
- 6 on a cartridge?
- 7 A. It would help law enforcement get quicker results, and it
- 8 | will go straight directly to the owner of the firearm.
- 9 Currently, I know the practice is to look at unintentional
- 10 markings. But with unintentional markings, in order to tie it
- 11 to a shooter, you have to --- you actually have to locate the
- 12 actual firearm. In this case, you wouldn't have to locate the
- 13 | firearm because the serial number would be imprinted on that
- 14 | cartridge.
- 15 | O. And if the owner of a firearm was not involved in the
- 16 | shooting, in your opinion, would it be helpful in an
- 17 | investigation to know which firearm was involved in the
- 18 | shooting, even if the owner was not the shooter?
- 19 A. Yes, because it gives you another lead. So it kind of
- 20 | closes the gap in between where the location might be, where
- 21 | the person might be. It might give you a lead into if the
- 22 | firearm was lost and never reported. I could tell you, "Okay.
- 23 This is the person that has been around my house that I suspect
- 24 had the firearm." I mean, it can go many ways. It's just an
- 25 | extra tool.

1 | Q. Do you know of any examples of shootings where

- 2 | microstamping could have helped identify a shooter sooner?
- 3 A. Yes. Recently, there was a Stockton shooting, a serial
- 4 | shooting. Stockton PD contacted me. They asked -- well, they

Sept.

- 5 told me that, based on the cartridges that were collected from
- 6 different scenes, they knew or suspected that the same firearm
- 7 | was used in all of the shootings. So if microstamping -- and I
- 8 know what they called the ghost gun that he used, a
- 9 | private-made firearm, but if there was a pin with markings or
- 10 | microstamping on that, it would have probably stopped more
- 11 deaths from occurring, if it tied it that closer to -- if there
- 12 was a more definite finding.
- 13 Q. Is it possible to remove a microstamp from a firing pin?
- 14 A. Yes.
- 15 | Q. Is it possible to remove a firearm serial number?
- 16 A. Yes.
- 17 | Q. And is it -- are there criminal penalties for removing a
- 18 | firearm serial number?
- 19 A. Yes.
- 20 | Q. Are there criminal penalties for removing a microstamp?
- 21 A. Yes.
- 22 Q. And what would be the criminal penalty for doing so?
- 23 A. It's Penal Code for obliterated serial number. It follows
- 24 | the same -- it would follow the same code.
- 25 Q. Is that a felony or a misdemeanor?

- 1 | A. That is a felony. I believe, yeah.
- 2 Q. And, in your opinion, can microstamping enhance public
- 3 | safety by helping law enforcement?
- 4 A. Microstamping, yes.
- 5 Q. Plaintiffs had talked about left-handed shooters being
- 6 disadvantaged by the handguns on the roster.
- 7 Do you, yourself, shoot left-handed?
- 8 A. No, I do not.
- 9 Q. Have you spoken with people who do shoot left-handed?
- 10 A. Yes.
- 11 | Q. And from your experience, are handguns typically designed
- 12 | for right-handed shooters or left-handed shooters?
- 13 A. Typically, like anything else, unfortunately, it's
- 14 | right-handed.
- 15 Q. Does that include handguns?
- 16 A. Correct.
- 17 | Q. Does that also include long guns such as rifles and
- 18 | shotguns?
- 19 A. Correct.
- 20 | Q. And from your understanding, how do left-handed shooters
- 21 | handle the practice of firearms typically being designed for
- 22 right-handed shooters?
- 23 A. They have to train for the manipulation of either the
- 24 | slide stop, the magazine release in order to -- or the safety
- 25 | in order to get it to work the way they want it to. So it's

1 | based on training and manipulation of the firearm.

- 2 Q. So do you think that left-handed shooters can use handguns
- 3 on the roster to defend themselves that are designed for
- 4 | right-handed shooters?
- 5 A. Yes.
- 6 Q. And are there semi-automatic pistols on the roster that
- 7 | actually can be adapted for left-handed shooters?
- 8 A. Yes.
- 9 Q. And what are some of the ways that they can be adapted for
- 10 | left-handed shooters?
- 11 A. There are some that come with an ambidextrous safety.
- 12 There are some that come with a magazine release which can be
- 13 | switched from one side to the other or already come with that
- 14 magazine release on both sides.
- 15 | Q. And from your conversations from -- with left-handed
- 16 | shooters, which ambidextrous feature do they view as most
- 17 | important, the safety or the mag. release?
- 18 | A. The magazine release, typically, because that, in a sense,
- 19 | will bother or kind of hurt their finger where the index finger
- 20 | connects to your palm. It kind of rubs up on it. It's a
- 21 | little nuisance, in a sense.
- Plus for reloading, it would be faster if you would have
- 23 | it on the opposite end.
- 24 | Q. And are there semi-automatic pistols on the roster that
- 25 | have that ambidextrous magazine release?

- 1 A. Yes.
- 2 | Q. Can you turn to tab -- we'll look through tab 16 through
- 3 | 19. Can you -- for tab 16, 17, 18, and 19, can you tell us the
- 4 | manufacturer and the model for each of those?
- 5 A. Yes. So the first one is a Heckler & Koch or H&K P2000
- 6 | SK-V3. And the magazine release, it's right to the rear of the
- 7 | trigger guard.
- 8 | Q. Let me put it up for you. Can draw it on there, please?
- 9 A. You can see it here or here.
- 10 | Q. And then, Exhibit 17, can you tell us what the make and
- 11 | model of that is?
- 12 A. So the 17, it's a Springfield Armory, model XD9162. And
- 13 | the magazine disconnect --
- 14 Q. With a mag. release?
- 15 A. I'm sorry. Mag. Release is here.
- 16 Q. Okay. Just for the sake of time, can you just tell us the
- 17 | make and model of the -- of Exhibits 18 and 19.
- 18 A. Model, it's a make: Sig Sauer, model P229. And the next
- 19 one is a Fabrique Nationale, FN five-seven.
- 20 | Q. Now, do all four of these semi-automatic pistols have
- 21 | ambidextrous mag -- magazine releases?
- 22 A. Yes.
- MR. SAROSY: Your Honor, I would like to --
- 24 | THE WITNESS: For capability of reversing them.
- 25 MR. SAROSY: Your Honor, I would like to move

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Exhibits 16, 17, 18, and 19 into evidence.
1
              THE COURT: Any objection?
2
              MR. DALE: No objection.
3
              THE COURT: Those exhibits will be received into
4
    evidence.
5
         (Exhibits 16, 17, 18, and 19 were received into evidence.)
6
    BY MR. SAROSY:
7
8
         And are there semi-automatic pistols on the roster with
    ambidextrous external safety?
         Yes.
10
    Α.
         Can you turn to tab 15? Is this an example of a
11
    semi-automatic pistol with an ambidextrous safety, external
12
    safety?
13
    Α.
         Yes.
14
         Can you point us to where on this firearm there is an
15
    Q.
    ambidextrous external safety?
16
         Here (indicating), the little lever there on the top.
    Α.
17
         And what is the make and model this?
18
19
         This is a Wilson Combat Tactical Elite.
               MR. SAROSY: Okay. Your Honor, I would like to move
20
    Exhibit 15 into evidence.
21
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- THE COURT: Any objection?
- MR. DALE: No objection.
- THE COURT: Exhibit 15 will be received into
- 25 evidence.

1 (Exhibit 15 was received into evidence.)

- 2 BY MR. SAROSY:
- 3 Q. And are there semi-automatic pistols on the roster that
- 4 | have an internal safety?
- 5 A. Yes.
- 6 Q. If there is an internal safety, does that impact a
- 7 | left-handed shooter in any way?
- 8 A. No, it does not.
- 9 | Q. And do you believe that handguns that are currently on the
- 10 | roster disadvantage left-handed shooters?
- 11 A. Do I believe? Well, they don't have as much selection as
- 12 | right-handed shooters, and that is an impact.
- 13 Q. And do you know when ambidextrous safeties and magazine
- 14 | releases started to be added to handguns?
- 15 A. I do not.
- 16 Q. There are a few handguns that some of the plaintiffs have
- 17 | testified that they would like to purchase that are off the
- 18 roster.
- 19 Are you familiar with a Glock 19, 5th Generation?
- 20 A. Yes.
- 21 Q. Are you familiar with a Sig Sauer P365?
- 22 A. Yes.
- 23 Q. Are you familiar with a Ruger LCP MAX?
- 24 A. Yes.
- 25 Q. Same question for a Smith & Wesson Shield Plus and a

- 1 | Staccato P?
- 2 A. Somewhat familiar; somewhat, yes.
- 3 Q. And all of those are off-roster handguns?
- 4 A. Correct.
- 5 Q. And does Unsafe Handgun Act prevent somebody from
- 6 possessing those handguns?
- 7 | A. Because they have not been tested or do not have the
- 8 | chamber load indicators or magazine disconnects, yes.
- 9 Q. Possession? Sorry.
- 10 A. Oh, possession. Oh, no.
- 11 Q. Are there pistols, or semi-automatic pistols, on the
- 12 roster that are generally similar to those five semi-automatic
- 13 | pistols that we just discussed?
- 14 A. They are semi-similar in the sense of magazine capacity
- 15 and rounds that they chamber.
- 16 Q. Can you turn to tab 20? And what is the make and model of
- 17 | this firearm?
- 18 A. This is a Glock 19, 9mm pistol.
- 19 Q. Is it a 3rd Generation?
- 20 A. This is what they would call a 3rd Generation, yes.
- 21 Q. And, I guess, can you discuss some of the similarities and
- 22 differences between the 3rd Generation and the 5th Generation?
- 23 A. So with the 5th Generation, they took away the little --
- 24 | the grip. You see the grip -- you see the little indentations
- 25 where your fingers would go towards the front of the grip?

They took that away on the 5th Generation because some found it bothersome.

The backstraps, they added where you can remove the backstrap for people with smaller hands. They could put a smaller backstrap and be able to handle the firearm a little bit better.

The recoil spring on the inside, they changed it, starting with the 4th Generation. It's a little heftier.

The 5th Generation is a little thicker, a little more -- I guess, like I said, heftier in the sense where it's made for -- so they changed the slide, the pin that fires the trigger -- the trigger weight and pull. It's just for better handling, I guess, in a sense that they stated.

Other than that -- what else did they change? I think that's about it. Oh, the magazine release. They made it a little bigger, and they made it, also, ambidextrous, so you could switch it out and reverse it.

- Q. In your opinion, do any of those changes affect -- or, I guess, do they affect the ability of the firearm to shoot?
- 20 A. No.

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- Q. Can you turn to tab 21? And can you describe just the make and model of tab 21 and then also the make and model of
- 23 tab 22?
- 24 A. Yes. This is a Glock, model 26, 9mm.
- 25 And number 22 is Sturm, Ruger LC380CA.

1 Q. And are these accurate photos of handguns that are on the

- 2 roster?
- 3 A. Yes.
- 4 Q. And differences and similarities that you discussed
- 5 between the Glock 3rd Generation and the Glock 5th Generation,
- 6 | are those similarities and differences about the same between
- 7 | these on-roster handguns and the off-roster handguns?
- 8 A. With the Glock 26, I think the comparison was -- there was
- 9 | a comparable firearm; right? And I believe it was just a
- 10 | little shorter, like, .7 inches longer than the -- I believe it
- 11 | was -- was that the 320?
- 12 Q. So the five off-roster ones were the Glock 19 5th
- 13 Generation, Staccato P, the Sig Sauer P365, the Ruger LCP MAX,
- 14 and the Smith & Wesson Shield Plus?
- 15 A. Okay.
- 16 | Q. So the differences between the on-roster and off-rooster
- 17 | firearms, would you describe them -- like, I guess, generally,
- 18 | what would you describe them as.
- 19 | A. They're just slight variations, either in weight or
- 20 overall length, I guess you could say.
- 21 | What else? Magazine capacity. Glock would allow for
- 22 | more -- you could use different types of magazines from
- 23 different series of firearms where the comparable would only
- 24 | allow to, like I said, 12 rounds, depending on what model it
- 25

is.

For the LCP, the LC380, it was looks like point -- I

- 2 | believe it's .7. It was bigger than the other Rugers but not
- 3 | too much of a difference overall. They're all still
- 4 | concealable firearms.
- 5 | Q. And do you believe that public safety would be put at risk
- 6 | if the handgun roster requirements were not in effect?
- 7 A. Yes.
- 8 Q. And why?
- 9 A. Because like with any product, you want to make sure they
- 10 | fall under certain safety guidelines. You don't want to go
- 11 | back towards a crude, like I said, Saturday Night Special
- 12 | that's made without any type of testing.
- 13 | Q. Do you believe the current handgun roster requirements
- 14 | help to protect firearm owners and those who reside with
- 15 | firearm owners?
- 16 A. Yes.
- 17 Q. And do you believe that the handgun roster requirements
- 18 | made it more difficult for someone to defend themselves?
- 19 A. No. I do not.
- 20 | Q. And does a chamber load indicator, magazine disconnect
- 21 | mechanism, or microstamping make a handgun less useful for
- 22 | self-defense?
- 23 A. What was that guestion again?
- 24 Q. Does a chamber load indicator make a handgun less useful
- 25 | for self-defense?

1 A. I mean, there can be occasions, like I said, during a

- 2 | tactical reload, where it might impede it.
- 3 Q. For a chamber load indicator?
- 4 A. Oh, not for a chamber load indicator.
- 5 For a chamber load indicator, I don't see an issue in it
- 6 being an issue.
- 7 Q. And then, do you think a magazine disconnect mechanism, in
- 8 | most circumstances, impede somebody's ability to defend
- 9 themselves?
- 10 A. I do not believe so. It would just impede maybe a few
- 11 | seconds if you had to reload. But I don't see it being a big
- 12 | major safety issue.
- 13 Q. Does microstamping make a handgun less useful for
- 14 | self-defense?
- 15 A. No, it does not.
- MR. SAROSY: Your Honor, I would like to move
- 17 | Exhibits 20 to 22 into evidence.
- 18 THE COURT: Any objection?
- MR. DALE: No objection.
- 20 | THE COURT: Those exhibits will be received into
- 21 | evidence.
- 22 (Exhibits 20, 21, and 22 were received into evidence.)
- 23 MR. SAROSY: All right. That's all I have, Your
- 24 Honor.
- THE COURT: It's 3:30. We need to give our court

1 reporter a break. How much longer do you anticipate with the witnesses? I 2 know we have Cross-examination of this one. 3 MR. BRADY: I would anticipate 20-ish minutes, 15. I 4 think I can get done -- it might be. I have guick guestions. 5 It depends on the witnesses. 6 7 THE COURT: Right, right. I am trying to get a gauge so I'll be transparent. Can everybody come back tomorrow? Or 8 9 were you hoping to be done today? MR. DALE: Well, We're always hoping to be done. 10 am sure you are as well, Your Honor. I can certainly be 11 12 available tomorrow. 13 THE COURT: I just don't want to rush it, and I don't know how long my 4:00 is going to go. 14 MR. DALE: Understood. 15 THE COURT: What is everybody's preference? Do you 16 want to just quit now and then come back tomorrow? Or would 17 you rather try to get in a little bit more? But I really don't 18 feel comfortable staying past 5:30. 19 MR. SAROSY: I think our preference would be to try 20 to get it done today, because Mr. Gonzalez is in Sacramento and 21 Mr. Woods is in San Francisco. But I think we can change 22 travel plans if needed. 23 24 THE COURT: I'll check with Rolls and our court

reporter and see how late that they can go, and then I'll let

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you know. Let's take a ten-minute break now, and then we'll
1
    pick back up.
2
              MR. SAROSY: Thank you, Your Honor.
3
              MR. DALE: Thank you, Your Honor.
4
              THE COURTROOM DEPUTY: All rise. This Court is in
 5
6
    recess.
7
         (A brief recess was taken.)
8
              THE COURTROOM DEPUTY: Please come to order.
                                                              This
    Court is again in session.
9
10
              THE COURT: Okay. Let's start Cross-examination,
11
    please.
12
              MR. BRADY:
                           Thank you, Your Honor.
13
                            CROSS-EXAMINATION
    BY MR. BRADY:
14
15
         Hello, Special Agent Gonzalez.
16
         Do you recognize the document -- can you see this on your
17
    screen?
         Yes.
18
    Α.
19
    Q.
         Do you recognize what that document is?
20
         It's probably a handout or past -- looks like a printout
21
    of the handguns certified for sale.
         A printout of the handgun roster?
22
    Q.
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I am going to turn to what is on this page, page 14 of

23

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Α.

Q.

219.

Correct.

1 Is there a way --2 THE COURTROOM DEPUTY: If you need to, you might need 3 to turn on the lamp again. This one? MR. BRADY: 5 THE COURTROOM DEPUTY: No. This one right here. You might need to see if that's better. 6 MR. BRADY: No. That works. 7 THE COURTROOM DEPUTY: It works? Okav. 8 MR. BRADY: Thank you. 9 Okay. So was it your testimony that they're around 829 10 0. handgun models currently on the roster? 11 As of January 1, 2023. 12 Α. okay. 13 Q. Yes. 14 Α. Would you agree that there are handgun models listed on 15 the roster that are only cosmetically different from handguns 16 that are listed as separate models on the roster? 17 If I understand your question, if there are -- what they 18 call cosmetically different would be something called a 19 "similar," that we call, to the tested model, which is the 20 21 original model and they're just cosmetically changed -- is that what you're saying? 22

If that's your -- let's start with that question. With

that understanding, would there be -- would similars, in that

context, be listed differently on the roster as separate

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24

- 1 models?
- 2 A. They would if they came out of a with different scheme --
- 3 Q. Okay. As the model number?
- 4 A. As the model number, yeah.
- 5 | Q. Okay. So I will try to do this quickly. Do you see right
- 6 here, entry -- the Beretta 92 -- I'm sorry, the Beretta 96.
- 7 A. Yes.
- 8 Q. And it's alloy steel; correct?
- 9 A. Uh-huh.
- 10 Q. It has a barrel of 4.9 inches?
- 11 | A. Yes. And there is the 96 -- the Beretta 96 black Inox
- 12 | stainless steel?
- 13 A. Correct.
- 14 Q. And 4. -- are these the same gun?
- 15 | A. Technically, the one would have been -- I don't know if
- 16 | this is technically what happened here, but let's say the black
- 17 one is the tested, so let's say the original black -- I thought
- 18 I saw it somewhere. So if there's a black one. They would
- 19 | send what we call a "similar" with differences. They would
- 20 | state, "Okay. We're going to change the color. So we're going
- 21 | to change it to" -- like, you saw that Tiffany Blue kind of
- 22 | semi-automatic pistol; right?
- 23 Q. Yes.
- 24 A. So they just changed the color. That's like a cosmetic
- 25 | change, so it would be "similar." We would verify that they

1 | are the same on the inside as the tested, and then it would get

- 2 approved.
- 3 Q. And it could be listed as a separate model?
- 4 A. Correct. Based on the color and whatever physical changes
- 5 on the exterior were, yes.
- 6 Q. Okay. So with that understanding, would it be fair to say
- 7 | that relying on how many handgun models are listed by sheer
- 8 | number on the roster would be an exaggeration of how many
- 9 actually different models there are?
- 10 A. Well, there is -- I didn't remember the number, but there
- 11 | are -- in the 829, there are similars along with those tested
- 12 | models, yes.
- 13 Q. Sure. So do you understand my question?
- 14 A. Yes.
- 15 | Q. These three or four 92s are essentially the same gun;
- 16 | correct? Beretta 92s that are listed there?
- 17 | A. So it's similar to, like, a car; right? So you get a
- 18 | newer -- it's basically a newer gun in the sense that they
- 19 | changed the color, but it still remains the same inner workings
- 20 | as the previous model, like the previous car; right?
- 21 Q. Sure.
- 22 A. They just changed the exterior look of it somehow.
- 23 Q. Okay. But it's purely exterior that we're dealing with
- 24 | the differences here? There's nothing different about --
- 25 A. Correct.

(

(The court reporter interrupted.) 1 MR. BRADY: This, Your Honor, has already been --2 this is Exhibit 1 to the Plaintiffs' Request for Judicial 3 Notice, this document. I don't know if Your Honor wants us to 4 enter it as a separate document, for purposes of this hearing, 5 or just refer to it as that? 6 THE COURT: I am not sure I follow your question. 7 Has it already been received into evidence? 8 MR. BRADY: It has been -- well, our Plaintiffs' 9 10 Request for Judicial Notice hasn't been ruled on by Your Honor yet, I don't believe. 11 THE COURT: So let's go ahead and -- so I don't have 12 13 to worry about judicial notices. 14 MR. BRADY: Sure, sure. So that's the roster. I assume there is 15 THE COURT: no objection to the roster? 16 No, Your Honor. 17 MR. SAROSY: Exhibit 1 will be received into evidence. THE COURT: 18 19 (Exhibit 1 was received into evidence.) 20 MR. BRADY: Thank you, Your Honor. 21 Q. Have handguns been removed from the roster? 22 Α. Yes. And are you familiar with the reasons that a handgun would 23 Q. be removed from the roster? 24 within the last maybe, let's say, three to four years, I 25

typically would be.

- Q. What are those -- I guess let's start with, like, generally. What would be the general reasons that a firearm would fall off or be removed from the roster?
- A. Well, like, some of these that you noticed on the roster and you see expiration dates, either they expire based on certification. So either the process of the renewal is in the mail somewhere and they haven't received the application, everything necessary to renew that firearm, that is one thing.

Typically, if they fall within the first year of expiration, it will be, like, 1/1/23. Let's say it expired that day. That is because either the application is in the mail and hasn't been processed fully. So that's when they fall off.

If it's like an internal change that is noticed, let's say, after the fact, then -- and the manufacturer failed to notify us previously that there was a change made and they have no reasoning or anything that they could tell us why they made that change, then it's decided that they should fall off the roster until they could either go back to the previous way of manufacturing that they manufactured that pistol or have some type of reason to show us that the device basically is the same or works the same way, or the firearm works the same way.

Q. So if I am understanding you correctly, you identified two ways that a firearm would be removed from the roster. Its

1 | certification would expire?

- 2 A. Correct.
- 3 Q. Or there would be a change to that handgun model that
- 4 | would warrant DOJ making a determination that it's now a
- 5 different model not worthy of certification; is that correct?
- 6 A. Yes. If they failed to notify us of the changes, yes.
- 7 Q. Okay. Or DOJ hasn't made a determination but has made a
- 8 determination that manufacturer did not notify DOJ about the
- 9 | changes; is that correct?
- 10 A. Correct. And we noticed those changes, yes.
- 11 Q. Okay. How does a firearm expire off the roster?
- 12 A. Well, like I said, there is an annual recertification fee,
- 13 | which they have to pay. It's, like I said, a \$200 maintenance
- 14 | fee, they call it. So every year they have to reapply and pay
- 15 that \$200 and state that to keep the handgun on the roster.
- 16 Q. So if a manufacturer failed to pay the \$200 fee, their
- 17 | firearm would be removed from the roster?
- 18 A. Until it's received, correct.
- 19 | 0. Until it's received?
- 20 A. Yes.
- 21 | Q. So if they failed to pay on the date it's due and it gets
- 22 | expired and then they go, "Oh, we made a clerical error." and
- 23 then submit the \$200 later, their gun gets put back on the
- 24 | roster?
- 25 | A. I would have to get further -- since I don't oversee it, I

would to have to speak to the actual what we call the associate 1 gun analyst that actually handles that. But they would give a 2 certain period to have the firearm placed back on the roster. 3 based upon when we receive it and when they postmark it and 4 everything like that. 5 Okay. Are you familiar with the fact that several HK, 6 Heckler Koch, handguns have recently been removed from the 7

roster? Yes.

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- Do you know the reasons why those handguns were removed? Q. 10
- Α. Yes. 11
- Can you explain to this Court? 12
- In August of 2021, we received -- I believe it was 13 two handguns that were -- I believe they said they were 14 similar. So similar meaning they just made a few exterior 15 changes, nothing that would internal physically change the 16 firing mechanism or hammer assembly or trigger; right? 17 So these are called -- they stated they were similars. 18

When they received them, I took a look at them side by side, with the tested model. The tested model was the original that was submitted. I'll try to remember how long ago it was submitted, but it was already on the roster.

So I took a look at it side by side. I noticed that the hammer assembly had changes, had divots that the original tester did not have. It had, like, a little hammer -- the axle that the hammer goes on had some changes. The sear was
elongated on one and not the other. And there was a little cut
and divot on the actual sear itself which wasn't on the other.

Q. So those were the -- they were minor changes -- I'm sorry.

Strike that. I don't want to put words in your mouth.

There were alterations to the handgun that you personally deemed took it outside of the certification originally?

A. It's not a personal deeming. I just look at it, and then I tell people my observations, and then the Department will decide if they're going to -- based on the regulations and the code if they are going to have them removed.

We did not start there. We went -- I personally went to dealers to try to get examples of these firearms to see if they were actually being sold in this way.

H&K actually contacted us and told us -- it was, like, a two-part story; right? The originals were denied. A few months after, H&K came back and contacted us in regards to them stating that they possibly had made changes on other firearms and just wanted to let us know about that situation.

- Q. Okay. What sort of change would warrant a removal from the roster? Would changing a spring or a screw or a divot on a particular feature?
- A. No. Divots are typically made by manufacturers to tell them exactly, like, what generation slide they have. So they'll put certain divots inside the slide, and they're able

to differentiate, okay, this is a Gen -- I don't how they will call it; right? But this is a Gen4 slide. This is a Gen5.

And they'll put the little divot. So that was not -- that's not something we take into consideration.

Springs, if they're similar, pretty typical, it doesn't warrant the removal.

But when it's almost the whole assembly or close to the whole assembly, where it has not been tested -- the drop test has not then occurred; right? We don't know if it's going to fire off a round during the drop-safety test.

Q. Sure.

- 12 A. That has not been tested.
  - Q. I understand that. I guess -- and I think you answered my question with respect to the divots. You said, if I understood you, the divots basically told you that this wasn't -- that there was something different. It wasn't the divot that made you say, "Okay. We've got to take this off the roster." It was the divot that made you look closer; is that correct?

    A. Well, like, in another firearms, right, we've had -- depending on the divot, right, there is divots that the manufacturer has placed on the slides. And we reach out to the

Let me state these divots are made because of the generational, so we could tell the difference.

manufacturer. This is how we know; right?

When it came to H&K, it was -- you call it, probably --

that's why you call it a divot, inside of the hammer, but it looks like a little cutout, a divot in that sense.

Plus, the sear, the auto sear got cut off -- auto sear weight. I didn't go -- I didn't take the firearm fully apart to look inside internally, because I could already tell from the outside that it was changed.

Q. Okay. The one part I don't think I got an answer to was, what level of change will reach the point where it's now warranted to say, "This is a different gun than the one that was tested"?

The changing of screws? The manufacturing process of a screw on a firearm warrants saying, "Okay. This needs to be removed from the roster until they change it back"?

- A. No. Screws are not something that we would decline a firearm for. It's more, like I said, internal parts. And in this instance, you can tell the part looked different.
- 17 Q. Okay.

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- 18 A. Or the parts. There were four different parts that we could see from the outside.
- Q. You testified that you are familiar with the requirement
  of the Unsafe Handgun Act that, if a handgun is added because
  it has microstamping technology, that a certain number of
  handguns fall off or are removed from the roster. I don't know
  if we decided whether it's two or three, but some --
- 25 A. It's three. It as three.

1 Q. It's three. So one comes on because it has

- 2 microstamping, --
- 3 A. Uh-huh.
- 4 Q. -- and three come off. Is that accurate?
- 5 A. Yes, correct.
- 6 | Q. How is the decision made which three handguns get removed
- 7 | from the roster? Do you know?
- 8 A. I know that they were still in the talks about that, so I
- 9 cannot be able to give -- tell you the answer because I know,
- 10 | at one point, it was -- like we were speaking about earlier on
- 11 | the roster, the list you had, if you were to remove one, it
- wouldn't take off the black one, the blue one, you know, the
- 13 | red one, even though they're technically based off the same
- 14 | model. It would just take off based on dates.
- 15 So if the blue one was introduced in 2001, then it would
- 16 | take off the oldest one; the black 2001. It wouldn't affect
- 17 | the blue 2005, even though it's, technically, a similar model;
- 18 | right? So it would go based off expiration dates.
- 19 | Q. Okay.
- 20 | A. Or initial initiation, like, of the application dates.
- 21 | Q. Is it starting with the oldest guns on the roster or the
- 22 | newest guns on the roster that are being removed? Or do they
- 23 | not know yet?
- 24 A. Oldest.
- 25 | Q. The oldest?

- 1 A. Oldest, yes.
- 2 | Q. Are you familiar with any models currently on the roster
- 3 | that have the ability to configure the magazine release, the
- 4 | safety and slide release ambidextrously? I know you testified
- 5 about some models that have each of those features.
- Is there any handgun model on the roster that has all
- 7 | three of those?
- 8 A. That I have seen, no. I haven't, technically, gone
- 9 | through every single one, so -- I haven't had the time, but
- 10 | that I know, no.
- 11 Q. I believe you testified that a chamber load indicator
- 12 | complements -- is a complement to safety protocol. Is that
- 13 | accurate?
- 14 A. Correct.
- 15 Q. Are you familiar with the four Cooper Rules of firearm
- 16 | safety?
- 17 A. Yes. Always point in a safe direction; make sure you
- 18 | don't -- you know where you're pointing, so, yeah.
- 19 Q. What is the first rule of the four Cooper Rules of firearm
- 20 safety?
- 21 A. Like, knowing your firearm. Basically, know your firearm.
- 22 | If you know it's unloaded, kind of thing, point it in the right
- 23 direction. I am trying to remember.
- 24 Q. If I can -- is it your understanding that the first rule
- 25 | is that a firearm is always to be treated as if it were loaded?

- 1 A. It is loaded, correct.
- 2 Q. Even if you know it's unloaded -- or even if you know it's
- 3 | unloaded, you see that it's unloaded, you still treat that
- 4 | firearm as if it's loaded; is that correct?
- 5 A. Correct.
- 6 | Q. That is basic firearm safety training 101; correct?
- 7 A. Correct.
- 8 Q. Does the presence of a chamber load indicator on a handgun
- 9 | alter how you treat a firearm in any way?
- 10 | A. Based on my training, of course, it's a helpful thing to
- 11 | see; right? You are going to come up and see that the flag is
- 12 | up, but I am always going to check to make sure if it's loaded
- 13 or not. You don't want to -- like, for example, you don't want
- 14 to go out on duty and -- let's say, you discharge -- you happen
- 15 | to discharge your weapon, and it won't fire. Or you got to the
- 16 training range, and you shoot your handgun, and it doesn't
- 17 | fire. So you -- you're not always going to rely -- it's more,
- 18 | like I said, a complement. You want to also visually check
- 19 | vourself.
- 20 Q. Sure. I understand it's your position it's a complement.
- 21 My question was more along the lines of does it change
- 22 | your behavior in any way when you have a chamber load indicator
- 23 on the handgun.
- 24 A. No, it does not. Based on my training, no.
- 25 Q. And that is because you treat a firearm as if it was

1 | loaded at every instance; correct?

- 2 A. Correct.
- 3 | Q. Can you explain -- I believe you testified that you think
- 4 | chamber -- it's your opinion that chamber load indicators are
- 5 helpful to protect people from themselves or harming others
- 6 when they obtain a firearm; is that correct?
- 7 A. Correct.
- 8 Q. How can somebody who has no firearm training be benefited
- 9 by a chamber load indicator?
- 10 A. Well, if they would come up to a firearm and they see that
- 11 | a red flag is up or the wording on it says, "Loaded," or there
- 12 | is a picture saying -- or somehow that states that it's a
- 13 | loaded firearm, it's not going to guarantee they're not going
- 14 | to handle the firearm; right? But, you know, it kind cautions
- 15 them to say this is a loaded firearm.
- 16 It's kind of like coming up to a house, and there's a
- 17 | warning sign, "A dog." Would you be more cautious if there was
- 18 | a sign that said, "Do not approach. Caution. Dog"? Or would
- 19 | you be more cautious if there was no sign and you couldn't see
- 20 | past beyond the fence; right?
- 21 | Well, it's the same thing. It's, like, you'd be more
- 22 | cautious if you actually saw the sign that said, "Dog."
- 23 Q. If I treated all properties as if there was a rabid dog on
- 24 | there, it wouldn't make a difference; right?
- 25 A. But we don't.

1 Q. But that is -- but people don't -- that's because people

2 don't have the firearm training, right? The number one rule is

3 to treat firearms as if they're always loaded; right? That's

the concern? That's the problem; right?

5 A. Well, it comes along with the training. I'm sure not

6 | everybody has the proper training, correct.

7 | Q. But if somebody doesn't have the proper training about the

8 | number one rule of firearm safety, wouldn't it be unreasonable

9 to expect them to have the training and understanding of what a

10 | chamber load indicator means?

11 A. Not exactly. Because sometimes kids -- right? -- you are

12 | already born knowing -- if you see a spider, you are scared of

13 | it. You see certain things. You kind of draw your attention

14 to say, "I'm not going to touch this."

15 And so by -- we already kind of -- like, with some of

these magazine disconnects, we already see some type of bright

17 | colorizations, something like that, as danger signs. So even

18 | though it's not going to stop every accidental shooting or

death, it might prevent some.

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20 | Q. Would you expect a child that is at risk of harming

21 | himself or herself or somebody else with a firearm to

22 | understand what a chamber load indicator is, in that instance?

23 A. Yes, depending on the age, yeah. A chamber load indicator

24 | may not -- probably, most likely, will not, depending on the

25 age. But I couldn't tell you what age.

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- 1 | Q. Would you agree that for young children they pretty much
- 2 | aren't worth much?
- 3 A. Yeah, depending on the age. I couldn't tell you what the
- 4 | age would be, but there are some children that wouldn't
- 5 understand.
- 6 Q. Have you ever witnessed a chamber load indicator fail?
- 7 A. I personally have not, no.
- 8 Q. Have you heard of any incident where a chamber load
- 9 | indicator has failed?
- 10 A. No, I have not.
- 11 Q. To your knowledge, are revolvers required to have a
- 12 | chamber load indicator to be on the California roster?
- 13 A. No, they're not.
- 14 | Q. Why not?
- 15 A. Because for some reason -- I didn't write the legislative
- 16 | thing, you know. But -- I wasn't involved in that, but I don't
- 17 know what the reason is.
- 18 | Q. We understand that, Special Agent. I guess my question is
- 19 | would there -- is there a difference, in your firearm
- 20 | expertise, between a semi-automatic handgun and -- a
- 21 | semi-automatic pistol and a revolver as to why one would
- 22 | benefit from a chamber load indicator and the other would not?
- 23 A. The only thing I can see is just that the cartridges are
- 24 | round and visible in the revolver where, when it comes to the
- 25 | semi-automatic, it's all enclosed inside. But other than that,

1 | I do not know why.

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- Maybe it's the weight, the weight of the trigger, but I don't see what the difference would be or how they did the chamber load indicator on there.
- Q. Is the round that would be in the chamber on a revolver in the cylinder visible?
- 7 | A. Technically, yeah, it would not be.
- Q. It would not be; right? If it's in the chamber -- the
  other rounds that are not in the chamber, at least some of them
  might be visible, but the one that is in the chamber would not
- 12 A. Correct, correct.

be visible on a revolver?

- 13 Q. Do you have any forensics training?
- 14 A. No, I do not.
- 15 Q. Would you personally be able to determine whether a
- 16 | firearm possesses microstamping technology?
- 17 A. No.
- 18 Q. Have you been trained on determining the presence of
- 19 | microstamping technology?
- 20 A. No, I have not.
- 21 Q. To your knowledge, is anybody at the Department of Justice
- 22 Bureau of Firearms been trained on that?
- 23 A. I know they have. Prior to myself, they were giving
- 24 presentations, but I don't know exactly to what extent.
- Q. Have you ever touched a firearm with microstamping

- 1 | technology?
- 2 A. I have.
- 3 Q. Does presence of microstamping technology on a handgun
- 4 | make it any safer?
- 5 A. Safer in the sense of --
- 6 Q. For the user.
- 7 A. For the user, no.
- 8 Q. Or for anybody around them? And I'm talking about direct
- 9 | harm. I understand the safety aspect of microstamping fighting
- 10 | crime, solving a crime. I get that. I am talking about the
- 11 direct harm from the firearm itself.
- 12 A. No. In that sense, no.
- 13 Q. Thank you.
- So what is microstamping's purpose, as you understand it?
- 15 A. It's just to cut down on the lead time involving a crime,
- 16 get to the actual owner, the gun -- not the gun itself but the
- 17 | gun information quicker, faster.
- 18 Q. Is it fair to call it a law enforcement aid?
- 19 A. Yes. Law enforcement aid. And it's a public safety issue
- 20 | as well. Like I said, if it's some type of guy involved, like
- 21 | a serial killer, in a sense, it would lead to a faster time of
- 22 | figuring out who the person is. And in that sense, it would be
- 23 | a public safety issue.
- 24 Q. In your experience, guns that are used in crimes, are they
- 25 usually stolen?

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- 1 A. It all depends.
- Q. Let me strike that "usually."
- 3 Are they oftentimes stolen guns?
- 4 A. I couldn't say, "Yes" or "No." I couldn't say, "Yes" or
- 5 "No."
- 6 | Q. Have you ever come across stolen -- a criminal who you
- 7 | arrested and they had in their possession a stolen gun?
- 8 A. Yes.
- 9 Q. Are stolen guns often used in crimes, to your knowledge?
- 10 | A. Yes, they're used in -- I am sure they're used in crimes
- 11 often.
- 12 Q. Okay. And in your experience, as a law enforcement
- 13 | officer, do crime guns change hands fairly frequently, or do
- 14 | bad guys hang onto their guns for an extended period of time?
- 15 A. I wouldn't be able to tell you that, yeah.
- 16 | Q. To your knowledge, has DOJ Bureau of Firearms ever
- 17 | contacted any handgun manufacturer to collaborate on developing
- 18 | microstamping technology?
- 19 | A. Since I've been there, that I know of, I do not -- no, I
- 20 | have not heard anything.
- 21 | Q. Are you aware of any study that the California Department
- 22 of Justice Bureau of Firearms has ever conducted on
- 23 microstamping?
- 24 | A. The only thing I know of is a presentation, probably 2014,
- 25 | I believe. But I don't know if it was an actual study or not.

1 | I know they had people that come in and present what

- 2 | microstamping was and the training aspect of it and what it
- 3 | involved, but I don't know anything else beyond that.
- 4 Q. So, to your knowledge, you don't know whether DOJ has
- performed a study, a field study, discharging firearms to
- 6 determine whether microstamping technology works?
- 7 A. No.
- 8 Q. Are you aware of any other government entity that has done
- 9 that type of study?
- 10 A. No, I do not. I am not aware.
- 11 | Q. Do you shoot firearms often?
- 12 A. Yes -- well, kind of, yes.
- 13 Q. Kind of?
- 14 A. Well, quarterly, we do have firearms training. Like I
- 15 | said, I'm an instructor as well, so I'm out there shooting with
- 16 other agents.
- 17 Q. Okay. So do you carry a firearm on duty?
- 18 A. Yes.
- 19 Q. How many rounds do you think you put through your duty
- 20 | weapon?
- 21 A. I don't know. Hundreds, maybe.
- 22 Q. Hundreds?
- 23 A. Yes.
- 24 | Q. In your trainings, your quarterly training, how many
- 25 | rounds do you discharge out of your duty weapon?

- At least -- depending on the training, we'll say 300. 1 would say average of 300 to 500, depending on the training. 2
  - Outside of that training, you don't discharge your duty Q. weapon that often?
- Just would go to the range, go to the range to practice Α. shooting, but not too many rounds. 6
- What about any personal firearms? Do you have any personal firearms that you discharge more often than your duty weapon? 9
- Α. No. I have -- I don't know if you are asking me exactly, 10 but no. 11
- Okay. Are you familiar -- do you know whether there are Q. 12 any devices that can be affixed to handguns to catch the brass 13 as it is being ejected so as to not stay on -- not be left 14 behind? 15
- I am sure there are devices of every type around. 16
- THE COURT: Counsel, I probably really need to break for the 4:00 o'clock matter. 18
- MR. BRADY: I'm going to be done in, like -- I mean, 19 I could come back if your Honor wants. I can stop here, if you 20 21 want.
- Is there going to be Redirect? THE COURT: 22
- It would be very brief, Your Honor. 23 MR. SAROSY:
- Okay. Why don't we break, then? THE COURT: 24
- 25 MR. BRADY: Okay.

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MR. DALE: Would you like us to clear our table? 1 THE COURT: I would, if you could do that. 2 (Adjourned at 4:18 p.m. to hear another matter.) 3 THE COURTROOM DEPUTY: Please come to order. This 4 Court is again in session. 5 All right. THE COURT: Please proceed. 6 7 MR. BRADY: Thank you, Your Honor. 8 SALVADOR GONZALEZ, previously called by and on behalf of Defendant, testified: 9 CROSS-EXAMINATION 10 BY MR. BRADY: 11 Special Agent Gonzalez, you testified that you carry a 12 handgun for duty use; is that correct? 13 Correct. 14 Was that handgun issued to you by the California 15 Department of Justice, or did you choose it? 16 By the California Department of Justice. 17 Α. What model handgun is that? 18 0. It's a Glock 23 Generation 4. 19 Α. Glock 23 Generation 4. 20 Q. Is that on the roster? 21 No. it is not. 22 Α. Does your duty handgun have a chamber load indicator? 23 Well, according to Glock, it does. According to the State 24 of California, it does not. 25

- 1 | Q. Can you explain that for us?
- 2 A. So as Glock refers to it, it's called a loaded chamber
- 3 | indicator, which is similar, in the sense, to those that know
- 4 | firearms, right, it's attached to the extractor of the Glock.
- 5 | So when you load a round in the chamber, the extractor comes
- 6 | out just a tiny bit. Maybe if you have good sensitivity to
- 7 | your fingers, you can feel the difference. Some don't go by
- 8 | that or it's not -- doesn't fall within the California standard
- 9 of a chamber load indicator because it does not contain the
- 10 contrasting colors or wording or design.
- 11 Q. Okay. Thank you. Does it have a magazine disconnect
- 12 | mechanism?
- 13 A. No, it does not.
- 14 Q. Does it have microstamping?
- 15 A. No, it does not.
- 16 | Q. Were you able to choose among various models that the DOJ
- 17 | made available to its agents?
- 18 A. There was only the Glock 23 or the Glock 22.
- 19 Q. And what generation is that Glock 22?
- 20 A. I think that's Generation 4 as well.
- 21 Q. Generation 4. So it's not on the roster either?
- 22 A. Correct.
- 23 Q. And it doesn't have a magazine disconnect mechanisms?
- 24 A. Correct.
- 25 Q. And it only has the chamber load indicator that you were

1 talking about, that Glock calls the chamber load indicator that

- 2 | is not one under California law?
- 3 A. Correct.
- 4 | Q. And it doesn't have microstamping either?
- 5 A. Correct.
- 6 Q. So the only model handguns that the California Department
- 7 of Justice offers its Special Agents for duty use are handguns
- 8 | that are not on the California roster and that possess neither
- 9 a chamber load indicator, as California defines it, a magazine
- 10 disconnect mechanism, or microstamping; is that correct?
- 11 A. Correct.
- 12 | Q. Do you carry a handgun off duty?
- 13 A. I do not.
- 14 Q. This might be redundant. I apologize. So are all special
- 15 agents limited to either one of those two Glock models you just
- 16 | identified, for their carry weapons?
- 17 | A. As a handgun, yes.
- 18 | Q. And you've testified earlier, I believe, about the
- 19 differences between the Gen -- the Glock Gen3 and the Gen5, and
- 20 | you pointed out some differences.
- 21 Are those the same differences between the Gen4 and the
- 22 | Gen3 as well?
- 23 A. No. The Gen5 is a little bit more -- I guess you could
- 24 | say it's a little heftier, a little thicker. They still have
- 25 | both -- the Gen4 and the Gen5 both have the backstraps,

1 | removable backstraps. The Gen4 still has indentations on the

- 2 grip, where, you know, your fingers basically mold into. It
- 3 does have -- the Gen4 does have the upgraded recoil spring.
- 4 | The slide is changed a little bit. But other than that, pretty
- 5 | similar. I think they also improved a little bit of the
- 6 | trigger pull.
- 7 | Q. They improved the trigger pull?
- 8 A. On the 5, on the 5th one.
- 9 Q. What about the barrel?
- 10 A. The barrel, on the 5th, on the Generation 5, they -- it's
- 11 stated that they improved the barrel for a more accurate, I
- 12 guess, shooting. This is also based on who states it; right?
- 13 But that is what they state.
- 14 Q. So you are saying it's Glock's position that the Gen5 is a
- 15 | superior firearm to its previous iterations?
- 16 A. In regards to, like, the barrels and stuff that, they do
- 17 | state that improvement of technology. That is what it says,
- improvement of technology in regards to the Gen3 or Gen4.
- 19 Q. Do you share Glock's opinion that its Glock Gen5 is
- 20 | superior to its previous iterations?
- 21 A. It's kind of similar to kind of owning a iPhone 13 and an
- 22 | iPhone 14; right? Sometimes people want the newest model even
- 23 though the older model still does basically the same thing;
- 24 | right? It's just a few changes. Maybe a new lens or whatever,
- but it still functions the same but just a newer improvement.

1 | Q. Sure. That makes sense, and I hear you.

But are all the changes on the Glock of that nature?

Aren't some, as you indicated, increasing accuracy,

4 potentially? And the removal of backstrap, what does that for?

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Is that to help ergonomics so that you have a better fit on the

6 gun?

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7 A. According to -- they removed the grip from, like I said,

8 | the Glock 4 to the Glock 5 -- which was also on the Glock 3 --

9 | the little indentations because people were complaining of the

handling of the gun. I guess you could say it was

11 uncomfortable.

They increased the magazine release from the 3 to the 4.

They kept it from the 4th to the 5th, the same magazine

14 release. It's a little bigger.

What they call the stripling, they kind of changed it a little bit, made it a little more aggressive, in a sense.

Q. Okay.

18 A. It's a little bit more grip. And the backstraps are --

were meant to be in case your hand, basically, has, like I

20 | said, an ergonomically better fit for smaller hands. In the

21 | case -- like, a Glock 22 is a little bit bigger than a

22 | Glock 23, so that is why some people tend, with smaller hands,

go with a Glock 23 instead of, like, a Glock 22.

24 | Q. Would you say that there are significant enough

25 differences between the Gen3 Glock and the Gen5 that, to your

1 | point about some people like this iPhone versus that, that

- 2 | there would be, in those differences -- those differences would
- 3 be significant enough that people would basically want to
- 4 choose? Like, I want -- that is substantively better for my
- 5 purposes than this other one?
- 6 A. It all depends. You know, financially, if you are
- 7 | willing -- you want to pay a little bit more for the newer
- 8 | product. I mean it all depends -- it would all depend. Like
- 9 I --
- 10 Q. I'm sorry.
- 11 A. Like I still have my iPhone 10. I haven't gone to the
- 12 | latest one based on pricing and things like that; right?
- 13 Q. I think I'm still on 8.
- 14 A. Yeah.
- 15 Q. But my point, I guess, is that there are certain
- 16 differences between a Gen3 and a Gen5, like the removable
- 17 | backstrap that changes how you can grip it, that is
- 18 substantively different, that can make a difference to the
- 19 user?
- 20 A. Yes. There's more options based on, like I said, smaller
- 21 hands. People that wouldn't have gone to a 3 based on they
- 22 | couldn't grip it correctly. It would allow for the smaller
- 23 hands to basically grip that weapon. And I am sure the
- 24 | shooting, even though slight differences, it would be something
- 25 that somebody would want.

And the barrel accuracy, that is what it does -- is better accuracy. It is not like a -- they don't consider it a competition gun, but they state it's better accuracy than the Gen3.

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5 Q. Understood. Thank you.

THE COURT: Agent, maybe this is obvious, but the Gen5 is not on the roster.

THE WITNESS: Correct.

THE COURT: So if they just paid a fee, it wouldn't get on the roster because of those changes; correct?

11 THE WITNESS: Correct, because of the changes.

12 BY MR. BRADY:

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- 13 Q. Do you, Special Agent Gonzalez, know why the California
- 14 | Department of Justice issues its agents, like yourself,
- 15 | handguns that are not on the roster?
- 16 A. Well, specifically, I mean, we have an exception on the
- 17 | 320000 [sic] Penal Code, which -- Section 4 which states that
- 18 certain law enforcement have certain exceptions in regards to
- 19 acquiring and having guns for, like, official duties, stuff
- 20 like that. Within our section, like, law enforcement, like,
- local PDs and sheriffs, they're allowed to have these firearms,
- as well as section -- what is it 6, 7? -- they have to have
- certain post requirements and further training in order to
- 24 acquire these firearms.
- 25 | Q. Understood that there is an exception -- an exemption for

- 1 | law enforcement officers, but is there a reason that the
- 2 | California Department of Justice decided to take advantage of
- 3 | that exemption and issue its officers only firearms that are
- 4 | not on the roster?
- 5 A. I am not aware of the reasoning.
- 6 | Q. They didn't make an analysis of the benefits of chamber
- 7 | load indicators or magazine disconnects or microstamping on
- 8 | your firearms?
- 9 A. That I'm aware of, I don't know.
- MR. BRADY: That is all. Thank you, sir.
- 11 THE WITNESS: Thank you.
- MR. SAROSY: I'll be brief, Your Honor.
- 13 THE COURT: Okay.
- 14 REDIRECT EXAMINATION
- 15 BY MR. SAROSY:
- 16 | Q. Mr. Gonzalez, similar handguns can be added to the roster
- 17 | without lab testing; is that right?
- 18 A. Correct.
- 19 | Q. And a similar handgun cannot have any changes to internal
- 20 | parts?
- 21 A. Correct.
- 22 | Q. And is the purpose of the lab testing, in your opinion, to
- 23 | see how the internal parts work?
- 24 A. Yes. That would be one of the functions during all of
- 25 | these type of stress tests, the drops, the firing.

1 Q. Is it easier -- because there is no lab-testing for a

- 2 | "similar," is it easier for a manufacturer to get a similar
- 3 | handgun added to the roster than a new handgun to the roster,
- 4 | let's say, pre-microstamping?
- 5 A. Pre-microstamping? It's easier for a "similar" since it

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- 6 | would not have to go through all the testing, correct.
- 7 | Q. For the H&K USP removal that you were asked about, to your
- 8 knowledge, were policies and procedures, including the statutes
- 9 | and regulations that applied to that situation, were they
- 10 | followed by the Department of Justice or the Bureau of Firearms
- 11 | in removing those handguns?
- 12 A. Yes, they were.
- 13 Q. To your knowledge, did H&K admit that the hammer
- 14 | assemblies on the handguns that were removed were different
- 15 | from the ones that were submitted and tested?
- 16 A. Yes, they admitted it.
- 17 | Q. And, to your knowledge, was H&K notified about the reasons
- 18 | for the removal of those handguns from the roster?
- 19 A. Yes, they were.
- 20 | Q. And in preparing for your testimony today, did you go
- 21 | through every semi-automatic pistol on the roster to see if it
- 22 | had an ambidextrous magazine release or ambidextrous external
- 23 | safety?
- 24 A. We didn't go through every single firearm. We went
- 25 through a lot of firearms.

- 1 Q. Okay. And is it possible for a parent to tell a child
- that, if a gun has a red pop-up on the gun, that that means
- 3 | it's loaded?
- 4 A. Yes, it's possible.
- 5 Q. And for a revolver, when you are, I guess, holding a
- 6 revolver, can you see in the barrel which one has cartridges in
- 7 | it, typically?
- 8 A. Like we were talking about earlier, if it's in the
- 9 cylinder, you can technically see the outer cartridges. But if
- 10 | it's in the chamber, which is the one that's chambered to be
- 11 | fired off, it's not going to be as visible as the other ones.
- 12 Q. Right. So you can't see the one in the chamber, but you
- 13 | can see the other ones in the barrel?
- 14 A. Correct.
- 15 Q. For a semi-automatic pistol, you can't see how many
- 16 cartridges are left in the magazine, can you?
- 17 A. You cannot see how many -- the rounds are in the magazine
- 18 or inside the chamber.
- 19 Q. And to be clear, did you make the decision to issue
- 20 off-roster handguns to Bureau of Firearms special agents?
- 21 A. No, I did not.
- 22 Q. And do you store your duty gun at home?
- 23 A. Yes, I do.
- 24 Q. And how do you store it, typically?
- 25 A. I pretty much put it in my safe. I get home, walk up, put

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it in my little lockbox, take the magazine out, and rack it
1
    back, make sure there is no rounds in the chamber.
2
                           All right.
                                      Thank you.
              MR. SAROSY:
3
                          Anything further?
4
              THE COURT:
                          No, Your Honor.
              MR. BRADY:
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              THE COURT:
                          Sir, you can step down. Thank you.
6
         Okay. We have another witness, don't we?
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              MR. WOODS: Your Honor, we have one more witness that
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    we can call Mr. Saul Cornell now. Dr. Saul Cornell. He's on
9
    the East Coast, and it is getting fairly late for him.
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                                                             We told
    him that he can come back -- he's willing to come back
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    tomorrow, if that would be better. I can see if I can get him
12
    to testify.
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              THE COURT: See if we can get him to testify.
14
                          All right. Let me try to give him a
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              MR. WOODS:
    call.
16
              THE COURT: All right.
                                       Great.
                                               Thank you.
17
              MR. WOODS:
                          I just spoke with him. He will be back
18
    to his computer momentarily.
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                           Perfect.
              THE COURT:
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              THE COURTROOM DEPUTY: Okay. Thank you.
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         (A brief recess was taken.)
22
              THE COURTROOM DEPUTY: Mr. Cramer is back now.
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              THE COURT: Rolls, you're going to get electronic
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    copies of all the exhibits; right?
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THE COURTROOM DEPUTY: Yes, Your Honor. We discussed 1 it, and they will be filing a stipulation to file the admitted 2 exhibit list and the witness list. Your Honor. 3 MR. SAROSY: Your Honor, for the last witness, Mr. Gonzalez, I forgot to move into evidence Exhibit 8, which 5 he had spoken about, and I know he just left. 6 THE COURT: That exhibit is received into evidence. MR. SAROSY: Thank you. THE COURT: And, right, you are going to put all of 9 these exhibits into electronic format, too? 10 MR. SAROSY: Correct. 11 (Exhibit 8 was received into evidence.) 12 MR. SAROSY: Would you like the demonstrative in 13 electronic format as well? 14 THE COURT: Sure. 15 (A discussion was held off the record.) 16 Okay. We're live. Sorry about that. 17 THE WITNESS: THE COURTROOM DEPUTY: Can you hear me, sir? 18 THE WITNESS: I can. 19 THE COURTROOM DEPUTY: Perfect. And you can see the 20 Judge? 21 22 THE WITNESS: I can see the Judge. 23 THE COURTROOM DEPUTY: Perfect. Do you want to call your witness? 24 25 MR. WOODS: Oh, yes. Sorry. Defendant calls

No.

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Dr. Saul Cornell to testify. 1 THE COURT: Very well. Rolls, do you want to --2 THE COURTROOM DEPUTY: Mr. Cornell, please raise 3 your right hand. 4 Do you solemnly swear the testimony you shall give in the 5 cause now before this Court shall be the truth, the whole 6 truth, and nothing but truth, so help you God? 7 THE WITNESS: Yes, I do. 8 THE COURTROOM DEPUTY: Please state your name and 9 spell your last name for the record. 10 Sure. Saul Cornell, C-o-r-n-e-l-l. THE WITNESS: 11 THE COURT: Please proceed. 12 SAUL CORNELL. 13 called by and on behalf of Defendant, testified as follows: 14 15 DIRECT EXAMINATION BY MR. WOODS: 16 Dr. Cornell, good evening. 17 0. Good evening. 18 Α. Thank you for joining us. 19 Q. where are you currently employed? 20 I'm currently employed at Fordham University where I am 21 the Paul and Diane Guenther Chair in American History and an 22 adjunct professor of law at Fordham Law School. 23 I am sharing the screen, and hopefully that works. 24 Ο. Is this your -- what looks like an accurate copy of your 25

. cv?

- 2 A. Yes, it is.
- 3 | Q. Okay. Is this a document that you prepared, sir?
- 4 A. Yes.
- 5 Q. Okay. Great. I'm going to ask some general questions
- about your background. If you need to refer to your CV, you're
- 7 | welcome to.
- 8 How long have you been employed by Fordham?
- 9 A. So I've been employed by Fordham since 2009. And before
- 10 | that, I was at Ohio State University for 18 years, and the
- 11 College of William & Mary for two years.
- 12 Q. And in what context were you employed by Fordham and Ohio
- 13 | State and William & Mary?
- 14 A. So William & Mary I was both an assistant professor and a
- 15 | fellow at the Omohundro Institute of Early American History &
- 16 Culture, which is the leading research institute on early
- 17 American history.
- 18 And at Ohio State, I was a the professor of history.
- 19 | Began as assistant, was promoted through associate to fellow.
- I also had an appointment at the John Glenn School of
- 21 | Public Policy.
- 22 And now I am employed at Fordham University.
- Q. And do you -- have you received any fellowships and/or
- 24 | grants?
- 25 A. Yes, a whole bunch of them. I've had fellowships from the

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National Endowment for the Humanities, the American Council of 1 Learned Societies. I was a distinguished Fulbright scholar, 2 where I taught at Leiden University in the Netherlands. 3 received fellowship support from the Gilder Lehrman Institute 4 from the Center for the Study of Slavery at Yale University, 5 which is a distinct part of the Gilder Lehrman Institute. 6 And I have also been a visiting research scholar at Yale Law 7 School, the University of Connecticut Law School, and the 8 Floersheimer Center for Constitutional Democracy at Cardozo Law 9 School. 10 All right. That's a lot. I realize this is, perhaps, a 11 big question, but do you have any particular areas of expertise 12 that you would consider yourself an expert in? 13 So I am an early American historian, a 14 constitutional legal historian. I have written on a variety of 15 areas of American political culture, American political 16 thought, American legal history. I've authored a popular 17 American history textbook that goes from the Paleolithic era to 18 the present. I co-authored that. 19 I also co-authored what has become standard history of 20 American constitutional development from the founding era 21 through to the Jacksonian period that was published by 22 Cambridge University Press a few years ago. And I've published 23 in almost all of the major peer reviewed history journals and 24

many of the top law reviews in the country, including Yale,

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William & Mary, Northwestern, UCLA, and there are others, but
 I -- that gives you a basic sense.

- Q. Understood. Can you kind of summarize your scholarship in constitutional law? I understand you mentioned constitutional legal history. Is there a particular focus on constitutional law that is part of that?
- A. Sure. My first book was on the anti-federalist, the original opponents of the Constitution. It's still required on many graduate reading lists. I know they use it at Cambridge. I know they use it at Princeton. I know it's assigned in many other places.

I've written a book on the Second Amendment. And I've also written a history -- co-authored a history on American constitutional development from the founding era through the Jacksonian period.

- Q. Great. Have you ever published articles on firearms, legislation in the historical period?
  - A. So I've published both in peer reviewed history journals and in top law reviews. The first article I wrote on this, I published in the Fordham Law Review, although I wasn't yet a Fordham faculty member. And to this day, it is one of the top five most cited and downloaded articles published in the Fordham Law Review, which is, at last, ranking the top 15 law reviews. I think it's been download almost 50,000 times.
  - Q. Great. And have you ever testified in -- or have you ever

1 | provided expert testimony in a case before?

- 2 A. Yes. I've provided expert witness reports in something
- 3 like a dozen cases. My work has been cited by several dozen
- 4 | federal and state courts. It's been cited by the Supreme Court

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- 5 on multiple occasions, both in dissent and the majority
- 6 opinions.
- 7 Q. Great.
- MR. WOODS: Your Honor, I would like to move Defense
- 9 | Exhibit 23 into evidence.
- 10 | THE COURT: Any objection?
- 11 MR. DALE: No objection.
- 12 THE COURT: Exhibit 23 will be received into
- 13 evidence.
- MR. WOODS: Great.
- 15 (Exhibit 23 was received into evidence.)
- 16 BY MR. WOODS:
- 17 Q. Have you been retained in this case to provide an opinion?
- 18 A. Yes.
- 19 Q. And what was your task in this case?
- 20 A. So my task was to read the complaint and the relevant
- 21 documentation by provided by the A.G. Office, and to analyze,
- 22 | with the framework provided by the recent Bruen decision in
- 23 | mind, what the history of firearms regulation was, what the
- 24 | context in which firearms regulations were enacted, and what
- 25 | that might tell us about the constitutionality of current

firearms law in California. In this case, you know, regulations affecting the sale of firearms.

- O. Understood.
- MR. WOODS: Your Honor, at this time, I would like to tender this witness as an expert firearms historian under Rule 702.
- THE COURT: He will be so designated.
- 8 BY MR. WOODS:

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- Q. So after receiving this task from the Attorney General's office, did you actually form an opinion?
- 11 A. I did. And my opinion, I think, has to be understood in
- 12 the following manner. So in order to apply the Bruen
- 13 | framework, which requires that we understand both the history
- 14 of regulation and what would be suitable analogies to
- 15 | contemporary firearms legislation, we have to not only look at
- 16 the kind of laws that were passed but we must try and
- 17 understand what were the circumstances that Americans,
- 18 particularly in the founding area of 1400s, what were they
- 19 doing by enacting these laws and what were the concerns and
- 20 social legalities and problems that would have motivated them
- to enact laws or would have made the enactment of laws not
- really possible because, for technological reasons or certain
- social ills, were not yet manifested in society? So that is
- 24 essentially what I was asked to do.
- 25 Q. And in forming your opinions, did you look at primary

1 sources?

- 2 A. Yes.
- 3 Q. From the historical era?
- 4 A. Yes.
- 5 Q. Sorry.
- 6 A. I looked extensively at a variety of primary sources. I
- 7 | think one has to -- particularly, when one is dealing with the
- 8 | founding era, one has to recognize that early American law was
- 9 immersed in a common law culture inherited from England. Not
- 10 every aspect of England's common law was transferred but many
- 11 aspects of common law were absorbed into early American law.
- So my analysis included, not just statutes but also
- 13 justices of the peace manuals, newspapers, a broad range of
- 14 | sources that would give me insight into both what the
- 15 | legislators were doing but also what the society was
- 16 experiencing that would lead them to enact certain kinds of
- 17 | regulations.
- 18 Q. And did you also look at the text of the Second Amendment?
- 19 A. Yes. Yes. One of my favorite Amendments. I would say
- 20 | after the Third, probably, my second favorite.
- 21 Q. Sure. Why not.
- Did you also look at the text of any other amendments to
- 23 | compare the text of the Second Amendment?
- 24 | A. Yes. I think many people often draw a pretty close
- 25 | comparison between language in the First and the Second. And,

of course, what is most clear, when you look at those two texts, is that they are both structured very differently and the language they use is quite distinct.

The First Amendment, of course, talks about an abridgement of a right; whereas the Second Amendment talks about infringement. And in 18th century English and, in particular, in the kind of legal English that was familiar to the kinds of people who would be drafting the statutes and the Second Amendment, that choice of language was quite significant. The fact that, in one Amendment, they framed the issue in terms of abridgement, and in the another, they framed it in terms of infringement.

Q. Okay. I want to get into the difference between those two words, as you understand it. I am showing you on the screen what has been marked as Defendant's Exhibit 24, which is a compendium of sources that I believe that you used in order to form your opinions.

Do you have that in front of you, or can you see it?

A. I do.

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- Q. Great. Okay. And so the first source, what do you understand the first source here to be?
- A. So the first source is a very typical type of primary
  source that has become particularly important in light of the
  Supreme Court's embrace of public meaning originalism,

25 dictionaries. And this one, probably the most famous

1 dictionary of English in the 18th century, British English, of

2 | course, is Daniel Johnson's dictionary. And it's a text that's

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- 3 | widely cited by original scholars and jurists.
- 4 Q. Great. And so this is, as I understand it, the 1755
- 5 | version; is that right?
- 6 A. That's right. This is an edition that would have been
- 7 | fairly widely available for educated and other Americans in the
- 8 era of the Second Amendment.
- 9 Q. And here are some excerpts from the 1755 dictionary that
- 10 | you looked at. And if you can see right here -- I realize the
- 11 | text is a little bit small, but this is the page with abridge
- 12 | on it?
- 13 | A. Yes.
- 14 Q. And so what do you understand -- or what does this
- 15 | dictionary tell you about the meaning of the word "abridge" in
- 16 1755?
- 17 A. So the choice of using the term "abridge" or "abridgement"
- 18 | signified that the framers, enactors, and the educated lay
- 19 | readers of this text would have understood that the First
- 20 Amendment, which, of course, in 18th century restriction on
- 21 | Congress -- it hadn't been incorporated the way it is today --
- 22 | would have prevented Congress from diminishing or contracting
- 23 the scope of the right.
- 24 So the clear meaning, plain meaning of this text is that
- 25 | Congress can't pass laws that will limit and thereby abridge

1 | the freedom protected by the First Amendment. And, of course,

- 2 | the First Amendment protects multiple freedoms, you know,
- speech, assembly, et cetera, et cetera.
- 4 Q. They can't make the right smaller; is that your
- 5 | understanding?
- 6 A. Yes, yes.
- 7 | Q. I am going to move to the next page where is -- and you
- 8 can see it -- the entry for "infringe." Do you have that in
- 9 | front of you?
- 10 A. I do.
- 11 | Q. Okay. I am pointing to it if you can't see it. And what
- 12 do you understand -- or what does that definition there tell
- 13 | you about the meaning of the word "infringe"?
- 14 A. Sure. So by choosing to use the word "infringe," which
- 15 | clearly means to destroy the right, the framers of the Second
- 16 | Amendment clearly distinguished it from the First Amendment
- 17 | that, in the case of the Second Amendment, a different kind of
- 18 | test was hard-wired into the language of the amendment so that
- 19 one, obviously, could regulate the amendment as long as one did
- 20 | not destroy the right substantiated in the amendment.
- 21 And that particular reading becomes the dominant reading
- 22 | for most of American history. And if you look, for instance,
- 23 | at the early cases that are cited by Heller, in *District of*
- 24 | Columbia v. Heller, they applied the cutting edge theory -- at
- 25 | least it was cutting edge when John Marshall articulated it in

the early Republic -- of the police power.

And the police power analysis that Marshall and others employed essentially looked to be the question of is the regulation a legitimate exercise of the police power, and does it infringe or, to say, destroy the right protected by -- in the case of the case law would be state arms-bearing provisions, not federal provisions.

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dominant framework that early American judges used to adjudicate questions about legitimate regulations of firearms.

And the issue was: Does the regulation infringe it or not?

So the notion of infringement dovetails nicely with the

- 12 You could say does it destroy it or not?
- 13 Q. Great. Okay. And then, as part of your research for this
- 14 case, as part your research in other cases, you looked at
- 15 primary sources; correct?
- 16 A. Correct.

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- 17 Q. We are going to look at a couple of those primary sources.
- 18 | So I have -- it's page 12 on Exhibit 24.
- 19 A. Right.
- Q. Which is -- what do you understand this printout to be?
- 21 A. So this is a law from Massachusetts, from the founding
- 22 | era, which makes it illegal to have a loaded weapon in a
- 23 | domicile in Boston. And, of course, the concern was that
- loaded weapons could discharge accidentally, particularly in
- 25 | situations where, you know, if there was a fire. And so it's

both a safe storage law and it's a law that is designed to prevent the harm that can come from a gun accidentally

- 3 discharging.
  - Q. And why is that important to you?
- 5 A. Well, it suggests that the founding generation understood
- 6 that firearms and gunpowder were particularly dangerous and
- 7 that one had to regulate them in a robust manner. So, you
- 8 know, it's difficult to try and think of an analogy for a limit
- on First Amendment freedoms that would be as intrusive as this
- 10 | kind of regulation.
- And, indeed, when John Marshall does write about the scope
- of the police power, he uses gunpowder as the locus classicus
- of what the police power is intended to do.
- 14 Q. But Massachusetts wasn't the only state with one such law,
- 15 | was it?
- 16 A. There are a variety of different kinds of regulations
- 17 about gunpowder in virtually every state and every locality.
- 18 And in many instances, when a new municipality is created, the
- 19 description of what the scope of police regulation permissible
- 20 by that entity often uses gunpowder as the illustrative example
- 21 of what the police power entails.
- 22 | Q. In fact, if you are looking at the screen here, the
- demonstrative, which is page 16, is this an example of one such
- 24 | law in New York?
- 25 A. Yes, although you've given me the title page? I would

1 have to now see down.

- 2 Q. Here is the next page.
- 3 A. Yes. And one of the interesting things about these
- 4 | gunpowder laws is, 18th century Americans and early 19th
- 5 | century Americans, who were particularly mindful of the abuses
- 6 of British power and general warrants and things of that sort,
- 7 | nonetheless gave government pretty broad authority to inspect
- 8 private dwellings for violations of Gunpowder Storage Act
- 9 because they believed that the threat posed by gunpowder was so
- 10 | important to meet, to remediate that inspectors had fairly
- 11 | broad authority to inspect private dwellings, to make sure that
- 12 | they were in compliance with the law.
- 13 | Q. When you say, "gunpowder regulations," you are not
- 14 | referring to just simply storage of gunpowder but also
- 15 | gunpowder and how it interacts with privately owned firearms;
- 16 | correct?
- 17 | A. Sure. I mean, what is amazing about the gunpowder
- 18 | regulations is they cover virtually everything from the moment
- 19 of production to sale to transportation to storage.
- 20 Q. Okay. Great. I am going to shift gears a little bit.
- 21 | And as part of your regulation -- or excuse me.
- 22 As part of your research, did you also find laws about
- 23 | proofing firearms?
- 24 A. Yes. And, you know, this is -- this particular law -- I
- 25 was aware of a slightly later version of this law, but I

actually only found this law about two weeks ago, which, of course, is an important reminder that this field is fairly young and we're still finding new things all the time and that our research mission has yet to be completed, although we have done a lot of research, at least, in Toulouse Society when there was actually fairly little of this kind of research.

And so this is a law that has the preamble -- and, of course, preambles were very important, in the 18th century and in the early 19th century, that government has a right and an obligation to inspect firearms to make sure they are safe and to impose standards on firearms to ensure that they are safe.

- Q. And so this law indicates it was enacted in 1805; is that right?
- 14 A. Right.

- Q. Okay. And I understand that you've read this law.

  How do you understand this law to work, to operate?
  - A. And one thing to keep in mind, by the way, Massachusetts is, perhaps, the key state in terms of producing small arms t this moment.

So this is the equivalent of Michigan, in the late 20th century, enacting a safety law pertaining to cars. So, you know, the Springfield Armory, which becomes one of the most important sites of the production of firearms and pioneers many new techniques in creating them is, obviously, located in Massachusetts as well.

So the idea here is that, before firearms can be sold, it

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- 2 | must be properly inspected, and the inspector must put a stamp
- 3 on it so that people who purchase these arms can know that they
- 4 are safe.
- 5 | Q. And that's what is meant by "proof" of firearms in this
- 6 | law; is that right?
- 7 A. Yes.
- 8 Q. The actual --
- 9 A. So, essentially, these arms are going to inspected,
- 10 tested, and then stamped.
- 11 Q. Okay. And what is the purpose of that stamp?
- 12 A. So the stamp, in this context, is so that anyone who
- 13 purchases one of these firearms knows that it has been
- 14 | subjected to the appropriate government scrutiny.
- 15 | Q. And was it -- is it your understanding that, pursuant to
- 16 | these laws, it was illegal or impermissible to sell firearms in
- 17 | Massachusetts that had not been proofed?
- 18 A. Yes. That's correct.
- 19 Q. Okay. And you said that you were familiar with a later
- 20 | version of this law. I think I'm going to show it to you. And
- 21 | it's on page 10 of this -- oh, no. I apologize.
- 22 A. This one is the main version of the law.
- 23 O. Yeah. That's a main version of the law?
- 24 A. Yeah. We are talking about the Massachusetts version.
- 25 | But Maine, the earlier culture, legal culture of Maine, is very

- closely tied to Massachusetts. Maine was originally part of
  Massachusetts and only was spun-off as a separate state in the
  period of the 1818's.
- Q. Let's go to -- let's see. Sorry. Is this the 18 -- that's the 1805 version. And this is the 1814 version.
- 6 A. The 1814 version, yes.
- 7 Q. Of the same proofing act?
- 8 A. Uh-huh.

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- Q. And collectively, what do you interpret these statutes to mean, as they relate to the regulation of firearms at the founding?
  - A. So there are a couple of broad principles that we need to keep in mind when trying to understand what these laws all mean when we assemble them together.

So government took a very active role in shaping the market for firearms. And government took a very active role in regulating firearms. And the idea that somehow regulation is incompatible with the right to keep and bear arms is a very modern and recent idea; that, in fact, in the 18th century, there is no liberty without regulation.

And we have, you know, a variety of different commentators who constantly emphasize that. And it's one of the most important tasks of the historian to sort of divest yourself of modern, contemporary assumptions that we bring to our reading of texts, set them aside, and try and reconstruct the very

different world in which these people inhabited.

And that is an essential part of the historian's task, which if you just sort of look up old laws and read them, you are likely to misinterpret them because you're not reconstructing -- you're not reading them the way an 18th century American would have read them. You are very likely reading them in the way a modern American would, and this is the sort of classic anachronistic fallacy that we see in so much -- particularly in this area, where people are so emotionally involved in the issue and are so committed to a particular policy agenda today. It is very easy to smuggle in those kind of assumptions.

But the first thing we teach our graduate students is they have to set those aside, to the extent that it's humanly possible, and you have to begin to think like those in the past thought.

- Q. So these laws, these sort of gunpowder storage -- and I want to focus on the gunpowder storage laws. You said that they were fairly common in the colonial period, not just in Massachusetts and New York?
- A. You find them everywhere. And they are ubiquitous and far-reaching in terms of the power they give the state to ensure that this very dangerous product does not cause any unnecessary harm to society.
- Q. Was that consistent with the, sort of, general public and

understanding at the time, that firearm regulation was a function of the state?

- A. Yes. I mean, there is simply no way to make sense of early American law without understanding that regulation is not antithetical to liberty. It is the absolute, necessary precondition for the exercise of liberty, because the founding era had a concept that has gone almost out of use in terms of contemporary language. They would describe what they would have called an excess of liberty as licentiousness and as a threat to what they perceived to be the true goal of the Constitution, which is ordered liberty.
- Q. You said, as part of your research in this case, that you read the complaint and some of the other pleadings that were filed.

Do you have a general understanding of the unsafe handgun law in California?

- A. Yes. I'm not an expert on modern firearms policy, and I wouldn't claim to be an expert on modern firearms technology. But my understanding is that California is trying to make their population safer, and they are trying to protect liberty in a way that is consistent with constitutionally protected freedoms. But that effort is obviously deeply rooted in American history where we've been regulating firearms since the first firearms were brought to America from England.
- Q. Right. And in your opinion, are these historical laws

1 that you've mentioned so for, the gunpowder storage laws, the

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- 2 | prohibition against keeping loaded firearms, and proofing
- 3 laws -- are these laws analogous to California's Unsafe Handgun
- 4 | law?
- 5 | A. Yes. I mean, the job of judging exactly how good an
- 6 | analogy they are, from the point of view of modern
- 7 | jurisprudence, it's, obviously, not the job of a historian.
- 8 But the job of the historian in this case, I believe, is to
- 9 understand what these laws were trying to do, what they were
- 10 responding to, and what understanding of power and liberty they
- 11 embodied, and then try and figure out, you know, how close a
- 12 | match it is to contemporary laws, which, of course, is what we
- 13 | have judges for.
- 14 Q. Would you agree that there is a long history and tradition
- 15 of state regulation of firearms for the purpose of making these
- 16 | firearms safe for public ownership and use?
- 17 | A. Absolutely. Yes. I mean, whenever -- I mean, the other
- 18 | thing to keep in mind is that, you know, firearms technology
- 19 has changed. And, typically, what we see is, when firearms
- 20 | technology changes, there is a time lag before a new technology
- 21 | is brought to market. Then there is usually another time lag
- 22 | before it achieves market penetration. And it's only at that
- 23 | point that we begin to see problems. And it's at that point
- 24 | that we see legislators trying to do what legislators have
- 25 | traditionally done, which is protect liberty while addressing

the necessity of promoting public welfare and safety. 1 And you've touched on this, but I want to get, you know, 0. 2 sort of like a focused answer, if I can, about why it was 3 important for states in the founding era, specifically states, to ensure that publicly owned firearms were safe to use? 5 Well, firearms in early America have many, many uses, and 6 early America was unquestionably a better armed society than 7 any society in the 18th century world. And I think, where you 8 have a high level of firearms ownership, you necessarily need a 9 robust and effective regulatory regime, so that any potentially 10 harmful consequences of the widespread ownership and use of 11 firearms does not result in excessive harm to society. 12 You mentioned -- you testified earlier that Massachusetts, 13 specifically, was kind of the Detroit of firearms back in the 14 day, the main manufacturer. 15 16 Did other states have a role in sort of encouraging the manufacturer of arms during the founding period? 17 Yes. My own state of Connecticut, of course, becomes one 18 of the major locations of firearms manufacturing, the 19 Connecticut River Valley. You know, this is, of course, where 20 Colt and Whitney and several other iconic manufacturers of 21 firearms set up business, in a little bit later period, 22 23 slightly after the period in which these laws are occurring. 24 Because one thing we need to keep in mind, of course, is

that there are hardly any pistols in the founding era. You

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know, over 90 percent of the firearms owned by Americans were long guns. So we don't really see the problems that we associate with handguns until they become cheaper, more reliable, and more available. And that wouldn't really be the case until, you know -- it's an upward trajectory, but it really takes off, you know, so that by 1848, when Colt perfects its revolver, that is sort of the golden era of handguns in early America.

But, essentially, at the time of the Second Amendment, if you are not someone like Alexander Hamilton and buying a dueling pistol, you are not really going to put food on the table with a pair of dueling pistols.

- Q. Understood. But as part of encouraging the manufacturer of arms, did that also include encouraging the regulation of arms?
- A. Yes. One of the things that it's important to understand is that, there is this consistent problem that early Americans face, early American governments face, which is that Americans don't want to buy the guns that are best suited to arm the militia. They want to buy guns that are more useful for putting food on the table, because it is largely an agrarian society, or guns that are more useful for getting rid of critters that are eating your crops.

So really, the entire structure of early American policy is to shape the nature of the market and to intervene, to

encourage actors to do what the government believes is in the best interest of American security.

- Q. Now, in this role of actively encouraging the manufacturer and the safety of arms, did that role continue into this sort of Civil War and reconstruction era?
- A. It does. One of the amazing things about the period of reconstruction is that the number of firearms regulations explodes. You see efforts to regulate firearms in a number of areas that were just not perceived to be that important in the earlier period. For instance, you see the number of laws limiting access of guns to -- limiting access of minors to guns expand enormously in this period.

So, you know, there is this idea that somehow the Fourteenth Amendment and Reconstruction was designed to prevent gun regulation, but, in fact, it's very clear that what they were trying to do was to prevent racially targeted disarmaments, the Black codes.

The moment that Republicans, who were the great champions of the Fourteenth Amendment -- the moment they got into office they enacted sweeping gun regulations because they were dealing with unprecedented levels of gun violence. And they had to protect these recently freed slaves and the Republicans who had come to the South to help restore order.

So Reconstruction is really a golden era of gun regulation, a legal note from reading some of the more popular

1 discussions of this period.

- 2 Q. So you were on Zoom earlier when plaintiffs' expert,
- 3 Dr. Cramer testified.
- Do you recall that?
- 5 | A. Yes.

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- Q. And do you recall that he testified about sort of a monolithic gun culture.
  - Do you recall that testimony?
    - A. I do. And, you know -- and one of the most interesting things that we now know from research is that American gun culture has never been monolithic. I mean, today, the attitude towards guns that you see in Alaska is very different than the attitude you see towards guns in the Bronx. And that's been true, really, since the very beginning of American history.

Levels of gun ownership, the type of guns owned, the robustness of the regulatory regimes have always varied by region in America.

There's a wonderful article called "Firearms Localism" in the law journal that explores some of these issues. And so, you know, if you think about it, firearms regulation really is the perfect illustration of the founders' genius because it is the great illustration of how the principle of federalism allows America to deal with the very different regional cultures around guns.

Q. All right. Dr. Cornell, do you recall -- I realize you've

1 been asked or retained in several different cases. Do you

- recall when you were specifically retained in this case?
- 3 A. Oh, gosh. You know, I must confess that I would have to
- 4 | look that up, because it does seem like every week I am talking
- 5 to a different AG's office.
- 6 | Q. Fair enough.
- 7 A. And sometimes I'm talking to your office on different
- 8 cases in the same week.
- 9 Q. Understood. Let me ask this in a different way.
- How long have you been working on your opinions in this
- 11 | case, if you can recall?
- 12 A. So this particular case, of course, came to me rather
- 13 | late, so I've really only been working on this one, I'm
- 14 guessing, less than two months. Maybe a month, month and a
- 15 half.
- 16 Q. Okay. And you formed -- through some research, as you've
- 17 | testified to, you formed some opinions about historically
- 18 | analogous laws or laws that you think are historically analysis
- 19 to the Unsafe Handgun Law Act; is that correct?
- 20 A. That's correct.
- 21 Q. Now, in general, and not necessarily just for this
- 22 particular motion, but how long does it take -- how long would
- 23 | it take you to do sort of full historical analysis, making sure
- that you've crossed all the t's and dotted all the i's?
- 25 A. So depending on how much research I have already done on a

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particular topic, it could take, easily, three to four months, maybe six months, depending on how new the issue is. one of the things that you have to do, again, if you are not going to approach this in an antiquarian fashion, if you're not just going to look up old laws and say, you know, "There is no exact law like the one today," end of case, if you are going to do what Bruen really asked us to do, which is to recognize that this analogical process does not require us to find twins and so the processes somehow must steer a course between, you know, the blank check and the straitjacket, as Justice Thomas colorfully phrases it, that means you not only have to dig for these laws but you really need to dig into the social, cultural, economic, military history to sort of see, wow, what does it mean that there is no law? Is there no law because there is a comparable problem and they choose not to pass the law? Or are we really dealing with a situation where there is just no comparable problem?

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And in many cases, given how different firearms technology is and given how different early American society was, in most cases, I think it generally turns out that we're just dealing with different problems. But in order to be sure about that, you really have to do your homework and really range it widely over all of this history so that you're -- you know, again, the goal is always to read these law as someone in the 18th century would have read them, not as someone in the, you know,

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21st century would've done.
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    0.
         Understood.
             MR. WOODS: Your Honor, I would like to move Defense
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    Exhibit 25 into evidence. Or is it 24?
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              MR. DALE: 24.
              MR. WOODS: Apologies. 24.
6
              THE COURT: Any objection?
              MR. DALE: No objection.
              THE COURT: Exhibit 24 will be received in evidence.
9
         (Exhibit 24 was received into evidence.)
10
              MR. WOODS: All right. Dr. Cornell, I have no
11
    further questions for you at this time.
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              THE WITNESS: All right. Thank you very much.
13
                           CROSS-EXAMINATION
14
    BY MR. DALE:
15
         Good evening, Dr. Cornell. My name is Joshua Dale. I'm
16
    an attorney for the plaintiffs in this matter. I appreciate
17
    your time tonight and thank you for hanging in there with us.
18
    I know it's getting late. I'll try to make this quick.
19
         I am going to go ahead and put Exhibit 24 back up here,
20
    really quick. Figure out how to do it.
21
              MR. WOODS: You might need to get permission.
22
    BY MR. DALE:
23
         And this was the exhibit that was just admitted. You
24
    testified that there were -- let me make sure I get your words
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1 here correctly -- there were so many gunpowder laws during the

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- 2 | founding and through the period of the adoption of the
- 3 | Fourteenth Amendment, that they were ubiquitous; correct?
- 4 A. Correct.
- Q. Okay. Let's look at Exhibit 24, because this was your
- 6 | client here, the State's opportunity to present those laws.
- Can you identify for me in Exhibit 24 how many gunpowder laws are identified?
- 9 A. So this is an illustrative example. This isn't a comprehensive table or list of all gunpowder laws.
- 11 Q. Why not? This was the State's chance. Why not?
- 12 A. Well, had we produced a formal declaration, probably we
- would have made a decision to do one of two things. We would
- 14 | have either produced a lengthy appendix with those laws or more
- 15 | likely -- or I hope more likely, because it would have been
- 16 more economical for the Court, to simply cite to the
- 17 | scholarship that documents them or a very lengthy footnote that
- 18 | would have listed them.
- 19 So I don't know that I would necessarily conclude anything
- 20 | from the fact that we gave you an example. It doesn't really
- 21 | speak to the ubiquity at all.
- 22 | Q. You are aware of scholarship that lists all of these laws
- 23 | that support your testimony that gunpowder laws were
- 24 | ubiquitous? Is that it?
- 25 A. So we have a number of -- particularly since Heller, for

instance, there is an excellent article by Professor Spitzer
that actually does count the number and types of laws. I don't
have it in front of me, but he clearly documents, if not
hundreds, then certainly dozens and dozens of these laws.

Q. All right. And that article was not included as part of
defendant's exhibit today; is that correct?

- A. Well, had we done a report, it is an article that I cite with great frequency, but for purposes of this -- I guess it's -- we're in a hearing, not a deposition; right? We didn't feel it was necessary to do that.
- Q. Okay. And then you've testified about how there were numerous jurisdictions that had proofing laws. And if I understand that correctly, "proofing" refers to making sure that the firearm is sound; that it's not going to blow up or do something that might injure the user or somebody who is nearby.

Is that a fair representation?

A. So, actually, what I said is, the fact that Massachusetts had one was especially significant, because Massachusetts is one of the leading producers of firearms in this period. So that a single law from Massachusetts would be comparable to a single law from Michigan dealing with car safety in the late 20th century.

I actually haven't had time, because I've -- like I said,
I only just found this 1805 law about two weeks ago, so I
actually haven't had time to finish the research to see how

1 | ubiquitous those laws were.

- Q. Well, let me just make sure I am clear. And I am being genuine about this. I count five laws listed in Exhibit 24.
- 4 Do I have that count right?
- A. I suppose I could sit here and count them. But, yes, these are five illustrative laws, correct.
- 7 Q. Understood. And you understand that part of the Bruen --
- 8 | well, let me -- you've testified that you've read Bruen;
- 9 | correct?

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- 10 A. Yes.
- 11 Q. Yes. And you understand that part of the Bruen test
- 12 | includes figuring out what are outlier laws and rejecting those
- 13 to determine if the analogues show some consensus among folks
- 14 | from the founding to the 14th Amendment.
- Would you agree with that characterization, or would you dispute it?
- 17 A. So the question of what constitutes an outlier based on
- 18 Bruen is pretty much, I think, up for grabs in the courts
- 19 because the general consensus among commentators, that I've
- 20 | read, is that it's not quite clear because the court seems to
- 21 change the definition of what constitutes an outlier.
- So, for instance, in one sense, a single law from
- 23 Massachusetts might be read as an outlier if the relevant
- 24 | criteria was number of laws. But if one then, you know,
- contextualizes the Massachusetts law, recognizing that it would

be comparable to a law from Michigan in the 20th century about cars, given that the vast majority of cars are produced in Michigan, then claiming that it's an outlier solely based on, you know, the numerical count would actually misrepresent the historical reality.

Would you agree?

Q. Well, I don't know if it's my place to agree.

But my question for you is, in terms of Bruen, can you identify anywhere in the language where it says that certain laws from certain states are to be given more weight in determining whether they are historical analogue than laws from other states?

A. Well, it seems to me Bruen very clearly says that some laws from some states are not to be given weight. It seems to leave open the -- you know, the logical -- it's been such a long time since I've studied logic. I took a course when I was an undergraduate.

So certainly, therefore, the question of whether or not some state having a law, if its population was sufficiently great, if its production of firearms was sufficiently great, that it would not be an outlier, and that is certainly consistent with Bruen.

Q. Well, no. But Bruen focused specifically on numerosity. In fact, the State of New York cited to them laws in places like Texas and in frontier territories. And the majority

opinion specifically rejected them because they were not 1 indicative of laws across the United States. 2

Isn't that a fair characterization?

Objection. MR. WOODS: Argumentative. (

THE COURT: Overruled.

THE WITNESS: Well, of course, the problem with that 7 is, we have also the Kavanaugh Concurrence, which reaffirms

some of Heller's presumptively lawful laws which might not 8

square with the criteria you just laid down, which sort of 9

- leaves it a little bit hard to know what to do. 10
- BY MR. DALE: 11

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- well, you testified that, in taking on this assignment, 12
- you read the Second Amendment. 13
- I did. Α. 14
- And you actually provided it, the first part of 15
- Exhibit 24, an analysis of the difference between the use of 16
- the word "abridgement" and "infringement" as it was understood 17
- in English law prior to the founding. 18
- Do you recall that testimony? 19
- Correct. Yes. 20 Α.
- My question for you is: Why did you do that? 21 I don't see
- that in anywhere in the Bruen opinion. 22
- Well, Bruen consistently refers that the text is the 23
- ultimate arbiter of constitutional meaning. 24
- But it also held a specific test, and that's 25 Q.

looking at whether or not a current law impacts the core exercise of the right and then, in turn, to see if there are historical analogues that support that particular regulation.

So I guess my question is: Why are you looking at a definition for something like infringement and discussing obliterating the right when that is not the text that was laid out in Bruen?

MR. WOODS: Objection. Argumentative.

THE COURT: Overruled. You don't have to adopt any characterization in the question, Professor.

THE WITNESS: Well, it seems to me, Bruen makes it very clear that tradition does not trump texts; so, therefore, getting the meaning of the text right is at the very core of the enterprise.

15 BY MR. DALE:

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Q. Okay. And then you also testified, as part of assessing whether there were historical analogues, you looked at concerns that society was going through during the relevant period, social realities, and problems.

Do you recall that testimony?

A. Yep.

Q. And, again, I would ask you: Where from the Bruen case is there any language that says that, in looking at historical analogues, you should be looking at societal problems or concerns of society in assessing whether or not a historical

1 | analogue exists?

2 A. Well, Bruen makes it very clear that, if you are going to

3 engage in the process of constructing an analogy, in order to

4 | construct an analogy, you have to understand what you're

5 | analogizing. And Bruen, also, very, very clearly states that

6 we are trying to understand what is the burden. And, also,

7 | we're trying to understand whether contemporary law is

addressing an issue that was of a similar nature to the -- to

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9 problems that the founding era experienced.

So if you are going to -- since Bruen says we must

11 understand whether or not, for instance, a contemporary law is

12 addressing a new social problem, that the founding era could

not anticipate, or whether or not they are dealing with the

14 | same problem, well, that invariably means you have to

understand what those problems were. It seems to me that's

16 | indisputable.

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17 Q. So let me ask you -- you've testified that you're an early

18 | American historian. You're a constitutional historian. You've

19 written a book on the Second Amendment.

20 | Would you call yourself an expert in the history of the

21 | Second Amendment?

A. Sorry. Can you repeat the question?

23 Q. Yeah. I was asking if you would consider yourself an

24 expert on the history of the Second Amendment?

A. Well, I was asked to write the chapter on the Second

Amendment in the Oxford handbook of the U.S. Constitution, which was edited by Sanford Levinson, Mark Tushnet and -- see, I have it here somewhere on my shelf -- and Mark Graber.

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And actually, I was recently interviewed by the head of the Rothermere Institute at Oxford about the Second Amendment. So I think I am generally regarded as the leading authority on the history of the Second Amendment.

- Q. Okay. But as you sit here today, if I understand your testimony, you need more time in order to be able to perform the tasks that was asked of you by the State to identify historical analogues; is that correct?
- A. So in order do the analysis properly, which requires not simply finding laws but trying to understand what were the issues that that society was dealing with that would have impacted firearms, that does require a deep dive that is slightly distinct from the kinds of issues that I've looked at before.

And, indeed, almost all of the writing about the Second Amendment, up until Heller, focused on a very, very narrow issue. The only issue that people seemed to talk about was whether it was an individual or collective right.

So we've actually have only had about a decade's worth of serious scholarship moving beyond that question, which Heller obviously solved. So it is a really young field.

Q. well, you've been writing about it for more than 20 years,

1 | though; correct?

2 | A. Well, I've been writing about certain aspects of it, but I

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- 3 | haven't written about every aspect of it.
- 4 Q. Well, let me pull up one here. I want to ask you --
- 5 | because I want to ask you about one of your writings. Let me
- 6 | pull up Exhibit 9. I will share this.
- 7 Do you recall writing an article for the Northern Kentucky
- 8 | Law Review? And I want to say the date on this was 2002,
- 9 called "Don't Know Much About History: The Current Crisis in
- 10 | Second Amendment Scholarship."
- 11 A. Yes.
- 12 | Q. Okay. And in that you -- well, let me ask you this sort
- 13 of as a preparatory question.
- 14 You understand what the individual right theory of the
- 15 | Second Amendment is; correct?
- 16 A. I do.
- 17 | Q. As opposed to, for example, the collective right theory?
- 18 A. Correct.
- 19 Q. Okay. And in this particular paper, you argue for a third
- 20 | way, which is, essentially, the civic right argument; correct?
- 21 A. Correct.
- 22 Q. Okay. And, in fact -- and let me -- so that folks
- 23 understand this, I am going to take you page 657.
- 24 And you write -- I'm going to start with the second
- 25 | sentence -- "The two dominant interpretations of the Second

1 | Amendment, the individual rights --

2 (The court reporter interrupted.)

BY MR. DALE:

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- Q. "The two dominant interpretations of the Second Amendment, the individual rights, and the collective rights models, no longer seem capable of accounting for the complexity of the historical evidence about the meaning of the right to bear
- So this is the introduction where you then go on to talk

  about how you believe the Second Amendment should be

  interpreted through this civic right model that you've

  identified: correct?
- 13 A. Correct.

arms."

- 14 Q. Okay. And for those historians who adopted a belief that
- 15 the individual right theory was the correct way to interpret
- 16 | the Second Amendment, you were critical of their work, weren't
- 17 | you?
- 18 A. Yes.
- 19 Q. And so, for example, if we go to page 661 of this
- 20 particular document, I believe you use a term that we heard
- 21 | previously. So we look down at this paragraph here, and it
- 22 says, "Reynolds" -- and are you referring there to University
- of Tennessee Professor Glenn Reynolds; correct?
- 24 A. Correct.
- Q. Right. And you say, "Reynolds is not the only gun rights

1 | advocate to approach the phrase 'right of the people' in an

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- 2 | anachronistic fashion."
- And I think we heard you use "anachronistic" before;
- 4 | right?
- 5 A. Correct.
- 6 | Q. And Reynolds, to your understanding, is a historian who
- 7 | argued for the individual right model, correct?
- 8 A. No. Reynolds has no training in history.
- 9 Q. Okay. So you're saying that you were citing Reynolds,
- 10 even though he has no training in history?
- 11 A. Well, he's a law professor, and he does what, I think, is
- 12 often described as law office history, but I don't think that
- 13 | is considered to be a serious genre of historical writing.
- 14 | Q. What is law office history?
- 15 A. So law office history is a kind of enterprise where you
- 16 | work backwards from the present instead of working forward from
- 17 | the past, which is the sort of standard approach amongst
- 18 historians. It is generally not well-researched. It is
- 19 generally not up-to-date in terms of the scholarship. And it's
- 20 generally trying to use history to advance a contemporary
- 21 policy agenda.
- 22 Q. And that's what you believe Professor Reynolds was or has
- 23 engaged in; correct?
- 24 A. Correct.
- 25 | Q. All right. And you've also been critical of Don Cates and

- 1 | Professor Randy Barnett; correct?
- 2 A. Yes.
- 3 | Q. And they both advocate for the individual right theory of
- 4 | the Second Amendment; correct?
- 5 A. Yes. They're both modern libertarians, and so, therefore,
- 6 | they tend to read 18th century texts as if they were
- 7 | ghost-written by Ayn Rand.
- 8 | Q. And in assessing their interpretation, you've often used
- 9 | the term "anachronistic"; correct?
- 10 A. Yes.
- 11 | Q. Okay. And, in fact, you believe the Supreme Court engaged
- 12 | in law office history or law office research, don't you?
- 13 A. Well, the term "law office history" was coined to refer to
- 14 | the practices of the U. S. Supreme Court, originally.
- 15 Q. But when you've used that term with the Supreme Court, you
- 16 | haven't used it flatteringly; correct? You've used it
- 17 | critically?
- 18 A. I would say "analytically" would probably be the most
- 19 precise term.
- Q. All right. Let's look at some of that analysis.
- I am going to bring this up.
- MR. WOODS: Counsel, which exhibit?
- MR. DALE: We are going now to exhibit -- well, the
- 24 numbers have changed.
- 25 (A discussion was held off the record between Counsel.)

1 BY MR. DALE:

- 2 | Q. So you wrote an article here, and if we look at the
- 3 date -- let me confirm.
- 4 This is an article that you wrote that was published
- 5 | SCOTUSblog; correct?
- 6 A. Correct.
- 7 | Q. And it was published on June 27th of last year, which
- 8 | would be about three days after Bruen was decided?
- 9 A. Just about.
- 10 Q. And it was written in response to the Bruen decision;
- 11 | correct?
- 12 | A. Correct.
- 13 | Q. And in it, you wrote -- let's look here. Make sure I have

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- 14 | the right parts. Let's take a look.
- So the first paragraph you call "The majority opinion
- 16 | invokes the authority of history but presents a version of the
- 17 | past that is little more than an ideological fantasy."
- 18 Do you recall writing that?
- 19 A. We have it right here.
- 20 Q. Yeah. And you said, "Rather than applying the history,
- 21 | text, and tradition, it would most accurate" -- "be more
- 22 accurate to characterize Justice Thomas's decision as an
- 23 | illustration of the current Supreme Court's new interpretative
- 24 | model -- fiction, fantasy, and mythology."
- 25 And then paragraph two -- let me see if I can find that.

1 You write, "It is hard to dispute Justice Breyer's negative

- 2 | characterization of his colleagues' tendentious, error-filled,
- and highly-selective culling of evidence to vindicate their gun
- 4 | rights agenda."
- 5 You wrote that correct, too?
- 6 A. Correct.
- 7 Q. You said, "Justice Thomas quoted Dred Scott approvingly."
- 8 Do you recall that?
- 9 A. Yes.
- 10 | Q. And then you also, down in paragraph three, you said that,
- 11 | "To describe the Thomas version of the past as a caricature
- 12 understates the case in the bizarro constitutional universe
- 13 | inhabited by Thomas. Shakespeare's England was filled with
- 14 pistol-packing peasants."
- 15 (The court reporter interrupted.)
- 16 BY MR. DALE:
- 17 Q. Do you recall writing that?
- 18 A. Yes.
- 19 Q. And then in the following paragraph, you write that, "It's
- 20 | a license to cherry-pick evidence with reckless abandon if the
- 21 | materials support the ideological agenda of the federalist
- 22 | society."
- 23 Do you recall writing that?
- 24 A. Yes.
- 25 Q. Okay. And then -- I mean, I am going to not belabor the

1 | Court with this because there are a lot more quotes in here in

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- 2 | which you are -- I think it would be fair to characterize it
- 3 | highly critical of the majority opinion in Bruen; correct?
- 4 A. That's fair.
- 5 Q. Okay. And I think you concluded that -- or at least in
- 6 | paragraph 11, you referred to Justice Neil Gorsuch and Justice
- 7 | Amy Coney Barrett as ideological warriors and political hacks.
- 8 Do you recall that?
- 9 A. You'll have to scroll down, because I haven't committed it
- 10 to memory.
- 11 Q. Sure. If I can find it for you.
- 12 A. Yep. Okay.
- 13 Q. So you were somebody who, in multiple publications,
- 14 championed the civic right theory of the Second Amendment, as
- 15 | you previously testified; right?
- 16 A. Yes.
- 17 | Q. And the Supreme Court rejected that and went with the
- 18 | individual right theory in Heller, didn't it?
- 19 A. That's correct.
- 20 Q. And you don't agree with them doing that; correct?
- 21 A. Well, I guess -- I mean, I am flattered that you read the
- 22 | article, but one of the first things -- you know, one of the
- 23 | fascinating things about teaching both undergraduates, graduate
- 24 | students, and law students is my undergrads have a very, very
- 25 difficult time understanding how can you criticize something

and then apply the law in a decision that you don't agree with.

But I say, "Well, if you don't figure that out, you probably ought not to go to law school."

So I am not sure what any of this has to do with my ability to apply the framework that was adopted in Bruen to the historical with record. I mean, if lawyers couldn't make arguments about positions that they didn't agree with, they wouldn't have much work, would they?

Q. But you are asking the Court to accept your opinion as expert and not tainted by biases when you testify about things like ubiquitousness of gunpowder laws, aren't you?

MR. WOODS: Objection. Argumentative.

THE COURT: Overruled.

THE WITNESS: Well, it seems to me that -- I mean, one simply has to think of the situation that any of the current Supreme Court Justices, when asked during their confirmation, you know -- Amy Coney Barrett, for instance, she wrote law review articles.

And people said, well, how could we approve you as a Supreme Court Justice? You wrote these law review articles that are critical of Supreme Court methodology," because she was a strong supporter originalist.

And she said, "Well, you know, I was a professor, and that's what professors do. As a judge, I apply the law."

So, again, I am not really sure that there is any real

1 logical connection between a criticism that you make when you

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- 2 | are writing in one role and applying the law in another role.
- 3 | That is what we do every day of our life as professionals.
- 4 Q. Okay. As you sit here today, can you identify for the
- 5 | Court how many jurisdictions had barrel or gun-proofing laws
- 6 | between the founding and the adoption of the Fourteenth
- 7 | Amendment?
- 8 A. Well, as I said, since I only found the gun-proofing law
- 9 | about two weeks ago, that is kind of why I need the time to
- 10 | actually figure that one out.
- 11 | Q. So with regard to gun-proofing, do you have any evidence
- 12 | at this point that it wasn't an outlier similar to the Texas
- 13 | law that was identified in the Bruen case?
- 14 | A. Well, as we've already discussed, it can't, by definition,
- 15 | be an outlier, if most of the guns in America were subject to
- 16 | it; right? Because if most of the guns in America at the time
- 17 | were being produced in Massachusetts, subject to this law, that
- 18 | means most of the guns in circulation would have been subject
- 19 to this law. So I think you are applying the wrong rule. You
- 20 | are being overly literal in terms of reading Bruen's
- 21 | methodology.
- I think Justice Thomas, to his credit, said that we need
- to be somewhat more sophisticated and nuanced when we're
- 24 | dealing with historical complexity.
- 25 Q. Okay. With regard to your article criticizing the

1 | Justices on the majority in the Bruen decision, --

- 2 A. Yes.
- 3 | Q. -- you actually took exception with Thomas rejecting the
- 4 | Texas laws that were cited in that decision; correct?
- 5 A. I did.
- 6 Q. And, in fact, you said that you the majority was incorrect
- 7 | in treating it as an outlier?
- 8 A. That's correct.
- 9 Q. And is your opinion that the Supreme Court was incorrect
- 10 | in treating it as an outlier -- did that color the way in which
- 11 | you approached your assignment that the State asked you to do
- 12 | in looking for historical analogues with regard to the Unsafe
- 13 | Handgun Act?
- 14 A. No. It had very little to do with it. So when I
- 15 | uncovered this law, I thought to myself, as a historian, since
- 16 | the question of how influential, representative, significant a
- 17 | law is, the different ways of describing the outlier
- 18 | question -- since having read Bruen, I knew that that is now an
- 19 important question. That is precisely why I went out and I did
- 20 | some research about the early history of gun manufacturing and
- 21 | confirmed what I thought to be true but needed to confirm,
- 22 | which is that Massachusetts was a major center of gun
- 23 manufacturing.
- So quite the opposite is the case, precisely because I've
- 25 | read Bruen very, very carefully. I take the rules laid down by

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1 | the courts quite seriously and have used them to inform my

- 2 research for this project.
- 3 Q. So let me ask you: In coming to the conclusion you
- 4 | testified here about today, that Massachusetts was a major
- 5 | gun-producing state, during what period was it a major
- 6 gun-producing state?
- 7 A. During the period that Bruen says is most significant, the
- 8 | year of the Second Amendment.
- 9 Q. Bruen also says that the period around the founding -- I'm
- 10 | sorry -- around the adoption of the Fourteenth Amendment is
- 11 | also important; correct?
- 12 A. That is correct. And it would take me some more time to
- 13 do some more research to fill out that part of the story.
- 14 Q. Okay. And when you say that it was a major gun
- 15 | manufacturer, what percentage of the gun market did
- 16 | Massachusetts have at the founding?
- 17 | A. I would have to pull something from the scholarly
- 18 | authority -- I've got that -- in order to answer that question.
- 19 | But, essentially, Massachusetts was the major provider of small
- 20 arms in America prior to the War of 1812.
- 21 | Q. Well, again, you used that word "major." I am just trying
- 22 | to figure out what you consider major, since there isn't any
- 23 documentation that has been provided to support your claim
- 24 | here.
- 25 Can you identify what you mean by that?

1 | A. Well, again, I would be happy, if it would help the

- 2 | Court -- I guess I don't know -- since we're not in a
- 3 deposition, I don't know what the appropriate rules are. I
- 4 | could dig up the citation to the scholarly authority that is
- 5 | the standard account of early gun manufacturing in America that
- 6 makes that claim. It was in a book that was published by the
- 7 University of Penn -- I think it was the University of
- 8 Pennsylvania Press.
- 9 Anyway, it was a top-of-the-line academic press,
- 10 | highly -- well-regarded, well-reviewed academic study of early
- 11 American gun manufacturing. It said, unambiguously, that
- 12 Massachusetts was the leading provider of small arms in the
- period before the war of 1812.
- 14 | Q. Any other sources besides this one that you've identified?
- 15 A. In the footnotes to that claim, there are references to
- 16 other authorities, but I haven't committed those to memory.
- 17 Q. Have you reviewed those other authorities?
- 18 A. Well, I looked at the footnote, and it seems quite chunky
- 19 and had a lot of impressive citations to it.
- 20 O. So that would be a "No"?
- 21 | A. Well, I suppose it depends on -- are you asking me did
- 22 | I --
- 23 Q. Yeah. Let me withdraw. You picked up on an excellent
- 24 | point.
- Did you review the sources that were cited in the

footnote?

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2 | A. It depends. What do you mean by "reviewed"? Did I go out

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- 3 and check them for accuracy? Did I pull them off the shelf?
- 4 Did I look to see whether or not they seemed like the
- 5 appropriate things to cite? There are sort of different
- 6 | standards of checking, depending on what level of confidence
- 7 | you have in the author and the press.
- 8 | Q. Well, you previously testified about how people
- 9 | cherry-pick quotes or pull them out without the context and the
- 10 | importance of the context. I am trying to find out, if in
- 11 | coming up with your opinion today that the majority or -- I'm
- 12 | sorry. I should say a major source of arms manufacturing was
- 13 | Massachusetts, if you relied on just the one source or if you
- 14 went and actually looked at the sources that were being cited
- 15 to to determine whether, for example, those weren't
- 16 cherry-picked citations, that those sources did, in fact,
- 17 | support the one book's conclusion that Massachusetts was a
- 18 | major source of firearms?
- 19 | A. Well, I mean, I also -- well, actually, I also looked at
- 20 | an unpublished dissertation on early American gun
- 21 | manufacturing. I looked at some of the National Park Services
- 22 | documentation about the role of the Springfield Armory in
- 23 | western Massachusetts.
- 24 So, again, if this was a written report, where I would
- 25 | have had to actually footnote, I would have done even more.

But for the purposes of this proceeding, I thought I had done enough.

Q. So let me ask you -- you talked about the gunpowder laws, and you've asked us to take your word that they were ubiquitous.

Is there any crime investigation purpose that you're aware of with the gunpowder laws that existed back at the founding?

- A. I'm sorry. Can you repeat the question?
- 9 Q. Yeah. Are you aware of any crime investigation purpose 10 for gunpowder laws?
- 11 A. Crime investigation?
- 12 Q. Right.

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A. So that is an excellent point. One of the most important, recent contributions to our understanding of early American firearms cultures and gun laws is recent work that makes very a compelling case that there was no comparable gun violence problem in the year of the Second Amendment for a variety of reasons.

Flintlock black powder Muzzleloader weapons are quite time-consuming to load; therefore, they're not good for crimes of passion. Because the black powder used in those guns is corrosive, leaving them loaded is not good for the maintenance of the firearm. And because the black powder is hygroscopic, it attracts moisture, which makes it unreliable.

So the most recent evidence we have about patterns of

1 | interpersonal violence suggests that America doesn't really

2 have a gun crime problem until the proliferation of handguns in

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- 3 | the early 19th century.
- 4 Q. I'm sorry. I apologize for cutting you off.
- My question was whether or not you had an understanding that those gunpowder laws had a crime investigation purpose.
- 7 A. So I guess what my response is: The gun crime is not a
- 8 significant problem here in the Second Amendment we now know.
- 9 Q. So that would be "No."
- 10 A. So, yes, that would be "No."
- 11 Q. And the proofing, the barrel-proofing laws, did those, to
- 12 | your understanding, have any kind of crime investigation
- 13 purpose, or were those purely for public safety?
- 14 A. My understanding is they were primarily for public safety.
- 15 Q. All right. And you also talked about -- and I recall you
- 16 discussing this with the State's Counsel. There were early
- 17 | laws that prevented the keeping of loaded firearms.
- Did you testify that you were aware of those laws?
- 19 A. Yes.
- 20 Q. And is it your testimony today that a law that would not,
- 21 | to your understanding of Bruen and the Second Amendment and the
- 22 | history and the historical analogues, that a law that prevented
- you from keeping a loaded firearm in your house for
- 24 | self-defense would be considered constitutional under your
- 25 understanding of the Second Amendment and the historical

1 | analogues?

- 2 A. So sorry. Are you saying: Did the founders think it was,
- 3 or is contemporary Second Amendment jurisprudence likely to
- 4 | find such a law constitutional?
- 5 Q. I would go with contemporary Second Amendment
- 6 jurisprudence.

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- MR. BRADY: Objection. Lacks foundation.
- 8 | THE COURT: Overruled.
- 9 THE WITNESS: Well, I suppose the standard reading of
- 10 | Heller would be that kind of safe storage law might not pass
- 11 | constitutional muster. But I seem to recall that there was at
- 12 | least one appellate case that was able to distinguish a safe
- 13 | storage law from the kind of law in the District of Columbia,
- 14 | so I don't know that we have a definitive answer to that
- 15 question yet.
- 16 BY MR. DALE:
- 17 Q. Do you have an understanding that the Supreme Court's
- 18 opinions are considered superior to those of lower appellate
- 19 | courts?
- 20 A. Yes. But, of course, the fact pattern has to match in
- 21 | order for the rules to apply, doesn't it?
- 22 Q. Yeah. So if I understand your testimony correctly, is
- 23 | part of identifying historical analogues to the current Unsafe
- 24 | Handgun Act, you have testified to early laws about keeping
- 25 | loaded firearms as evidence of appropriate regulation?

1 A. Sorry. Could you restate the question?

- 2 Q. Yeah, yeah. So if I understand your testimony correctly,
- 3 | in identifying the historical analogues that the State is going
- 4 | to rely upon to try to say that the Unsafe Handgun Act is --
- 5 | there are historical analogues to it, you've identified at
- 6 | least one early law that didn't allow you to keep a loaded
- 7 | firearm in the house; is that correct?
- 8 A. Yes.
- 9 Q. And that law, by the way, is not included in Exhibit 24,
- 10 | is it?
- 11 A. I'd have to check Exhibit 24.
- 12 Q. Well, let me ask you this: By your own admission, under
- 13 contemporary Second Amendment jurisprudence, that sort of law
- 14 | wouldn't be considered something that would pass muster under
- 15 | the Second Amendment; isn't that right?
- 16 A. Well, of course, that question sort of forces me to come
- 17 | to a contemporary legal conclusion, which is not something
- 18 | that, as a historian, I could provide expert testimony on.
- 19 Q. Understood. Now, I want to focus you back on your article
- 20 | that was critical of the Bruen decision, and I want you to look
- 21 | at this paragraph here where you are talking about your
- objection to the majority calling Texas's law an outlier.
- Do you see that? And it's right there in the middle of page.
- 25 A. Not on this page, but I do remember saying that.

Q. Okay. Well, let me make this simpler. You also, in this 1 article, say that another example of a law that promoted regulation of firearms was Georgia's 1868 Arms Bearing 3 Provision in their Constitution. Do you see that part? Yes. 6 Α. And, in fact, you previously testified that, in your 7 Ο. expert opinion, there was a robust trend of regulation of 8 firearms that sprang from the Fourteenth Amendment; correct? Α. Correct. 10 Q. Okay. I am going to take you to another exhibit here. 11 THE COURT: Let me ask you a question, Counsel. It's 12 almost five to 7:00. 13 MR. DALE: Yes. 14 THE COURT: We're not going to get done by 7:00, are 15 we? 16 I don't believe we are. MR. DALE: 17 THE COURT: Okay. So I think, in fairness to the 18 court staff, we should break, then, today and come back 19 tomorrow at 9:00. 20 MR. DALE: Thank you. 21 MR. BRADY: Thank you. 22 MR. DALE: Thank you. And appreciate the 23 accommodation on this. 24 25 MR. SAROSY: Thank you, Your Honor.

1	MR. WOODS: Thank you, Your Honor.				
2	THE COURTROOM DEPUTY: All rise.				
3	(Adjourned at 6:54 p.m.)				
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5					
6					
7	REPORTER'S CERTIFICATE				
8					
9					
10	I certify that the foregoing is a correct transcript of				
11	proceedings in the above-entitled matter.				
12					
13	/s/ Suzanne M. McKennon, CSR, CRR, RMR				
14	United States Court Reporter				
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## EXHIBIT 6

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UNITED STATES DISTRICT COURT
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           CENTRAL DISTRICT OF CALIFORNIA - SOUTHERN DIVISION
 3
             HONORABLE CORMAC J. CARNEY, U.S. DISTRICT JUDGE
   LANCE BOLAND, an individual;
   MARIO SANTELLAN, an individual;
   RENO MAY, an individual; JEROME
   SCHAMMEL, an individual;
   CALIFORNIA RIFLE & PISTOL
7
   ASSOCIATION, INCORPORATED, a
   California corporation,
8
                       Plaintiffs,
                                            Certified Transcript
9
                                            Case No.
            VS.
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                                            8:22-cv-01421-CJC-ADS
    ROBERT BONTA, in his official
11
   capacity as Attorney General of
    the State of California; and DOES
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   1-10,
                       Defendants.
                                            Day 2
13
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15
                   REPORTER'S TRANSCRIPT OF PROCEEDINGS
                           EVIDENTIARY HEARING
16
             REPORTED VIA ZOOM VIDEOCONFERENCE AND IN PERSON
                        TUESDAY, JANUARY 24, 2023
17
                                 9:05 A.M.
                          SANTA ANA, CALIFORNIA
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                     DEBBIE HINO-SPAAN, CSR 7953, CRR
                     FEDERAL OFFICIAL COURT REPORTER
24
                     411 WEST 4TH STREET, ROOM 1-053
                           SANTA ANA, CA 92701
25
                           dhinospaan@yahoo.com
```

1	APPEARANCES OF COUNSEL:
2	
3	FOR PLAINTIFFS:
4	MICHEL & ASSOCIATES PC
5	BY: ALEXANDER ASCH FRANK, ESQ. 180 East Ocean Boulevard
6	Suite 200 Long Beach, California 90802 562-216-4444
7	afrank@michellawyers.com
8	MICHEL & ASSOCIATES PC
9	BY: JOSHUA R. DALE, ESQ. 180 East Ocean Boulevard Suite 200
10	Los Angeles, California 90802 562-216-4444
11	jdale@michellawyers.com
12	MICHEL & ASSOCIATES PC BY: SEAN ANTHONY BRADY, ESQ.
13	180 East Ocean Boulevard Suite 200
14	Long Beach, California 90802 562-216-4444
15	sbrady@michellawyers.com
16	MICHEL & ASSOCIATES P.C. BY: KONSTADINOS T. MOROS, ESQ.
17	180 East Ocean Boulevard Suite 200
18	Long Beach, California 90802 562-216-4444
19	kmoros@michellawyers.com
20	
21	
22	
23	
24	
25	

## 1 APPEARANCES OF COUNSEL: (Continued) 2 3 FOR DEFENDANTS: 4 CAAG - OFFICE OF ATTORNEY GENERAL CALIFORNIA DEPARTMENT OF JUSTICE 5 BY: CHARLES JOSEPH SAROSY 300 South Spring Street 6 Suite 1702 Los Angeles, California 90013 7 213-269-6356 Charles.Sarosy@doj.ca.gov 8 CAAG - OFFICE OF ATTORNEY GENERAL OF CALIFORNIA 9 CALIFORNIA DEPARTMENT OF JUSTICE BY: SEAN CLINTON WOODS 10 455 Golden Gate Avenue Suite 11000 11 San Francisco, California 94102-7004 415-510-3807 12 Clint.Woods@doj.ca.gov 13 CAAG - OFFICE OF ATTORNEY GENERAL CALIFORNIA DEPARTMENT OF JUSTICE 14 BY: MARK R. BECKINGTON 300 South Spring Street 15 Suite 1702 Los Angeles, California 90013 16 213-269-6256 mark.beckington@doj.ca.gov 17 18 19 20 21 22 23 24 25

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1	SANTA ANA, CALIFORNIA; TUESDAY, JANUARY 24, 2023
2	9:05 A.M.
3	
4	A.
09:05AM 5	THE COURT: Okay. I think we left off on
6	cross-examination.
7	MR. DALE: Yes, sir.
8	SAUL CORNELL, DEFENSE WITNESS,
9	CONTINUED VIA ZOOM VIDEOCONFERENCE
09:05AM 10	CROSS-EXAMINATION (Continued)
11	BY MR. DALE:
12	Q Good morning, again, Dr. Cornell. Thank you for being
13	here. And we appreciate you staying with us so late last
14	night. I don't know that I have a lot more to ask you.
09:05AM 15	MR. DALE: Before I do, though, last night I asked
16	him questions regarding an exhibit that was a Northern Kentucky
17	Law Review article, and I showed it to him. At this time, I'd
18	like to move to add it as Exhibit 9.
19	THE COURT: Exhibit 9 will be received into
09:05AM 20	evidence.
21	(Exhibit Number 9 received.)
22	MR. DALE: And I also asked him questions regarding
23	an article he penned after the <i>Bruen</i> decision on the
24	SCOTUSblog. I'd like to move that as Exhibit 10.
09:06AM 25	THE COURT: Exhibit 10 will be received into
	<u>'</u>

evidence. 1 2 (Exhibit Number 10 received.) 3 MR. DALE: And to set the table, I'm going to go briefly back to the SCOTUSblog article. 4 BY MR. DALE: We were talking yesterday about how you 09:06AM didn't agree with the majority in Bruen, that they rejected 6 7 Texas as an indicator of the robust regulation that was going 8 on during the Reconstruction period. 9 Do you recall that? 09:06AM 10 Α . Yes, I do. 11 Okay. And in this article where you criticized the 12 Court, you also made reference to Georgia's 1868 constitutional 13 provision regarding bearing arms. And that's right in the middle here of this Exhibit 10 SCOTUSblog article. 14 09:07AM 15 Correct. 16 Okay. My question for you is -- and I'll take this off 17 the screen now because I don't need it -- my question for you is, Georgia was not a state in 1868; isn't that correct? 18 19 So we're dealing with the period of Reconstruction where 09:07AM 20 the reentry and reincorporation of southern states proceeded 21 slowly, and they had to agree to the Fourteenth Amendment. I'd 22 have to check my notes to give you a precise answer because I haven't memorized the date that each of the southern states 23 24 reentered the Union. 09:08AM 25 Understood.

1 So there was a period, though, after the end of the 2 Civil War where the southern states like Georgia, Texas, and 3 others weren't actually states anymore, they were considered military districts; isn't that correct? 09:08AM 5 They were -- they -- during the first -- the early phase of military Reconstruction, the south was divided up into 7 military districts, and the goal was to try and reincorporate 8 the south into the Union as expeditiously as possible. And, of course, there was considerable disagreement between Lincoln's 09:08AM 10 quite lenient terms and the much more demanding terms that the 11 radical Republicans wished to impose upon the defeated south. And as rebel states -- or former states, subject to 12 13 military rule, the citizens of those states did not enjoy the full range of constitutional rights; isn't that correct? 09:09AM 15 During military Reconstruction, yes. But by the time you 16 have an arms-bearing provision in a constitution, by definition 17 you're under constitutional government once again. 18 Well, isn't it true that Georgia was not readmitted as a state until 1870? 19 09:09AM 20 So, again, I haven't committed all the narrative details, 21 the process by which various states reentered the Union, but 22 once Georgia accepted that constitution -- and that provision, 23 of course, was not unique. Virtually all of the new southern constitutions and the new constitutions of the western states 24 09:09AM 25 included radically different arms-bearing provisions which may

express mention of a police power right of regulation that was now yoked directly to the right to bear arms.

So I think the timeline you're sketching, again, I'd have to open up a book and check a few details. But from the point of view of original public meaning, the relevant point is surely that there was a radical change in the language of state constitutional arms-bearing provisions. It was not unique, it was pervasive. Indeed so pervasive, that Justice Alito makes quite a point of it in this McDonald opinion saying that whatever the Second Amendment might have meant in 1791, the evidence of the changed language in state arms-bearing provisions should cause us to recognize that some things had changed.

Q All right. So if I understand your testimony correctly, you're saying that virtually all of the western states, when they came into the Union, had these -- what you're calling these police power arms-bearing provisions; is that correct?

A Yes. I think I once tallied it up, and there were a total of 16 newly drafted or drafted from first time, as they moved from territories to states, constitutions implying a radically different formulation of the right to bear arms, one that no longer mentioned the militia or the threat of standing armies, but that stress the power of the state to regulate arms.

Q All right. But, again, none of those constitutional provisions were submitted as part of Exhibit 24 in support of

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          the State's case; correct?
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                So --
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                Is that correct?
                I have written about them, and they're mentioned in --
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          some of them are mentioned in McDonald. But, again, this was a
          hearing and not a full proceeding where we produced a
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          declaration. If I had more time to write up a report, I could
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          certainly produce all of those texts for your edification.
                So -- and I would certainly appreciate that.
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                      So, again, to clarify, you need more time in order
      11
          for the state to be able to show that these historical
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          analogues exist. You can't do it today; correct?
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                Well, we didn't prepare a declaration for today, no.
      14
          understanding is this was a hearing in which we would flesh out
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          some of these issues in a preliminary fashion. And if it was
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          necessary to produce full declaration, that would require us to
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          proceed in a different manner.
      18
                               So my instructions were not to produce a
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          detailed declaration or a long report, but to simply canvass
09:13AM 20
          the relevant history as directed by Bruen and offering opinion
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          on what that initial canvassing revealed.
      22
                All right. Are you aware that the State produced
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      23
          declarations in opposition to plaintiff's motion for
      24
          preliminary injunction?
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The State certainly sent me a bunch of documents.

09:13AM 25

given that I'm a historian and not a member of the State's 2 litigation team, I didn't dwell particularly long on what 3 motions they were making, since my focus was really on the history. So you weren't asked to prepare a declaration as one of 09:13AM the ones to be submitted in opposition to plaintiff's motion; 6 7 that's correct? So for today -- for today's hearing, I was not asked to prepare a declaration, that's correct. 09:14AM 10 Okay. Yesterday we talked a little about Exhibit 9. 11 That was the 2002 article you wrote for the Northern Kentucky 12 Law Review where you talked about your historical belief that 13 the civic right theory of the Second Amendment was the correct 14 one. Do you recall that testimony? 09:14AM 15 16 А I do. 17 And that was not the -- certainly the only time that you gave the opinion that the civic right theory of the Second 18 19 Amendment was the correct one? 09:14AM 20 Yes. Although I think it is worth noting that there has 21 been an awful lot of scholarships since I published that. And, 22 in particular, there's a quite important article by 23 Jud Campbell, who's a leading originalist scholar, who was, I 24 think, recently appointed as professor at Stanford. 09:15AM 25 And he has a kind of paradigm-shifting analysis

which suggests that the entire debate over the Second 1 2 Amendment, as it's been proceeding, has missed important 3 aspects of 18th Century constitutional and legal thought, particularly the way rights were understood. 09:15AM 5 So I would have to say I haven't completely recast 6 my thinking, but his really quite brilliant analysis, some of 7 which appears in the law journal -- I think he's had three 8 articles in the law journal, which may be a record, recasting the First Amendment, has caused me to rethink some of my 09:15AM 10 framing of this issue. But I have not yet had a chance to 11 explicate that in a scholarly venue. 12 And do you recall in 2004 publishing an article in the 13 Fordham Law Review in which you further talked about your historical understanding of the Second Amendment as a civic 14 09:16AM 15 right and not an individual or collective right? 16 Right. So, again, it is important when we use these terms 17 which are scholarly analytical framework, that when I -- you 18 know, at the time that I was trying to understand the Second 19 Amendment, when I called it a civic right, the purpose of 09:16AM 20 calling it a civic right was to call attention that we 21 understand the right in its 18th Century sense, and that 18th 22 Century rights in general don't easily fit into our modern 23 simple dichotomy between individual and collective rights. 24 And that's one of the reasons why I find Jud 09:16AM 25 Campbell's work so exciting and powerful because he's the first

scholar to really flesh out a different vocabulary and a different understanding of how we should talk about rights so that we don't keep falling back into these anachronistic modern framing of the rights. And I assume that's why he got the job at Stanford, which is quite a coup for a young scholar of his stature.

Q You co-authored amicus briefs that were presented to the Supreme Court in their consideration of the *Heller* case; isn't that correct?

A Yes.

Q And in those amicus briefs you, again, argued for the civic right theory of the Second Amendment; isn't that correct?

A Well, not exactly. The Heller briefs was spearheaded by Jack Rakove at Stanford, who's, I think, generally regarded as the leading constitutional historian of this generation.

And Rakove was the lead author. And I would say that most people would characterize the brief as making a slightly different type of originalist argument about the nature of the Second Amendment. So no, that brief was not really modeled on a civic rights argument.

Q Well, the brief that you co-authored, that was not the view that the Supreme Court adopted in the majority opinion in Heller; isn't that correct?

A I think that's a fair statement, if it's somewhat, you know, slightly reductionist. There were certainly aspects of

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that brief that are consistent with Heller; other aspects of 1 that brief that aren't. 2 Well, let me make it easier because I don't want to hit you with any ambiguities. Your amicus brief was not cited favorably in the 09:18AM 6 majority opinion in Heller; correct? 7 That's right. We got our best "ink" in the dissenting opinions. Understood. 09:19AM 10 So I'm going to now show you a law review article 11 that you wrote recently, actually. If I can just figure out 12 where I put it. Apparently, I didn't have it. My apologies. 13 All right. Doctor, if you take a look on your 14 screen, you're going to see a symposium essay. 09:19AM 15 Do you recall writing this essay? 16 А Yes. 17 And you wrote this in 2021; correct? 18 Correct. 19 And so this would have been about a year before the Bruen 09:19AM 20 decision came out? 21 Literally this article came out two days before the 22 deadline for filing amicus briefs in Bruen. I think it was 23 something like this article published on Friday, and the amicus

briefs were due on Monday. I'd have to check the specific

24

dates.

09:20AM 25

Well, that's -- yeah, that must have certainly been fun. 1 2 In this article, you -- again, like you talked about 3 in the SCOTUSblog article critical of the Supreme Court, you, again, argue that Reconstruction era America had a very rich history of applying the Second Amendment in a way which 09:20AM permitted regulation during the Reconstruction period. 7 Is that a fair characterization? 8 That is a fair characterization. Okay. And you not only argued that it was -- that --09:20AM 10 well, withdrawn. 11 You made the claim there that radical Republicans 12 that were driving the Reconstruction Movement in Congress and 13 nationally, they were as equally fervent about this regulatory turn towards firearms as were the southern Democrats who were 14 supposedly doing it for racist reasons. 09:21AM 15 Is that a correct characterization? 16 17 Α That's not really a correct characterization. So the gun regulations being pushed by neo-Confederate southerners were 18 19 racially targeted laws designed to disarm recently freed 09:21AM 20 persons. 21 The regulations that the Republicans were racially 22 neutral and were driven by the desire not to -- you know, not to weaken the ability of African Americans to defend 23 24 themselves, they were designed to address the rampant violence 09:22AM 25 of the period and were primarily targeted at groups like the

1 Klan which were terrorizing Republicans and African Americans. 2 So they each were efforts of regulation, but the 3 nature of the regulations and the driving impulse behind them were almost diametrically opposed. All right. Can you read the sentence I've highlighted 09:22AM from page 71 of your 2021 article there? 7 "Republicans were committed to a vision of government 8 that would protect the rights of recently freed slaves and promote the ideal of a well-regulated. society." 09:22AM 10 11 And, again, this is in comport with your opinion that 12 you've given, that there was this robust regulation going on 13 during the Reconstruction period that would be consistent with 14 some of the laws being challenged, including the Unsafe Handgun 09:23AM 15 Act: is that fair? 16 So I would actually say it's not so much an opinion, it's 17 a statement of fact. There are, unquestionably, many, many qun 18 regulations enacted during this period. And subsequent to the publication of this essay, we have some quite remarkable 19 09:23AM 20 scholarship showing that these blogs were actually enforced, 21 and enforced in a racially neutral manner until Jim Crow and, 22 at that point, the sort of Reconstruction project of building a 23 multicultural racially inclusive society collapsed, and pretty 24 much every law in the south was turned towards the goal of 09:23AM 25 perpetuating a "white supremacist Jim Crowe vision" of the

- 1 | south.
- 2 Q But, again, that robust scholarship and those citations,
- 3 | they're not anywhere within State's Exhibit 24; correct?
- 4 A Well, again, since my charge was not to assemble a report
- 09:24AM 5 | where, of course, I would cite them, no. I mean, they're not
  - 6 | cited because there's no report. It would be hard to cite them
  - 7 | without actually having written a report.
  - 8 Q Right. But they're not -- none of those laws that
  - 9 | support the testimony you're giving today about this robust
- 09:24AM 10 | regulation, none of those laws have been attached to
  - 11 Exhibit 24; isn't that correct?
  - 12 | A Yes. But you have examples of the law in the documents
  - 13 | before you.
  - 14 | Q But those were laws back during the Founding period;
- 09:24AM 15 | isn't that correct?
  - 16 A No. No. This article is entirely about the period of
  - 17 | Reconstruction.
  - 18 Q No, this article. I meant specifically the laws that the
  - 19 State presented on your direct examination regarding gunpowder
- 09:25AM 20 | storage, regarding barrel proofing. You haven't provided any
  - 21 | laws from the Reconstruction period for gunpowder storage, for
  - 22 | barrel proofing, or anything else that you contend is part of
  - 23 | the historical analogues that support the Unsafe Handgun Act;
  - 24 | isn't that correct?
- 09:25AM 25 | A Yes. The focus of the documents that were provided were

1 on Founding era laws which are -- makes quite a bit of sense 2 given the importance of the Founding era. But it was not 3 intended to be an exhaustive or comprehensive election of laws, it was merely a sampling which the AG's office produced for the 09:25AM Court's benefit. But you also contend that this -- what you claim as a 6 7 robust history of regulation during the Reconstruction era is 8 also important for the Court to consider. In fact, Bruen requires the Court to require Reconstruction era laws; correct? 09:26AM 10 Well, it is fascinating. There's a lot of debate about 11 the relevance of 1791 and 1868. I'm actually quite delighted 12 to hear that you believe that 1868 is really important because 13 there are many people on the gun rights side who said we should 14 not pay any attention to 1868. So I am very pleased to hear 09:26AM 15 that you believe that 1868 is important and we are to dig more deeply into it. I think that's a very positive development in 16 17 this inquiry. 18 But more importantly, as part of providing your opinions, 19 you believe that period is important for the Court in 09:26AM 20 determining whether this law that's being challenged is, you 21 know, something that is permissible or impermissible after 22 Bruen; isn't that right? 23 So if this was -- if I was asked to write a 24 comprehensive report and produce a declaration, I would 09:27AM 25 certainly include extensive discussion of that.

course, was not my charge in this particular proceeding, 1 2 because it is not a -- it was sort of a preliminary hearing on a preliminary injunction, if I'm not mistaken. Here, I'm 3 betraying my historian's training in my absence of legal 09:27AM training. Understood. And if the state didn't ask you to do that, 6 7 the state didn't ask you to do that. 8 Let me -- I want to delve a little further into your article and highlight another part that I would like you to and 09:27AM 10 read. And if I understand correctly, this is -- in this article where you're arguing about this -- excuse me. 11 12 Withdrawn. 13 In this article where you are writing about this robust era of regulation of firearms rights during the 14 Reconstruction period, you then go on to give an example. 09:28AM 15 16 you go ahead and read that for me. 17 Which part? You want me to read the whole paragraph or just the General Order Number 1? 18 The part that I've highlighted in blue, please. 19 09:28AM 20 Α Okay. 21 "Nothing better illustrates the linkage 22 between gun regulation, the right to bear arms and 23 the protection of free persons than General Daniel 24 Sickles's general orders. In General Order 09:28AM 25 Number 1, Sickles declared 'The constitutional

rights of all loyal and well-disposed inhabitants to 1 2 bear arms will not be infringed. Nevertheless, this 3 shall not be construed to sanction the unlawful practice of carrying concealed weapons, nor to authorize any person to enter with arms on the 09:28AM premises of another's against his consent." 6 7 And, again, you're giving this as a illustration of the bipartisan, robust gun regulation that was occurring during the Reconstruction era; correct? 09:29AM 10 Well, no, it's not bipartisan. General Sickles is a 11 representative of the Reconstruction republican government. 12 He, obviously, would not have been very well liked by 13 neo-Confederates who opposed Reconstruction. But it is a great 14 source for understanding what was the thinking of the 09:29AM 15 Reconstruction era governments regarding both the right to bear arms, the importance of racially neutral and robust regulation 16 17. of firearms and, most fascinating of all, particularly in light 18 of developments in New York and New Jersey, stating clearly 19 that the default assumption is no guns on private property 09:30AM 20 without permission as opposed to the view that people can carry guns wherever they want unless you have a "no firearms" posted. 21 22 So this is really quite a remarkable statement of 23 what the Republicans view to be the scope of the -- and the 24 robust regulation permissible of the right to bear arms. 09:30AM 25 Well, you say this is an example of the Republicans of

1 that time. General Sickles was a military officer; correct? 2 General Sickles was a military officer, correct. 3 And he was a commander of one of these military districts that had been set up post the Civil War to basically maintain marshal law within the South until the states were readmitted; 09:30AM 6 correct? 7 Correct. 8 And, in fact, these general orders, they weren't legislated. Congress didn't pass them down. These were orders 09:31AM 10 that he wrote up himself in his role as a military commander of 11 a military district; isn't that correct? 12 But, you know, the point is that if you look at sort Yes. 13 of much of the scholarship that you mentioned, people like, you know, Glenn Harlan Reynolds and Randy Barnett and many people 14 09:31AM 15 who have adopted the robust libertarian view of the Second 16 Amendment, almost all of them quote this as dispositive of the 17 meaning of the Second Amendment in the era of the Fourteenth. 18 But, of course, they quoted selectively. They just quote the 19 part about up to the semicolon and ignore the part that comes after the semicolon. 09:31AM 20 21 So, you know, it is certainly true that we certainly 22 need to understand the difference between military Reconstruction and civilian Reconstruction. 23 But this 24 particular text has bloomed large in modern Second Amendment 09:32AM 25 scholarship, particularly, Second Amendment scholarship

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forwarding a libertarian expansive view of the right to bear
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       2
          arms.
                      So it does seem odd to me that you would disparage
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           the significance of this because it would tend to undercut much
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          of the scholarship that you yourself have suggested is
          important to understanding Heller in the Second Amendment.
       7
                You do understand that with regard to this general order,
          the people that were subject to it were not given the full
          range of constitutional rights that other Americans were given
09:32AM 10
          during this time period?
      11
                Well, what General Sickles is, in fact, saying, and the
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          plain text underscores this, is that we need to protect those
           rights in a racially neutral manner. So I'm not sure that I
      13
          would agree with the way you've spun the text in this context.
      14
09:33AM 15
                Well --
                It is certainly true that the larger context -- we're
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      17
           talking about multi-Reconstruction -- where we're not living
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          under a normal civilian constitutional order, but this
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          particular text clearly is asserting the need to protect rights
09:33AM 20
           in a racially neutral manner.
      21
                So are you aware of the case of in re McCardle from the
      22
          Reconstruction era?
      23
          А
                Sorry, which case?
      24
                In re McCardle.
09:33AM 25
           Α
                Oh, McCardle case?
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0 Yes.

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2 Yes.

> And that was a case where a newspaper publisher in Vicksburg, Mississippi published an article that was not -- let me phrase it this way -- it was critical of Reconstruction legislation.

Would that be a fair characterization?

I must confess, it's been a while since I read that decision. That rings true. But before I'd opine on it, I'd need to reread it. Because I know it is -- it's a landmark decision from the Reconstruction era, but, again, I haven't committed every major decision or maritime institutional law to memory. So I would need to reread it.

Okay. And I apologize. I actually misquoted. It's Ex parte McCardle. And the cite on that is -- if I can find it again -- 74 U.S. 506.

And so you don't have any regulation in that case of -- in that instance the newspaper publisher seeking habeas corpus relief from the Supreme Court and being denied because Like I said, you know, the habeas cases from that period are important. And I have read them. And when I'm teaching Civil War Reconstruction, I refresh my memory about them. I -- without having read them in about a year, my memory isn't

he wasn't entitled to it as a citizen of a military district? 09:34AM 20 21 22 23 24 09:35AM 25 good enough to give you an informed scholarly opinion. But

your account sounds entirely plausible to me. 1 2 All right. Well, I won't ask you more questions on that. I'm just -- I'm trying to determine how the Court 3 can have evidence of this robust history of regulating firearms 09:35AM during Reconstruction when you're citing in this instance to a military order over essentially militarily occupied people --6 7 actually I'm going to withdraw that. Were there concerns for the military at that time 8 about Southern sympathizers shooting at the military and 09:36AM 10 shooting at black people? 11 Well, there was a tremendous amount of violence in this 12 period, and that's one of the reasons why many laws are passed. I mean the South in particular. 13 The vast majority of that article that you cite actually 14 09:36AM 15 lists dozens of racially neutral laws that were passed and, 16 indeed, actually focuses quite heavily on California and the 17 rise of permitting schemes during this period. So I wouldn't think it's a fair characterization to say that I'm relying 18 19 heavily or even primarily on the general orders. 09:36AM 20 Actually, the article's mostly about laws passed by 21 the California legislature and other legislatures and shows 22 that half of California's population was living under 23 regulations at least as burdensome as the law at issue in

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09:37AM 25

Bruen; and that the ten largest cities in America all have laws

at least as onerous as Bruen. And this is during the era of

1 the Fourteenth Amendment. That's really what the article is 2 about. 3 I see. So your article essentially is citing to these other laws and regulations for support for the idea that the law in New York that was overturned in Bruen was actually a 09:37AM valid law? 6 7 Well, the -- the best way to characterize it was the law 8 in Bruen was itself part of a larger movement to regulate firearms that extended back into the 1870s. 09:37AM 10 MR. DALE: All right. I'd like to move this law 11 review article into evidence as Exhibit 11. 12 THE COURT: Any objection? 13 MR. WOODS: No objection. THE COURT: Exhibit 11 will be received into 14 09:38AM 15 evidence. 16 (Exhibit Number 11 received.) 17 BY MR. DALE: I'm going to wrap up here. 18 Are there any assurances you can give to the Court that your personal beliefs about gun regulation have not seeped 09:38AM 20 into the opinion that you've provided here today and you provided yesterday? 21 22 Well, my job as a scholar is not to take my personal views 23 and make them the foundation for my scholarly analysis. 24 job, as a scholar, is to use the standard rules that govern 09:38AM 25 scholarly inquiry and apply them to the materials.

So, you know, none of my -- I mean, one of the things that people find quite surprising is my involvement in the whole gun debate is really not -- has very little to do with the gun debate. It's all about the use of history and constitutional law.

And, indeed, I often remind people of the famous episode of "Seinfeld" in which Jerry's dentist decides to convert so they won't be the subject of so many jokes. the end of the episode, Jerry complains. And somebody says, "Does this offend you because he's converted to Judaism."

He says, "No, no, no. It doesn't offend me for that It offends me because I'm a comedian." reason.

So my interest in this has always been about the history, not about the guns. I just want to make sure that courts have the best possible history available to them. so my personal views about guns have very little to do with what I do. It's all about defending Clio's honor, if you will. Clio being the muse of history.

And I apologize if I wasn't clear. I wasn't talking about your personal views on gun control per se. I meant your views on gun control history. And I'm just wondering what assurances you can give to the Court in light of the fact that your views were rejected by the Court in Heller; they were rejected, again, in Bruen. And you wrote a very -- you know, not just an article critical of the Supreme Court after that,

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UNITED STATES DISTRICT COURT

but personally attacking them. You called them "hacks." You called them "ideologues." You called them, essentially, "agents of the federal society." And that seems to me at least to go beyond, you know, preserving history.

So I'm wondering what you can tell the Court that would assure it that you are not -- you don't have some animus towards the Court and the *Bruen* decision for having rejected your views of history in *Heller* and *Bruen*.

MR. WOODS: Objection. Argumentative.

THE COURT: Overruled.

If you want to respond to it, sir.

THE WITNESS: Well, as we discussed yesterday, I think what any scholar does, when they act in their scholarly capacity, is employ what are the orthodox and accepted rules for that discipline. And given that Bruen is the law of the land, any expert report or any opinion I would offer in the context of a proceeding would be governed by what the law of the land is. And so whatever I might write in a law review article or op-ed about the Court is somewhat different than what I would do in this capacity, because the rules governing this particular enterprise are very, very different.

You know, I think anyone who spent their life participating in academic debate recognizes that you need to wear more than one hat if you're going to be a scholar, particularly one who operates as a public intellectual. And so

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it seems to me it's really just sort of standard operating procedure.

You know, when SCOTUSblog calls you -- and that's worth pointing out, they don't call a lot of people. Getting published in a SCOTUSblog is a bit of a coup -- they want something that will engage their audience, and they're asking for a certain kind of writing. And when, you know -- when the AG's office calls and says, "We need an expert witness report," they're asking for a very different kind of piece of writing and piece of analysis. And I think any scholar worth their weight can move between those two roles effortlessly. That's the very definition of an accomplished scholar.

Q BY MR. DALE: I appreciate you reiterating that *Bruen* is the law of the land.

As you sit here today, do you still believe that the Texas laws that were rejected as outliers in the *Bruen* decisions are outliers? I'm sorry. I'm going to withdraw that.

Do you still believe that the Texas laws that were rejected as outliers in the *Bruen* decision are still not outliers?

A So I think that I share the view of many people that the criteria by which a law is characterized as an outlier in *Bruen* is insufficiently clear, and that if looking at the first round of judicial decisions applying *Bruen*, we're already seeing that

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courts are construing the outlier concept in very different ways. So I think the best answer I can give is we need more quidance.

And I assume it will probably come at the appellate level or, perhaps, at the district level about what exactly an outlier is and what is the metrics to determine it because Bruen pronounces that certain things are outliers, but it doesn't really provide a very detailed set of metrics to determine that. And I remain puzzled as do many, many constitutional scholars and theorists and even judges.

- Q But, specifically, do you believe that Texas is an outlier?
- 13 | A Well, in Bruen, the Court says Texas is an outlier.
- 14 Q Do you believe it?
  - A For purposes of a declaration, it would not make much sense to hinge an argument on Texas because the Court has pronounced it an outlier.

Now, what we take to be the guiding principle that made Texas an outlier, and whether or not a law in Louisiana would fall under a similar criteria, we really don't know, do we?

- Q Well, if I understand correctly, you're professing to not know at this point; isn't that right?
- 24 A Well, I'm professing to share the view of, I think, the
  09:45AM 25 vast majority of people who have weighed in on what Bruen

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1 means, that it's not exactly clear how to apply Bruen's outlier 2 principle on a consistent and neutral fashion. Understood. Thank you again for your time this afternoon, and I appreciate it. Thank you, Doctor. 09:46AM THE COURT: Redirect? 6 MR. WOODS: Yes. Thank you. 7 REDIRECT EXAMINATION BY MR. WOODS: Good morning, Dr. Cornell -- or good afternoon where you 09:46AM 10 are. Thank you again for joining us. I just have a few 11 questions for redirect. And you covered this, but I wanted 12 to -- you covered this a little bit. 13 Counsel asked you a lot of questions about the 14 SCOTUSblog article, about Bruen, and I just want to make clear, 09:46AM 15 were you acting as an expert witness on history in writing that 16 article? 17 I was asked to give my quick first reactions to Bruen as a scholar and interested citizen, what I thought -- what I 18 19 thought of the decision. 09:46AM 20 Okay. And then counsel asked you some questions about 21 the 1868 Georgia Constitution and the provision in there. 22 Do you recall that? 23 Α Right. 24 Does it matter to your analysis around police powers 09:47AM 25 whether that statement in the 1868 Georgia Constitution was

- 1 | pre- or post-readmittance for Georgia?
- 2 A No, I don't think it does. If it was isolated, if it was
- 3 | an outlier, it would, but, of course, it's typical. And there
- 4 | are over a dozen similar provisions. So I could have just as
- 09:47AM 5 | easily chosen anything from Utah to you name it, because that
  - 6 was -- that was a profound change in the language of state
  - 7 | constitutional arms-bearing provisions.
  - 8 | Q And counsel asked a question about historical analogues
  - 9 and whether or not you can point to historical analogues for
- 09:47AM 10 | the unfair competition law. But you can point to historical
  - 11 | analogues, can you not?
  - 12 | A Sorry. I couldn't hear the last question.
  - 13 | Q You can point to historical analogues for the unsafe
  - 14 | handgun law; correct?
- 09:48AM 15 | A Yes.
  - 16 | Q Okay. And what are those historical analogues?
  - 17 A So could you just point me to the specific year so I can
  - 18 know whether I'm going forward or backward in time for
  - 19 | analogues?
- 09:48AM 20 Q Well, do you want me to pull up Exhibit 24 again?
  - 21 A Yeah. That would be helpful.
  - 22 Q Great. I can do that. Let me see. Hang on.
  - 23 A I'm sorry about that. I kind of got lost in the
  - 24 | chronology where I am.
- 09:48AM 25 | Q No problem.

Since we've been weaving back and forth between "Founding" 1 Α and "Reconstruction." 3 This is Exhibit 24, and that's the dictionary pages, and here's the 1805 law that we talked about yesterday. 09:49AM 5 Right. So as I said, I found this law about two weeks 6 I was aware of a subsequent law from the 18-teens, and another law from Maine from the 1820s. And after I found this law, I noticed that Massachusetts continued this process through the Reconstruction period, but I have not yet had the 09:49AM 10 time to expand the scope of my research beyond Massachusetts 11 and Maine. 12 Okay. And I believe your testimony yesterday was also 13 that gunpowder laws around storage and loading guns were also 14 historical analogues to the unsafe handgun law; is that 09:50AM 15 correct? 16 I've been working on gunpowder storage laws for a 17 very long time. These gun-proving laws really didn't figure in 18 my analysis because they were not relevant to the kinds of 19 questions I was asking at the time. It's only in the context 09:50AM 20 of this latest round of litigation where things like the 21 microstamping act make laws like this so relevant. Really most 22 of the litigation-driving research was about public carry. 23 So the vast majority of my energy was devoted to 24 digging out that particular history. So, yes, I have a good 09:50AM 25 sense of this for Massachusetts, which, as we've established,

is a very important center of gun manufacturing, but I have not 1 had the time to expand beyond that. 2 3 And your opinions in this case are not limited to the sampling of laws that are cited in Exhibit 24; correct? I mean, you know, I've been writing about this for a 09:51AM long time, and I published widely about this. So my opinions 6 7 reflect that body of scholarship. And amazing as it may seem, 8 we are still finding new things. This 1805 law being a good example. 09:51AM 10 All right. And counsel asked you some questions about a 11 Kentucky Law Review article that was published in about 2002. 12 Do you recall those questions? 13 Yes. One of the earliest things I published. 14 Right. And that was before D.C. v. Heller; correct? 09:51AM 15 Correct. And counsel asked you some questions regarding some 16 17 characterizations of your law review articles, specifically the 18 article in the Davis Law Review that was recently published. 19 Do you recall that? 09:52AM 20 Α Yep. 21 Would you say that the fairest characterization would be 22 to read the article in the entirety to understand what you were 23 saying? 24 Oh, absolutely. I mean, the article is primarily about 09:52AM 25 gun regulations enacted during the period of Reconstruction

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when Republicans were in charge, not the period when military
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          rule was the norm in the reconstructed South.
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                All right. Thank you, Dr. Cornell.
                     MR. WOODS: I have no further questions at this
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09:52AM
          time.
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                                 All right. Any further questions?
                     MR. DALE:
                                 No.
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                      THE COURT:
                                  Thank you, sir.
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                      THE WITNESS:
                                    Thank you very much. And thank you
09:52AM 10
          for allowing us to do this on Zoom given the COVID spike. I
          appreciate that.
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                     THE COURT: Any more witnesses from the defense?
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                     MR. WOODS:
                                 No, Your Honor.
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                                 I would like to recall Mr. Cramer.
09:52AM 15
                     THE COURT: Very well.
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                     MR. WOODS:
                                  Your Honor, I think Mr. -- or
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          Dr. Cornell mistakenly dropped off. I was going to ask him --
                      THE COURTROOM DEPUTY: He's coming back.
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                     MR. DALE: Mr. Cramer, we're going to wait until
09:53AM 20
          Dr. Cornell comes back on line before I start asking questions.
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                      THE WITNESS:
                                   Okay.
      22
                      (Pause in proceedings.)
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                                  He's still trying to get connected.
                      THE COURT:
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                                  I apologize and beg the Court's
                      MR. WOODS:
09:55AM 25
          forgiveness for this and indulgence. I've texted him.
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going to jump outside very quickly.
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                      THE COURT: Okay.
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                      (Pause in proceedings.)
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                      MR. WOODS: I believe he's back on.
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                          CLAYTON CRAMER, PLAINTIFF WITNESS,
09:56AM
                   RECALLED AND TESTIFIED VIA ZOOM VIDEOCONFERENCE
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                                  DIRECT EXAMINATION
          BY MR. DALE:
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       9
                Thank you, Mr. Cramer. Thank you for being with us
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          yesterday for the entire day, and thank you again for being
          with us again this morning.
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                      Did you have an opportunity to listen to
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           Dr. Cornell's testimony, Mr. Cramer?
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                Yes, I did.
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           Α
09:57AM 15
                Let me ask you, have you ever previously been aware of
           Dr. Cornell giving expert testimony in cases regarding firearms
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      17
           laws?
                       In a case which I was also giving expert testimony
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      19
           two years ago --
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                Baird v. Bonta.
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           Α
                Right.
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                And was he testifying on behalf of the State in that
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           case, or was he testifying on behalf of the plaintiff
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           challenging the law?
09:57AM 25
           Α
                State's.
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                Okay. And you heard his prior testimony where he talked
          about how he has multiple cases that he's providing expert
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          testimony for the State.
                     Did you hear that?
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09:57AM
                Yes.
                Do you have any understanding as to whether he ever
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          testifies in favor of the constitutionality of a gun control
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          law?
                I'm not aware that he's ever done so. That does not mean
09:58AM 10
          that -- that does not necessarily mean that he's consistently
          against. He has a rather nuanced view of the meaning of the
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      12
          Second Amendment. And it is possible to read what he says in a
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          way that will be in opposition to some sort of gun control
      14
          laws.
09:58AM 15
                But you're not aware of him ever testifying on behalf of
          a plaintiff challenging the law?
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                No. No, I'm not.
      17
          Α
                Okay. And, you know, you heard the testimony about the
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          civic right theory of the Second Amendment?
09:58AM 20
          Α
                Uh-huh.
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                Is it your understanding that the Supreme Court accepted
          or rejected that theory subsequent to it being proposed?
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      23
                I think they pretty thoroughly rejected it.
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          D.C. vs. Heller, it definitely took an individual's rights.
09:58AM 25
          But the idea that Mr. Heller's right to possess a firearm is
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- somewhat dependent on his willingness to participate in the 1 2 collective activities of this society was not in any way 3 required.
- And did you hear his testimony last night where he said that pistols were rare in the early part of the Founding of 09:59AM America up through Reconstruction? 6
  - Yes, I did. In fact, I think he was specifically saying before Colt's began -- started manufacturing in 1848 -- and, in fact, I think pistols were quite readily from throughout the period before 1848, not just dueling pistols --
  - Sorry. Keep going. My apologies. 11

making. So they're not dual pistols at all.

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generations of Pennsylvania, made guns (inaudible) the Interior Department to provide the Indians and, also, for personal use. Quite a number of them are actually pocket pistols that they're

The Henry gunsmithing family, which was several

- 17 So do you agree with his testimony that pistols were rare 18 prior to the Civil War?
  - They were rarer than muskets and rifles, but they were sold to quite a number of them. They advertised quite readily in newspapers. One case I found, one said, "2,000 pairs of pistols available."
  - And did you hear his testimony yesterday that Massachusetts was a major producer of arms during -- following the Founding?
- 24 10:00AM 25

Yes, I did. I found that a little bit surprising. 1 2 Because other than Springfield Armory, I was not aware of any 3 gun manufacturers in Massachusetts in that period. What it is, the U.S. Government, along with the population census every ten years at that point, also is doing censuses of manufacturing. 10:00AM They were trying to find out who was manufacturing what and 6 what states. The 1810 manufactured census showed absolutely no manufacturing of quns in Massachusetts. It showed quite a bit in Pennsylvania, however, and some of the other states like 10:01AM 10 Tennessee. 11 So do you agree or disagree with his testimony that 12 Massachusetts was a major manufacturing or firearms following 13 the Founding? 14 It was not. The 1820 census, manufacturing, which was quite a bit more complete than the 1810, it's not as well 10:01AM 15 organized to be able to find a total by state. I went through 16 17 all the entries for all the counties of Massachusetts, and I 18 found only one county that showed any sort of firearms 19 manufacturing, and that specifically was making 2,000 muskets a 10:01AM 20 year for the U.S. Government. So that was the Springfield 21 arsenal. So not a prior firm at all. 22 And interesting enough, that proofing law does not 23 apply to any barrels being made for the U.S. Government. 24 the proofing law would appear to have had little or no impact 10:02AM 25 on who was actually making guns in Massachusetts.

- Q And you had an opportunity to hear his testimony about the Massachusetts laws that were identified in Exhibit 24, did
- 3 you?

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4 | A Yes.

of the Founding?

- 10:02AM 5 Q And do you agree with his opinion that Massachusetts
  6 laws, like the one cited in Exhibit 24, should be given more
  7 weight than laws in other colonies or states around the period
- 9 A I would say it has more weight than some law that might
  10:02AM 10 have been passed in a remote community out on the frontier
  11 somewhere than a territory. I would agree on that.
  - Massachusetts is not -- it's not the most important state in the Union, but it's not a critical one either.
    - Q So if 12 of the 13 states of the Founding didn't have laws requiring proofing, but Massachusetts did, in terms of the opinions that you've provided to the Court, would that have any impact on how much weight you would give the Massachusetts law in comparison to the other 12 states?
    - A I would say that it's obviously not as important. I mean, you always find an outlier of some sort. It's just not as dramatic of an outlier as the one that *Bruen* pointed to where you're talking about frontier communities in territories with laws that often do not survive more than a few years, usually because states cause the revisions.
- 10:03AM 25 | Q And did you hear the testimony about Dr. Cornell's

reliance on General Sickles' order as an example of the robust 1 2 regulation that was going on during Reconstruction? 3 Well, I would say that the banning of the concealed carry of weapons is something that by the time that the Civil War is over, it was pretty generally accepted as something that was 10:04AM within the realm of the State's authority to do. But it also shows that it was still your right to carry your arms. this right was individual in nature. It was not a collective right. 10:04AM 10 And it wasn't a civic right; correct? 11 Right. In fact, in some ways it's quite the opposite. 12 The post war period, some of the neo-Confederates, basically, 13 they have state militias formed specifically to enforce the 14 power over the KKK and the right to possess your arms as a way 10:04AM 15 to push back on the KKK. It was definitely an individual right 16 fighting against this sort of strange civic right idea that 17 he's got. 18 One of the things I also found very interesting in 19 looking at Exhibit 24 is I believe that the --Professor Cornell described this --10:05AM 20 21 Hold on. Hold on, Mr. Cramer. Did you want to look at 22 Exhibit 24? 23 Yes, please. 24 Let me go ahead and put it up on the screen so everyone has it and we know what you're looking at. 10:05AM 25

What page would you like to look at? 1 2 Page 17. 3 Now, this and the next page is supposed to be a gunpowder storage law. I do not see anything in here that 4 10:06AM describes the general organization of the city government of New York City. 6 So explain to me the significance of that. 8 Well, he was referencing a gunpowder storage law. actually not a gunpowder storage law at all. 10:06AM 10 Well, what kind of law was it? Well, it's basically directing the -- for the mayor and 11 12 recorder. It was the law --13 (Reporter requests clarification 14 for the record.) 10:06AM 15 BY MR. DALE: Hold on. Hold on. Mr. Cramer, could you 16 slow down a little bit for the court reporter and repeat what 17 you just said. 18 Okay. It is a law that is providing some sort of 19 provision for the organizing of city government. It is not 10:07AM 20 anything to do with gunpowder storage at all. So I know how we 21 made this mistake because I'm very familiar with the qunpowder 22 storage laws of that period. I'm aware of a number of them. 23 But this particular one, he has the wrong volume number. 24 went to Volume I. The pages he wants are actually in 10:07AM 25 Volume II.

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                I see.
                        So --
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                I'm a little --
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                So?
                It's actually a law.
                All right. But it's not reflected in the document that
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          was submitted as part of Exhibit 24.
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                      Is that what you're saying?
                Yes. I'd say it's a little bit on the sloppy side to
          submit something like this without apparently having read the
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          actual law you're submitting.
      11
                Okay. So to clarify, this page 17 and page 18, which you
      12
          understand was submitted as evidence of a gunpowder storage
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          law, it's actually the incorrect volume?
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                Right.
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                Okay. Now, you talked about how banning concealed carry
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          was something that was recognized during Reconstruction?
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                Yes, it was generally accepted by that point that states
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          had that authority.
                Do you consider that sort of authority to ban concealed
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          carry a historical analogue to the provisions of the Unsafe
      21
          Handgun Act?
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                Not in the least.
      23
                Okay.
                However, I would say that one of the things
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          Professor Cornell mentioned was that the post-bellum, it's the
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constitutional -- constitutions have a lot more police power written into them. From my reading of the case law associated with those post-bellum constitutions, it appears that there were two different motivations for those to increase police powers be added to it, the "right to arms" provisions. One was a -- of course there had been some cases that have challenged totalitarian laws in the antebellum period as contrary to the State constitutional guarantee. And because in some cases, State's recourse did actually strike down such laws, making sure that the constitutional provision provided an opportunity for the State legislature to regulate it somewhat, the carrying of concealed weapons certainly makes some sense. I would also point out that a lot of the southern states that increased police power, there was an increased opportunity to go ahead and find some way to disarm the freedmen, because it's really hard to keep freedmen terrified of the Klan if you start putting holes in their robes and hoods. So let me ask you, were there any other opinions that you

heard Dr. Cornell testify to that you disagreed with?

Yes. At one point, he made a reference to a recent -saying that the loading of black powder firearms in the constitutional period was sufficiently difficult. And the need was to keep them unloaded -- keeping them loaded with damaged That is a very logical assumption that you would do guns.

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But I found when I looked through

Governor Winthrop's journal of Massachusetts Colony, at least

four separate accidents with bad results were because someone

had left a loaded musket accessible, in one case, to a child.

In others there were people on a militia muster who were -- not

an actual discharged gun, but a -- supposedly an unloaded

weapon. So pretty clearly, people in this period did often

keep loaded black-powdered weapons in their homes or in their

possession. They were not widely used.

And I would also point out that Professor Cornell pointed to a 1783 law that provided that Boston residents could not keep loaded artillery pieces or firearms in their homes. And it seems if it was really a bad idea to have a loaded black-powder weapon because the risk would have created damage in the weapon, seems all you have to tell people is "Do not do this as a fire safety measure" if it was already considered a bad idea. Pretty obviously a lot of people were keeping loaded black-powder firearms in their homes. It appears loaded cannons and hand grenade ordinance was mentioned in there as well.

And, also, when he talked about how personal views would not influence a scholar worked, I think it's fair to say that any scholar who is not influenced, to some degree, in what area he researches, what he's looking at is going to

necessarily be very difficult to not be influenced by the
things -- also the things you research that you think about
what public policy should be.

- Q Were there any other opinions of Dr. Cornell you heard and disagreed with?
- A I guess the -- at one point, the microstamping was made to the proofing laws. That's a poor analogy because the proofing laws were intended as a public safety measure to prevent all -- to be directly injured by the exploding gun.

Microstamping is a -- an ill-fated attempt to track down who the unlawfully used firearm belongs to. Most of the time unlawful-use firearms are not registered to the -- are not owned by the person who actually used weapons if it was stolen.

It seems like microstamping is sort of a -- not an analogy, it's an attempt to make it appear as though you're trying to find people who were responsible for these crimes when, realistically, a lot of the guns that are misused are stolen in burglaries and robberies.

- Q Of all the laws that you saw cited in Exhibit 24, do you have an opinion as to whether any of those laws have the same or similar crime investigation purpose that microstamping has under the UHA?
- A No. The proofing laws are -- those are purely safety issues and have nothing to do with pursuit of criminals.
- Q All right. Thank you again for being back with us this

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1 morning. 2 MR. DALE: At this time, I'd submit Mr. Cramer as an 3 expert under 302. THE COURT: So designated. And I'll tender the witness. 10:14AM MR. DALE: Thank you. CROSS-EXAMINATION 6 7 BY MR. WOODS: Mr. Cramer, thank you for joining us this morning. name is Clinton Woods. I am a Deputy Attorney General for the 10:14AM 10 State of California representing the defendant in this case. 11 want to follow up on just a few questions that counsel asked 12 you just now. Would you say that your personal views influence 13 14 what you read and think about history? 10:15AM 15 Absolutely. It's certainly an influence why I decided to research. And I think it would be illogical to think that a 16 person would not be influenced to highly read the significance 17 18 of the law. 19 Have you ever testified on behalf of the State or any 10:15AM 20 state defending gun law as constitutional? Although some of my law review articles have been 21 cited by government -- U.S. Government, in fact, in cases where 22 23 they were trying to demonstrate, for example, misdemeanor 24 aggressive violence convictions are, in fact, a valid firearms 10:15AM 25 disqualifier.

- 1 Q Have you ever published in a peer review journal?
- 2 A Yes.
- 3 Q Okay.
- 4 A Journal of Mass Media Ethics.
- 10:15AM 5 Q And what was the topic of your publication?
  - A The topic was that the way that news media covered mass murders is very unbalanced. It gives -- they give far more space to mass murders involving guns than they do mass murders involving other sorts of weapons.

There was a period there where the biggest mass murders in American history were done entirely with explosives and arson, and most people do not have any awareness of those, because news magazines, like, "Time" and "Newsweek" pretty much ignored those and gave enormous coverage to the mass murderers with guns.

And, of course, the copycat -- one of the things that I'm working on right now is the history of mass murders in the United States. And one of the things I've noticed in an awful lot of these crimes are copycats. There's one where a woman came in and -- her husband read her a -- she read a horrific account of a person who murdered their family with a rat poison. She read it three times and then she went and bought the rat poison and killed herself and her child.

So people are definitely influenced by -- the more the news media report on something, the more likely they are to

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          encourage or influence someone to say, "Well, if I'm doing
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          something horrible, that's what we'd use to do it with."
       3
                Understood. But you don't dispute that mass murders
          involving guns do happen; correct?
10:17AM
       5
                Oh, they certainly do happen. And from the 1920s on,
       6
          they've become more common.
       7
                Right.
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                      Have you ever heard received any fellowships at any
          educational institutions?
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                     I have -- most of my career was spent as a software
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          engineer. I went back to school and got my bachelor's degree
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          and -- my bachelor's degree while I was working for some
      13
          startups in California until I had a stroke in 2014, which you
          may be able to tell from the swallowing issues that I'm having.
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          Until 2014, that's what I did for a living. I did teach a
      16
          little bit at the Boise State University out of the community
      17
          college. But mostly I was a software engineer.
      18
                Understood. And no fellowships; correct?
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          Α
                Right.
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                Thank you.
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                      Counsel asked you some questions about a page on
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          Exhibit 24 that you pointed out were New York's organizing
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          laws.
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                      Do you recall that testimony?
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                Yes, I do.
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- Q Would you agree that organizing laws include the power to regulate gunpowder?

  A No, because the gunpowder storage law is actually very
- specific and refers to gunpowder. And there's a limit to the amount you can have in your home.
  - Q But you don't dispute that there was such a gunpowder regulation in New York at that time; correct?
  - A Yes. It's in Volume II of Laws of New York.
  - 0 Understood.

And you don't dispute that there are gunpowder regulations in virtually all the colonies at that point; is that correct?

- A I'm not sure I'd say all of them. I know of one in Pennsylvania in 1782, and I know of one in South Carolina in 1770. And there's one in Brunswick, New Jersey by 1821.
- Q So that sounds like a pretty good sampling.
- 17 A Those are the ones I found.

At some point someone was crazy enough to ask me -we do every -- every published year in effect our succession
log of the revolutionary period which, believe me, was a lot of
work. And so along the way, I was looking at gun-related
laws -- anything -- hunting laws, carrying laws, licensing
laws, gun storage laws, things like that. And that's why I was
able to find these. There probably are others, but I would not
claim that I found every one of them.

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1 Q Does it take a long time to do a full historical
2 analysis?

A It does take a very long time. The one thing that has really changed since I was working on my master's degree was -- when I was working on my master's degree, I went to University of California Hastings law school library.

7 0 That's where I went to law school.

A Well, that library has this enormous collection of books gathering dust. And that was a very slow process to go through and find all the case law associated with all those state constitutional provisions. And it's a lot faster now. But even now, looking through old statutes online is a slow and laborious process.

Q Do you agree that the 1868 timeline is relevant to the constitutional inquiry for these cases?

A I would say it's relevant with one little caveat, and that is, 1965, 1868, you have an awful lot of these states passing laws that are very clearly aimed at disarming freedmen. And the Fourteenth Amendment, to a large extent, was an attempt to overturn the black codes and, specifically, the firearms related ones.

And so you have to look at those laws with that in mind that what you may be seeing is one of the laws that the reason the Fourteenth Amendment was adopted. So the fact that there's a law to that purpose may not necessarily mean very

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1 much. Needless to say, this is the one they were trying to
2 stomp out, as an example.

Another case that I read recently, another case that I was working with the lawyers on, there was an 1867 Alabama law that had a provision that basically said — that prohibited the possession of a Bowie knife without some sort of \$2 fee, and a handgun was, like, \$3. And it really struck me that those are the laws that could have been — even though they were racially neutral in the text, it would be very easy to have either enforced a racially unneutral way or the cost of the licenses to possess a Bowie knife or a pistol might well have had a disproportionate impact on the freedmen.

- Q Okay. But it seems like you agree that the time frame is relevant to the constitutional inquiry; correct?
- 10:22AM 15 A The time frame is relevant, yes.
  - 16 Q Thank you. Did you submit a declaration in this case?
  - 17 | A I did not.
  - 18 Q Is that because you weren't asked to submit a
  - 19 declaration?

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A No one asked me to. I would have had absolutely no
problem doing so. I've spent -- basically starting 1989,
pretty much every waking hour that was not involved with
raising a family or working for a software company -- has been

UNITED STATES DISTRICT COURT

10:22AM 25 Q And you testified yesterday about laws concerning honor

spent that was searching this topic.

1 | culture around the Founding.

Do you recall that testimony?

A Not so much on the Founding, but they are an issue during the Founding period.

10:23AM 5 Q Understood.

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Dueling is an issue associated with military throughout the most part of Europe. A lot of military officers came over to America either on the British side or fighting on the American side, and they brought this notion of the honor culture with them. It's something that was already present in some of the southern states, but this sort of was aggravated in the north.

And dueling became very unpopular because of the Alexander Hamilton death, and the south had persisted for quite a bit longer. And to some extent it's a reflection of the fact that an awful lot of Scotch-Irish immigrants had brought this honor culture with them from the very violent and largely without law parts of the border counties between Scotland and Ireland -- Scotland and England.

Q And is it your testimony that the colony -- or excuse me -- the states, at that time, enacted laws in response to this sort of honor culture?

A Yes. As I said yesterday, the very indirect sort of relationship. We want to stop dueling, but the only way to stop dueling is for people to not challenge someone to duel.

The only way to make sure they don't do that is you see someone 1 2 that's armed openly, they don't have to go over and attack them. But if they're carrying a concealed, who knows, maybe 3 they'll draw a weapon on me and kill me. So maybe I'm not going to go in and insult them. 10:24AM But you didn't submit any primary sources of these laws 6 7 that were passed as a result of the honor culture as part of your testimony either yesterday or today, did you? 8 9 No. But if anyone wants, I can provide them -- boy, do I 10:25AM 10 have a collection. And you didn't submit, for example, the 1810 census, the 11 primary source, as part of your testimony today, did you? 12 No, I did not. I found that last night after -- I had 13 been through the documents previous from a book I had written 14 10:25AM 15 some years ago. 16 But when Professor Cornell made that claim, I went 17 ahead and found the documents that were supplied to -- the 18 documents to Mr. Dale. Right. But the fact that you didn't submit those primary 19 10:25AM 20 sources doesn't mean that those primary sources don't exist; 21 correct? 22 Right. They do exist. But if anyone wants them, I can 23 provide them. 24 Thank you.

MR. WOODS: No further questions.

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1	THE COURT: Anything further?
2	MR. DALE: No.
3	THE COURT: All right, sir. You're excused. Thank
4	you.
10:25AM 5	THE WITNESS: Thank you. Glad to be of help.
6	THE COURT: Any more evidence?
7	MR. DALE: Not from plaintiffs, Your Honor.
8	THE COURT: Okay. Anything further from the
9	defense?
10:26AM 10	MR. WOODS: No, Your Honor.
11	THE COURT: Okay. Why don't we take a break. And
12	then when we get back from the break, I have some questions. I
13	kind of wanted to think out loud with both sides and then we
14	can talk about submitting closing supplemental briefs. I think
10:26AM 15	that would be helpful and appropriate in this case. So take
16	about ten minutes. About ten minutes.
17	THE COURTROOM DEPUTY: All rise.
18	(Recess from 10:26 a.m. to 10:40 a.m.)
19	THE COURT: All right. I have a few questions, some
10:40AM 20	issues I wanted to brainstorm with both sides. And why don't I
21	start with the plaintiffs first. I don't know who wants to
22	answer my questions, and maybe go to the lectern. And then
23	there may be some other issues you want me to think about. I'd
24	encourage you to let me know what those are, and then we can
10:40AM 25	talk about closing briefs.
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So I want to give a disclaimer. I want this to be a very open and free discussion. Don't read into any of the issues that I identify that that's where I'm coming out. is just the way I think and I try to analyze the issues. And I would want you to answer my question, but if you think any question -- the answer isn't really relevant or probative, please feel free to tell me that. I want you to tell me that, which it's kind of ironic.

Usually the rule is if the judge asks the question, you got to answer it and it's important. But I find the Bruen decision a little confusing, quite frankly, as a district judge on how to apply it. And that's going to be my first question is, as I read Bruen, there's a -- I guess two-element -- or two-step test.

The first is does the plain text of the Second Amendment cover an individual's conduct? And taken literally, it seems to be pretty understandable and clear, but I don't think it's completely literal. In other words, do I look at that narrowly or do I look at it broadly? And more specific --I just jotted down -- is the step: Are plaintiffs' rights to acquire a new state-of-the-art handgun protected by the Second Amendment right to keep and bear handquns? Is that the question that I ask myself? Or is it: Does the UHA's requirements interfere with plaintiffs' rights to keep and bear handguns?

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UNITED STATES DISTRICT COURT

The step, as worded, focuses on the plaintiffs' And I think in the briefs, which I understand, it was does the requirements of the UHA, does that implicate the plain text of the Second Amendment? Maybe it's the same thing, but what's the starting point?

I gave you two examples. Is there any other question -- precise question that I -- that I should be asking at this first step?

The problem that I also see, and then I'll be quiet and let you answer that, is if I read this very broadly, this first step, then it's not really a step at all. I mean, if you satisfy it by just mentioning a firearm -- refers to or mentions a firearm or a handqun, then the plain text is covered, that seems too easy.

Personally, and I could be wrong on this, I would say that a serial number on a weapon shouldn't be implicating the right to bear -- keep and bear firearms because that doesn't impact the ergonomics, the structural integrity of the weapon. It's not hard to do. It's not costly. And that shouldn't interfere with your right to keep and bear firearms.

And then if I -- so I don't feel it should be too broad, would be too easy to satisfy, but I don't think it should be the other extreme is we can require gun manufacturers just to sell squirt guns. You know, that -- that -- you know, that's not right either.

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1 So I think the plaintiffs, in their brief, they used a -- described -- or does this implicate. "Implicate" is 2 better than "cover." But isn't there -- doesn't this have to 3 really interfere with your right to keep and bear firearms? 10:45AM Now, maybe what standard applies in this case, plaintiffs are going to say, "We'll be able to satisfy it," and 6 7 so be it. And defense may say, "No, you can't satisfy it." But I really want to know what is that first question in this 8 first step that I need to be asking myself? MR. FRANK: Thank you, Your Honor. 10:46AM 10 I think I can absolutely help the Court understand how to apply the Bruen 11 12 test. So the test does have two parts. It's a little 13 14 unclear, but perhaps upon a first reading of Bruen, whether 10:46AM 15 it's a two-part test or whether it's not. And I think the Court does understand the ambiguity quite well. 16 17 When the Court says -- when -- as Justice Thomas 18 wrote regarding the first step: "We hold that when the Second Amendment plain 19 10:46AM 20 text covers an individual's conduct, the 21 Constitution presumptively protects that conduct." 22 Now, what the State is trying to do is advance an 23 extremely narrow understanding of this first step. 24 trying to advance an argument that unless a gun law effects a 10:47AM 25 complete destruction of an individual's Second Amendment right

to possess an operable firearm for self-defense, then it's whatever the law in question that we're analyzing is constitutional, that it's okay. It's a presumptively lawful exercise of the State's police power or perhaps falls under the language from Heller about a presumptively lawful commercial regulation.

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But that's a misreading of Heller, and it's a misreading of Bruen and other authorities like Caetano v.

Massachusetts. And those cases establish that of course a complete destruction of the right is going to violate the Second Amendment. That's a granted. However, that doesn't mean that anything that falls short is not a violation. So the proper interpretation of this language from Bruen that establishes the first part of this test is a broad interpretation of it.

Now, that doesn't mean that there may not be circumstances where it's a stretch to see whether or not the Second Amendment right is implicated, but in virtually all cases, and definitely here, it is correct to look at the law that effectively picks an arbitrary point in time and says that if you — if a manufacturer cannot include a hypothetical technology that's never really been proven to be commercially adaptable, that's just too bad, and you have to choose from everything that's aging into obsolescence that was on the market prior.

In the Pena v. Lindley case, which litigated this same question that's before the Court here prior to Bruen, there's an excellent dissent by Judge Bybee where he explains, "Well, what does the Supreme Court mean when they talk about presumptively lawful commercial regulatory measures? How do we square that with this broad individual rights holding?" what he basically said, which is very helpful, is that there are certain types of commercial regulations that apply to all kinds of things in society, and other constitutional context do not present ambiguous questions.

So the example that he raised was in the free exercise domain of the First Amendment, is imposing a tax that a church would have to pay the same as a car dealership or any other type of commercial actor, is that an insult to the free exercise of religion? And the answer is no, because it applies everywhere.

But if we're to go beyond that to a more dramatic extreme of regulation, you can clearly see how something that's a commercial regulation would actually be a serious insult to the right.

And I think the example that Judge Bybee used was imagine if a commercial regulation was passed that said that a gun store can only be open from 11 at night until midnight or that there's a \$1 million bond that someone who wants to buy a gun would have to post in order to acquire a gun. Sure, that

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would really be a commercial regulation. But would that really 1 2 be squarable with the broad, strong, individual rights notions that Heller established? So I think this is long-winded way, Your Honor, of 5 saying that it should be interpreted broadly. 10:50AM 6 borderline rhetorical question. And as Judge Bybee said 7 that -- it seems pretty clear that if you draw an arbitrary line on the sand and say, "You can't have any new guns in California that were introduced past this point" -- or maybe 10:50AM 10 not any new guns, but new semiautomatic handguns, the 11 quintessential self-defense choice under Heller, that clearly 12 intrudes into the Second Amendment right. That intrudes into 13 the most widespread common practice of what the Second 14 Amendment right in the United States means today, which is 10:50AM 15 acquiring handguns. 16 THE COURT: Can I interrupt you because --17 MR. FRANK: Of course. 18 -- you said -- you used a word there THE COURT: 19 that I get, but I want to seize on it. You used the word 10:50AM 20 "intrude." And I saw in some of the documents one of the definitions of infringement, apparently at the time of the 21 22 Founding of the Constitution, was "hinder." 23 So is that the word -- or what I'm trying to 24 understand, does it intrude, hinder, interfere? I understand 10:51AM 25 what you're saying. It's not complete destruction.

high of a burden. And you could have something that's far less drastic, but it substantially impairs your ability to keep and bear firearms.

So I interrupted you. Is that the answer to my question, is it's got to impede, interfere, intrude, as opposed to just refer, mention firearm.

MR. FRANK: I think it's actually a question that this Court doesn't have to answer. There have been no -inside of 15 years, there have been four Supreme Court
decisions that I think answer the question clearly, which is
that if we're touching upon someone's ability to exercise the
right, then we're within the meaning of the plain text, and we
can proceed to step two.

Does that answer the Court's question?

THE COURT: Maybe -- I don't think so. I guess I've written a lot of orders and opinions, and at least, in my own mind, I need to understand what I'm saying. That refers to my comment I said. The standard is really important to me to apply the correct standard.

MR. FRANK: Uh-huh.

THE COURT: And I get it. You're going to be saying there may be a couple ways to look at this reasonably, but we satisfy it no matter what. The purist in me still, I want to know what is the best interpretation of this first step? I want to know that. And I -- I assume you're going to say we

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can easily satisfy it. I still want to know.

MR. FRANK: Understood, Your Honor.

Caetano v. Massachusetts, this is one of the early post-Heller cases, and the issue before the Court there was whether or not Tasers are a protected category of arms. And what the Caetano court said was, "Yes, they are." And Tasers are a less -- are a sublethal type of arm. And so if the Supreme Court has held that the -- and in that case the Supreme Court said that the Second Amendment presumptively extends to all bearable instruments that can basically be weapons.

So if Tasers -- if Bay Staters, who were seeking to protect their rights, require Tasers under the Second Amendment were successful, then Californians seeking to protect their right to acquire their choice of what the semiautomatic handgun market nationwide has to offer, I think they should similarly be able to pass the bar. We're talking about the quintessential handgun.

Q And so, again, you can disagree with me, but I still -it's dancing around my issue because the limitations in this
case are -- it's not a complete ban of Tasers. There's
limitations on the features.

MR. FRANK: Uh-huh.

THE COURT: I got a bunch of questions about that when we get to the second step. But this first step, do you agree that it's got to be something more than just mentioning a

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1 firearm? Do you agree with that? 2 MR. FRANK: I think so. I think that's probably 3 I can't think of an example where just mentioning would be outside of it. It's possible. THE COURT: Well, but the example, you might 10:55AM 6 disagree, you got to put a serial number on the firearm. I'm 7 not talking about microstamping. Let's get no confusion. 8 said it doesn't make sense to me why that would, using your 9 word, implicate or intrude on the right to keep and bear 10:55AM 10 firearms. Because, again, it doesn't affect the ergonomics of 11 the weapon. It's relatively inexpensive to do. You can easily 12 So I wouldn't think that that implicates it. MR. FRANK: I think you make a persuasive argument, 13 14 Your Honor. I think it might not. 10:55AM 15 THE COURT: Okav. 16 MR. FRANK: But if you look at it at a general 17 level, this law prevents Californians from buying handguns, the 18 quintessential self-defense weapon, against Heller. I think 19 that's all you really need to know in order to decide the --10:56AM 20 regardless of how you want to construct the first part of the 21 test, whether you want to go very broadly or very narrowly, if

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The UHA restricts Californians from accessing a

you look at it at that level, the fact that there's still guns

on the roster that people can acquire doesn't really matter

because we're still looking at what the question is.

1 significant number of modern semiautomatic handguns and, 2 therefore, restricts the supply. And under authorities 3 nationwide, here in the Ninth Circuit and throughout the 4 nation, courts recognize that there's a concomitant right to 10:56AM 5 commerce in arms, to acquire arms necessary to exercise the 6 right to self-defense that's protected under the Second 7 Amendment. 8 So the weight of the authority here would clearly indicate that we don't need to decide on how broadly or 10:56AM 10 narrowly to interpret the language that establishes the first 11 step under Bruen if we look at it like that. There's a right 12 to acquire arms, and there's really little room to doubt that 13 there's an intrusion into someone's ability or attempt to 14 exercise. 10:57AM 15 Now, I know I used that word "intrusion" again, and 16 the Court maybe is a little unsure. But in any event, the 17 Supreme Court has said that infringement -- the Supreme Court did not adapt the 1950's dictionary definition that the State's 18 19 trying to advance. The State is trying to advance an argument 10:57AM 20 that the Supreme Court has already settled. The right to bear 21 arms under Heller and other authorities is not likely to be 22 reversed anytime soon. And infringement doesn't mean what the 23 State would like it to mean. 24 THE COURT: Well, one of the definitions of "infringement" at the time is "hinder." Another is "destroy." 10:57AM 25

1 And they're taking the view "destroy," but I get that. 2 take from your papers and from what I heard today, you're 3 basically saying these requirements are preventing a citizen, 4 law-abiding citizen from acquiring a new state-of-the-art 5 semiautomatic handgun. 10:58AM MR. FRANK: Correct. 6 7 THE COURT: So you're left with the old models. know, that has my attention. That seems significant. One of the issues that's not clear to me, have there 10:58AM 10 been any new handguns registered since 2013 when the 11 microstamping thing came in? If you understand my question. 12 When I mean new handguns, did they have to go through a firing 13 reliability test and safe dropping? Because I understood I 14 think Agent Gonzalez saying that, you know, if it's pretty much 10:59AM 15 identical the way it -- the mechanical features, it's just you 16 have a different color or maybe a different material on a grip 17 or something, that you can register it, but it just is another 18 But you don't have to go through the drop test or the 19 firing liability. I'm not talking about those. 10:59AM 20 I'm saying is there any new handgun that has been 21 registered, that meets, I guess, all these -- these three 22 requirements: The chamber load indicator, the magazine 23 disconnect mechanism, and the microstamping? 24 MR. FRANK: No. Your Honor.

So there's nothing new that's been added

THE COURT:

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since 2012?

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MR. FRANK: There's no new semiautomatic centerfire handgun that has all three features. I believe the State introduced some evidence of a -- kind of a jerry-rigged version of a gun that's like a single-shot exemption kind of a thing, but that is a totally different animal.

There have been no new semiautomatic centerfire firearms introduced to the broader national market post-May of 2013 that have been admitted to the roster because they've been able to satisfy all three. There are no guns anywhere in the world that have microstamping, let alone here in California.

As we learned from plaintiffs' expert Mr. Beddow, this technology was invented and tested in a laboratory. And the laboratory test was proven that after a very minimal amount of rounds, it's borderline useless. It's not fully -- it's not imprinting a legible or complete stamp on primers.

So we know in the laboratory it can work. But in the real world implementation, by the world's biggest and even some of the smallest manufacturers, it's not implemental. It's a theoretical technology that works in the laboratory, but it's not commercially adaptable. That's what plaintiffs' expert testified to.

And the State has not made any efforts to collaborate with arms manufacturers. And I think the fact that ten years on, after the -- after the theoretical experiment

that this would fall into technological revolution and firearms, here we are, and there's not a single one anywhere.

And we're not even talking about a small industry that's incapable of bearing R & D costs. These are global arms manufacturers, many of which has U.S. government defense contracts like FN. These companies could afford to do this if there were a consumer demand and feasibility to actually make this technology work.

But it doesn't work because it's an unnecessary complication to an already fairly delicate type of technology. Firearms are held together with pins and springs. And the shooting of the firearm injects thousands of pounds or hundreds of pounds of explosive pressure. So little parts that aren't well designed can break very easily.

And after all, this is a mechanical industry we're talking about here, and it just hasn't worked. And that's why no gun has been admitted in the last ten years as the currently available options agent to obsolescence.

THE COURT: I feel I do understand your argument.

Let me ask you a few questions about some of the requirements other than microstamping, because I think I know where you're going with that. But give it to me simply. What is the problem with the chamber load indicator as far as using the firearm?

MR. FRANK: As far as using it from a user's end

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view of it? 2 THE COURT: Yeah. Why -- I assume I can look at each of these requirements individually, and I feel I'm on top 3 of the microstamping issues, but some of the evidence, from what I was listening to, I don't want to say it's inconsistent, 11:03AM it's not conflicting, but it's just not clear. 7 Does the chamber load indicator cause a problem, 8 "yes" or "no," for the user? 9 MR. FRANK: Yes. 11:03AM 10 THE COURT: What is that problem? 11 MR. FRANK: The problem with the chamber load 12 indicator is that, as Mr. Boland testified, and even, as I 13 believe, Mr. Gonzalez testified, is that a chamber load indicator is a technological solution to a problem -- to a 14 11:03AM 15 human problem that is a mismatch. 16 It is a -- the idea behind it is that somebody who 17 is in the process of negligently using a firearm, which 18 violates all the rules of gun safety, is going to have a sliver of a chance at seeing that there's a thing on the gun that 19 11:04AM 20 looks weird, inspect it for what it is, read it, and say, "Oh, 21 this gun's loaded." That's the theory behind it. 22 But in practicality, we know that this piece of 23 technology has a failure rate and it proposes something of a 24 logical conundrum, which is that if someone is being negligent

with a firearm, can we really expect a small little pop-up on

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the top or the side of the slide of the pistol to really do much? It's unsubstantiated whether this technology really even can do what it purports to do.

In the process, it can actually obscure the sights on a pistol, which is a terrible thing to happen to you if you need to use a firearm in a defensive situation. Acquiring a clear-sight picture through your sights is hard enough when your adrenaline is pumping or you're in a dangerous situation.

So to point your sights above the weapon and not have a clear-sight picture is a terrible thing tactically to happen to you. And it can also, unfortunately, cause the kind of problems that it's designed to prevent from happening in the first place.

THE COURT: Because of distraction and it obstructs the user's vision.

MR. FRANK: Right. And as Agent Gonzalez said, it could potentially malfunction and tell you that your gun is loaded when it's not.

So a law enforcement officer maybe who is using a weapon -- equipped with one that's a duty weapon -- might look at the gun and say, "Okay. I have a round in the chamber. I can go on duty now," and then there might be an altercation where they need to use deadly force, draw their weapon and present their weapon and pull the trigger and not get the bang they were expecting. So it's a technology that tries to solve

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one thing but in the process creates other problems.

And, as we've learned, it's not -- you should always be following the rules of gun safety no matter what. Wherever you go in this nation, perhaps the world, the four rules of gun safety, or some variation thereof, are taught everywhere.

I've been shooting firearms my entire life. I've heard them at every single shooting competition I've ever been to, at every range, every class I've taken. These are something of a gospel of how to be a responsible and safe owner and user and operator of a firearm.

And to delegate that to a piece of technology that has a failure rate and comes at the cost potentially of obstructing the sights on your gun -- not all guns, but some models -- is too high of a price to pay. There's only one way to guarantee gun safety, and that's to inculcate responsibility of how to safely use guns into people.

There may be an off chance that somebody could use -- could pick up a gun with a loaded chamber indicator on it and see that it's -- and say, "Oh, what's that?" and learn that the gun is unloaded, but is that the type of person who's likely to cause an accident with a gun in the first place?

Negligent uses of a firearm happens very quickly.

I've seen adults pick up firearms -- smart adults pick up

firearms and pull the trigger without even inspecting the gun

at all. And, of course, if an adult can do that, then a child

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can do it.

So this is a huge intrusion into the manufacturing of modern firearms that hasn't proven that it actually can do anything. And common sense and wisdom from everyone experienced with a gun say, "Don't rely on that. Pretend it's not there."

THE COURT: I have many thoughts about what you're saying. What you're saying makes sense to me. But question -- I have several questions.

One question is post-Bruen, does this matter? From a judge having to decide this, it matters to me. I want to -- at least it's helpful context, but I don't know whether it matters so much.

Another thought I have is, okay, your argument is —
makes sense to me, but don't I have to give deference to the
legislatures if they think it's a good idea? And I think —
actually, I believe it was yesterday there was a document I
didn't have a chance to review closely, but that was
introduced, that they said accidental discharges are — I think
even accidental deaths could have been reduced with this
chamber load indicator. If you give me just a moment, I'll
tell you the document. Again, I haven't read it quickly. I
just remember when some of the questions were being asked.

Accidental injuries and deaths from firearms. It's Defendants' Exhibit 12 where it was done by the GAO,

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United States General Accounting Office. Many deaths and injuries caused by firearms could be prevented. It was done in 1991, March 1991. But this suggests that deaths could have been avoided, prevented with this safety feature.

MR. FRANK: Sure. Your Honor, I believe the Court used the word "deference." And the most important thing for applying Bruen is to understand that the interest balancing test that proliferated after Heller prior to Bruen, which is basically a strange adoption of Justice Breyer's dissent in Heller, is those days are over. We don't interest-balance anymore. We ask the simple, straightforward borderline rhetorical question of whether or not the conduct at issue

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historical analysis.

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So the bulk of the testimony that the Court heard here about whether or not this technology works, which it doesn't, is important, like you said, to the Court's understanding of what are we really looking at here. And that's important. But the legal question has been simplified thanks to *Bruen*.

implicates the plain meaning, and then we proceed to the

And we have to look at whether the State has met its burden to show the -- has marshalled the evidence of the well-subscribed, historical regulatory tradition that's sufficiently analogous to the modern regulation. And what we've seen here through the State's expert witnesses and in

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their briefing are a handful of citations to laws that they can't conclusively say are outliers or not.

THE COURT: Can I stop you because I have a bunch of questions on the second step. Now you're getting to the second step, but I'd like to finish the first step because then it's going to rain on my parade and I'm going to go back there. I want to be comfortable on the first step before I get to the second step. So please hold your thoughts and try not to forget them, if you want to make a note or whatever, because I do want to hear that.

So the chamber load indicator, you told me about the potential problems for the law-abiding citizen who uses it. distracts, obstructs his vision. How about the magazine disconnect mechanism? What problems arise from that?

MR. FRANK: So the magazine safety -- magazine disconnect mechanism is meant to ensure that if the semiautomatic firearm does not have the magazine that feeds the ammunition in it, if you eject the magazine, then the trigger goes dead. So even if there's a live round of ammunition in the chamber of the gun, the gun won't fire.

And the idea here is that there's some evidence -some anecdotal evidence that too many people have accidentally shot people, shot themselves, or caused accidents, negligent discharges, because they didn't understand how semiautomatic handguns work. And they ejected the magazine, and they thought

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the gun was unloaded, but it wasn't, and something terrible happens. So the idea is that if we -- if the mechanical ability to prevent the gun from firing would help.

But as we saw through plaintiffs' witnesses, this is a delicate piece of technology that will fail and has failed which creates the problem that it's meant to prevent. And I'm aware of at least one incident where someone mistakenly believed that a gun had an MDM and went to demonstrate that to someone and accidentally committed suicide. It's actually depicted in the pandemic era documentary "Tiger King." It's all caught on film.

And it's a remarkably tragic illustration of how the public misperception about a firearm having an MDM actually caused the problem that the MDM was supposed to prevent in the first place. And, again, it goes back to the rules of gun safety is that you cannot rely on unproven mechanical safety features on a gun to ensure that a gun is safe. You have to abide by the rules of gun safety. It is not a substitute for the failure to inculcate rules of gun safety into people who live in a society where guns are ubiquitous.

THE COURT: Was there -- I hear you, and I remember that testimony. But was there also an additional ground that if you're in a firefight and you need more rounds, that this is going to cost you time? Am I recalling that argument correctly? Or is it a viable point?

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MR. FRANK: I believe the argument you're recalling 1 is testimony, I believe, from Agent Gonzalez about how a law 2 3 enforcement officer in an altercation could theoretically eject the magazine while holstered. And, therefore, if a suspect was successfully able to get the gun from the officer, he wouldn't 11:14AM be able to use the firearm against the officer in a defensive 6 7 scenario. 8 And that sounds good enough, but it's strange that law enforcement officers are exempt from the UHA. And as Special Agent Gonzalez even testified, he had the Gen4 Glock 11:14AM 10 11 that's not equipped with an MDM. I've met tons of law enforcement officers. 12 13 them carry guns that are equipped with MDMs, despite the fact 14 that they would probably be the ones who could benefit from it 11:14AM 15 the most. Because I don't walk around with weapon retention 16 issues in society. Most civilians don't. Even civilians with 17 So it could help law enforcement the most, yet 18 ironically they're exempt. 19 THE COURT: I understand that. It's ironic. 11:14AM 20 question probably wasn't a good one. I didn't tee it up because it clearly shows I didn't understand. 21 22 What you were saying, I was expecting the 23 Attorney General to argue that, you know, this is a real 24 safety -- if a police officer loses his weapon.

I was asking you -- I thought there was another

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1 downside to -- particularly to law enforcement when they're in a fight that it's not in all the way, but they need that round 2 3 and they can't fire their gun, and so then they lose time, 4 whatever they have to do to take that out or put it back in or get more rounds in. 11:15AM 6 MR. FRANK: I understand now, Your Honor, and you're 7 correct about that. 8 Would you explain it better than I did? THE COURT: 9 MR. FRANK: I think the Court understands it, but 11:15AM 10 I'm happy to paraphrase the Court's understanding. 11 Yes. So I've done a lot of shooting with firearms. 12 And sometimes you think you fully seeded a magazine into the 13 firearm, but you haven't. And it's hanging on in there through friction and through the fact on -- although most firearms, 14 11:15AM 15 especially polymer frame, which is a species of plastic that's 16 very commonly used to construct modern handguns, all Glocks are 17 that, the pressure from your own hand can actually keep the 18 magazine and the gun, despite the fact that the magazine isn't 19 fully seeded and, therefore, can't deliver ammunition, can't. 11:16AM 20 reliably feed ammunition. 21 So it's entirely possible that a firearm equipped 22 with an MDM, you can have that problem and present the firearm 23 and not -- the gun will not go "bang" when you pull the 24 trigger. And then you have to do what's called a tap rack or 11:16AM 25 bang drill, which is -- basically means that you tap the

magazine to try to seed it, and then you rack the slide to 1 2 eliminate the possibility that the malfunction was caused by an 3 ammunition and not something else. And it's what people were taught to do to quickly cycle and clear malfunctions in a 11:16AM tactical scenario. And an MDM would absolutely prevent that. Because if your magazine weren't fully seeded and 6 7 there was a live round of ammunition in that gun, then the gun would go "bang." But it wouldn't if you had an MDM. And that 8 could cost you precious seconds in a self-defense scenario as 11:16AM 10 Mr. Boland testified to. THE COURT: Okay. Could you -- and maybe it's not 11 12 possible because there's so many different variations, but 13 given the evidence that you've highlighted that no new 14 semiautomatic handguns have been added to the register since 11:17AM 15 2013, that there's no firearm on the register that has these 16 three requirements. 17 What are the advantages of the new state-of-the-art 18 handguns? I have a feeling you're going to say from a legal analysis under Bruen, it really doesn't matter. But I want to 19 11:17AM 20 understand, you know, how bad is this law hurting you? 21 MR. FRANK: I can absolutely explain that, Your Honor. 22 23 So firearms evolve incrementally like most other 24

handguns, which are the quintessential, most popular choice for

products. And the current landscape for semiautomatic

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defense, looks very different than what the roster of available guns offer in terms of, I'd say, primarily ergonomics. ergonomics are really the big thing.

If you look at modern offerings from, say, the world's most popular manufactures, the manufactures that are most popular with military, law enforcement, and civilians, the guns that are offered today are configurability. One common feature to these modern guns is what Agent Gonzalez testified to yesterday when he talked about interchangeable backstraps on the back of a qun.

So if you imagine you're holding a firearm, the part that's towards the rear of the hand, that piece can be taken out. And then with the gun in the box, you have different size backstraps. So if you have small hands, you use a small one, medium, large, and so on.

Gripping a firearm confidently is critical to using it safely. So this is an important ergonomic feature of a lot of popular, very affordable guns, that no gun on the roster currently offers to California.

So if you -- and if you're, say, a smaller person, you have smaller hands and you want the benefit of maximizing the amount of ammunition in your gun, you might learn that "I only feel comfortable gripping a small-frame pistol." And the person at the gun store is going to tell you, "Yeah, that's okay. You'll have the good grip, but you'll lose that on the

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ammunition capacity of a larger gun with a larger handle."

There's also been another really important development in the firearm space in the last ten years, which is as the American -- as American society has embraced concealed carry exponentially -- I mean, half the states in the country don't even require a permit for it anymore -- manufacturers have responded by introducing smaller-frame guns that are easy to grip, but at the same time don't have the capacity limitation.

So ten years ago -- actually, less than ten years ago, if you wanted a gun optimized for concealed carry, there are only a few reliable recommended good choices nationwide, even fewer on the roster, and they all came with disadvantages. They're still kind of big for carry guns and had capacity limitations.

But today there are incredibly reliable, excellent firearm choices for that specific purpose that offer significantly greater ammunition capacities, and these are offered by the major names that we've heard so far in this proceeding like Glock, SIG Sauer, Heckler & Koch, CZ, Smith & Wesson. They all offer guns that are optimized for concealed carry that are very ergonomic, very flat, and have high capacity. There's no more tradeoffs anymore in that world. All of those guns are off roster.

I believe Mr. Boland and Mr. -- Mr. Boland testified

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to buying a Glock 43. At the time it was the most popular gun in America. Glock has since released models that are variations of that that offer almost twice the capacity and are the same price effectively making the 43 obsolete.

So the reality is that the ergonomic options, yes, side by side if you shot them at a range and you weren't that familiar with the guns, you might not understand it. But after actually using them, after shooting them, you'd realize that the modern Glock Gen5, even though on paper it looks like a Glock Gen3, there's some critical things about it that are just better. It's just a better gun. It's a better piece of technology. It has a better barrel in it. It has a better trigger with a smoother and lighter trigger pull, which is directly translatable into how accurate the gun is, and the backstrap.

So you have a one-size-fits-all version of a gun, of America's most popular gun versus a configurable one that's more accurate and has a better trigger and can cost the same money and has better sights on it.

THE COURT: Let's bring into the discussion

left-handers. Is the problem with left-handers only if you

have these limitations on the gun of the chamber load

indicator, the magazine disconnect mechanism? I assume

microstamping isn't involved there. Is that the problem with

left-handers? Or is it the older versions of guns are not

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really suited for left-handers and the newer ones are or some combination of that? Or am I missing the boat?

MR. FRANK: I can explain.

So because of firearm -- a semiautomatic centerfire handgun must have the CLI, the MDM, and microstamping, and no guns can do that, all these modern options, some of which I just described, are unavailable. And so it's not the CLI and the MDM, per se, it's -- the reality is that, of the guns on the roster, these designs are predominantly from the 1970s and 1980s and, at least in one particular case, are variants of a firearm that was invented in the year 1911. It's called the 1911.

And there are variants of that gun on the roster, depending on barrel length, primarily caliber, but they're all basically the same gun. And a significant percentage of the semiautomatic guns on the roster are a variant of the 1911.

When it was designed, ambidextrous features were rare. Over the years they incorporated some. But the reality is that all of these popular weapons that -- choices that are -- that predominate the roster were designed for right-handed shooters.

And maybe some options allow you to configure one of the three main controls on a semiautomatic firearm for a left-handed shooter. But virtually everything that's off roster that's very popular today allows you to configure all

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three of the core controls.

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So there's the trigger, of course. Every gun has a trigger. But on a semiautomatic pistol, you have the magazine release, you have the slide release, and then sometimes you have an external safety, but not all. Glocks don't have an external safety. Most striker-fired pistols don't have an external safety; hammer-fired ones do.

So the ability to manipulate, to safely and accurately and quickly use a semiautomatic firearm, you have to be able to actuate the magazine release and the slide release.

It's very important. It's very important to actuate the gun to clear malfunctions.

And those -- firearm manufacturers have only recently, in the last ten or so years, designed guns to configure all of these controls for a left-handed shooter.

That's a new development. And I have seen left-handed shooters struggle, myself, with figuring out how to do the manipulations.

As Mr. Boland testified, the best thing to do probably is to transfer the weapon from your strong hand -- if you're a left-handed shooter, that's your left hand -- to your weak hand, and then use the gun as it's intended for a right-handed shooter, but that slows you down. And it's a delicate and precise mobile thing to do under stress.

So, I mean, just transferring a gun enough without

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stress can be a little tricky and takes all the focus that you have, because you don't want to accidentally pull the trigger, you want to do it safely. And if not, then you have to do strange manipulations that enhance danger to yourself, if you're trying to move quickly. You could muzzle yourself. You could sweep -- which means basically that in the process of trying to reach around the gun to activate it, you could potentially put your hand in front of the gun which violates the rules of gun safety.

So the left-handed shooter is at a big disadvantage because why wouldn't you buy a gun that's optimizable fully, all controls? And it's not much of a consolation that maybe you could buy one gun that allows you to reverse the position of the magazine release but not the slide release.

THE COURT: Got it. I think I'm ready to go now to the second step. I know you're anxious too. No, I misspoke. Couple more questions relevant to the first step.

I know in Bruen, in Justice Alito's concurrence, he talked about anecdotal evidence of defensive firearm use. you have any of that evidence, access to that evidence?

Again, I'm not so sure it matters under the Bruen analysis. So if that's what you're thinking, so be it. it's important to me to -- you know, to have that Second Amendment, to have real meaning and why it's important that it matters. And I don't know if you have at your fingertips or

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access to anecdotal evidence where good thing that the victim or someone helping the victim had a firearm.

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MR. FRANK: Your Honor, the question of statistics on defensive gun use has a few complexities to it. So you may have seen recently in the media there was an article that the Centers For Disease Control at one time posted information about defensive gun uses and then took it off — took it out of the public's purview. And the issue is that it's hard to — well, first, the term "defensive gun use" can mean lots of things. It can mean defensive brandishing. It can mean actually discharging the firearm. It can mean discharging the firearm and shooting someone. It could mean discharging the firearm and killing someone.

So there's some reliable data out there that tracks actual defensive, justifiable homicide incidents, and some of the data is in the FBI's Uniform Crime Report. And what it shows is year after year, several hundred people will commit justifiable homicide. So we can definitely measure that and do so with handguns.

But there are estimates that range into the range of 2.5 million defensive gun uses a year. Now, that, obviously, doesn't mean homicides because there are only 12- to 14,000 homicides a year in the whole United States; so we're not talking about that. But we're talking more along the lines of people being able to brandish, or people -- well, that's the

thing. It's such a broad definition that it's hard to get good data about it.

THE COURT: But there is data on defensive --

MR. FRANK: There is. There is data on defensive -on justifiable homicide, I believe, in the FBI's Uniform Crime
Report. Probably elsewhere.

THE COURT: And do you -- it is a question. Do you think it would be helpful for me to see that or no?

MR. FRANK: Only inasmuch as it would ratify what the Supreme Court already said, which is that the quintessential choice for self-defense in the United States is the handgun. And that's, you know, been determined, as a matter of law, in Heller. So I don't know if it would be all that useful for the Court to peruse it. It might. It might help paint a more concrete picture of how many instances there are.

But the question of self-defense is broader than what people are actually doing. It's more — it's broader than that. It goes into what arms do people prefer to own for the, you know, unfortunate contingency that they're going to need to use their weapon in self-defense. Because you have to be trained with the firearm. You have to be comfortable with it.

So say the data showed that everyone that was involved in a defensive gun use last year used a gun that's on

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legitimate defensive use?

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the roster. It wouldn't necessarily mean anything for really 1 the resolution of this case. I mean, they might have just used 2 3 guns on the roster because California is a state with 40 million people, and that's what the statistics are going to draw from because there's just so many people here. You know, 11:30AM 5 so it's -- I don't know if it will be that useful to the Court 6 7 here. THE COURT: I appreciate that. I guess it's similar 8 9 with respect to statistics. 11:30AM 10 Is there any statistics that are still being 11 maintained on how many accidental discharges of handguns that 12 we have? 13 There are. In fact, I recently was on MR. FRANK: 14 the CDC's website. They have an interactive portal where you 11:30AM 15 can customize your search query fairly -- with some 16 complexities. 17 So you can go to the State of, say, Idaho. You can 18 say, "I want to know how many children were, unfortunately, 19 lost to a negligent use of a firearm." You can look that up. 11:31AM 20 The states furnish the data to the CDC. Not all states have 21 the same best practices. So there are even some big states 22 like even Arizona. There are some years that the CDC just 23 couldn't present data for. 24 So there's holes here and there, and there may be 11:31AM 25 differences state to state on what they classify as a negligent

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But, yes, the CDC does furnish a portal online that
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          anyone can access and investigate that data to some degree.
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                      THE COURT:
                                  And in California, do you know, have the
          rates increased or decreased or stayed the same since 2013?
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                                  Since 2013, I couldn't definitively say.
                      MR. FRANK:
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                      THE COURT:
                                  Do you have any -- over the past couple
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          years have the rates increased, decreased, or stayed the same?
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                     MR. FRANK:
                                  Specifically in California?
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                     THE COURT:
                                 Yes.
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                     MR. FRANK:
                                  I couldn't definitively say. I'm not
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          sure.
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                      THE COURT:
                                  Do you know nationally?
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                     MR. FRANK:
                                  Nationally, I don't.
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                                 Okay. Do you think that matters?
                      THE COURT:
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                      MR. FRANK: It matters -- well, if the State could
          produce -- well, I don't think it matters legally. I think
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          that -- first of all, the State, I think, would have to prove
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          that.
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                      Well, let's assume that there is a decrease, a
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          dramatic enough decrease that it warrants investigating,
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          because a small one can be attributable to any number of other
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          variables that we can't control for. But even if the State
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          could produce fairly clear evidence that the -- that the UHA
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          has actually made guns safer and, therefore, fewer people have
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          been injured in negligent firearm situations, I'm not sure it
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would change the legal question because we're not interest 2 balancing. Because of Bruen, we're no longer interest balancing 3 the people's interest in their exercise of their Second 4 5 Amendment rights with the public safety. And I can see why 11:33AM people are uncomfortable with that, but it's one step too many, 6 7 as Justice Thomas wrote. THE COURT: Now, I guess some of this has relevance 8 9 to this point, and I'm not trying to interject political passion into this. But, you know, I've heard the argument that 11:33AM 10 11 UHA and maybe other laws, it's really driven by those of the 12 belief that -- especially in urban environments, we shouldn't 13 have handguns. So the UHA is an indirect "We're trying to take 14 away people's guns in the urban areas." 11:33AM 15 Do you feel that is what's happening here? Or do 16 you agree that the motives of the California legislature were 17 genuine, that they were just trying to reduce the number of 18 accidental discharges?

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That's a good question, Your Honor. MR. FRANK: think they -- some of the legislatures probably were. there are some legislatures that have made it clear of the areas that they'd go to any means to destroy the Second Amendment and take guns out of society, and they may have had more cynical purposes.

You know, as somebody that is familiar with

firearms, from a perspective of how to make guns safe, I think there's probably some theoretical -- theoretical legitimacy to experimenting with these technologies. I think there are stronger reasons why there are bad attempts to do that.

But as far as the UHA being, you know, a backdoor way to banning guns, I'm not so sure that has merit. Because the irony of the UHA is that because of the grandfathering that it allows, it doesn't actually do anything but ensure the proliferation of guns that are allegedly unsafe.

Because you can walk into any gun store in California and buy a grandfathered Glock 19 that doesn't have an LCI or an MDM, and it truly doesn't have microstamping, and you can do this forever, and that's what's happening, is that we're just seeing fictitiously designated unsafe guns proliferate ad infinitum, and that's the strange thing about the UHA.

THE COURT: And, again, I don't know how relevant this is, but that's what I'm confused about the UHA. I'm -
I'm not sure this is the best way or the sensible way to try to limit accidental discharges because of -- you have all those guns on the roster that don't have these mechanisms. So, like you said, you're promoting outdated versions of weapons.

But then I don't know whether it should or not. It bothers me that law enforcement have the state of the art to protect themselves, to protect others, but law-abiding citizens

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don't. But law enforcement can make money on it selling secondhand things.

I'm not trying to say "Shame on you." I'm just trying to from a -- trying to understand this law that is -- has pretty broad exceptions to it. And I -- it's encouraging the law enforcement to sell their weapons and get new ones and make money. I don't know if that's a good thing.

MR. FRANK: I think it's a bad thing, and it's actually illegal. That's the irony. Under federal law, you have to have an FFL, federal firearms license, to be a dealer in handguns. And every few years a law enforcement officer who's not familiar with the nuances of federal firearms regulation will get in trouble because he'll start a little side business acquiring off-roster firearms and selling them for significant markups. And he does this too many times or she does this too many times, and the ATF makes an arrest, and there's a prosecution and it makes headlines.

And people say they're special law enforcement officers. Well, what do you mean? You're telling me I can legally buy this off-roster gun, and I can legally go to a firearms dealer, and I can process it through a lawful private party transfer, that's legal; but if I do it too many times in too short of a period, then it's illegal. And that's right. That's a correct interpretation of the law.

So it does create perverse incentives for law

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enforcement. And the reality is that there are far more law enforcement officers in California than there are people moving into California with desirable off-roster guns who want to sell them.

So the market is predominantly -- basically facilitated by law enforcement, either intentionally or unintentionally, exploiting a loophole. So if these guns are so unsafe, why is it that anyone is allowed to acquire them in the secondary market? But why does the law facilitate you paying a significant price premium for your unsafe gun? If the gun is unsafe, you shouldn't be able to own it either way. It it's another strange aspect of the UHA.

THE COURT: Well, I think we've talked more than enough about step one. And you've defined step one broadly. And I really don't want to shortchange the discussion on step two because it's important. But, candidly, I'm confused on step two, especially having both sides' experts hasn't helped me.

What are the metrics that I'm supposed to use to determine whether there's a comparable analogue? What am I supposed to look for in this case? And it's not disconcerting. I mean, I've seen that. But it's the experts, they're not even in the same parking lot of the same stadium. They seem to be very diverse. And I don't know if one's wrong or if they're both a little wrong or both right.

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What I want to do is what I think is the right 1 2 thing. I don't see how any of the analogues that -- and this 3 is probably a better question for the defense, the Attorney General, than for you. But the microstamping, I wasn't following how any of the analogues that were cited, the 11:40AM 6 proofing, the gunpowder, that dealt with microstamping. So I'm babbling. What are the metrics that I use to 8 find this comparable analogue or that there's no comparable analogue? 11:40AM 10 MR. FRANK: Absolutely, Your Honor. And before I proceed to answer that question, my colleague just looked up 11 12 the information that the CDC has on unintentional firearms For the year 2013, it was 35. 13 deaths in California. 14 year 2020, it was 39. 11:40AM 15 THE COURT: Okay. So the analogical inquiry under Bruen is 16 MR. FRANK: fairly straightforward. And Bruen itself builds upon language 17 18 from Heller that established the text history and tradition 19 approach to the Second Amendment. And basically the test is we 11:41AM 20 look back to history. We look back to the time of the Founding 21 and perhaps the time of ratification of the Fourteenth Amendment. And we look to see if the majority of the state 22 23 legislatures pass laws that regulated a right that's 24 sufficiently analogous to the one in question. So we're basically looking at the statutes, and 11:41AM 25

we're seeing what they say, and we're seeing if the analogies 1 2 hold up. That's the broad level to look at it. And the State here --3 4 THE COURT: What are the metrics for an analogy, though? That's the problem I'm having. Do I look for 11:41AM 6 regulations which put restrictions on the mechanical features 7 of a weapon? It doesn't seem to me -- and I don't think there's any dispute here, I shouldn't be looking -- okay, 8 the -- there is restrictions on you can't have machine guns, or 11:42AM 10 you can't have weapons at a hospital, or you can't have weapons 11 at a school. I don't think I -- those issues are in this case. 12 And I don't think any analogues -- trying to find comparable 13 analogues for that is relevant. 14 I know there was discussion by the experts on 11:42AM 15 qualifications restrictions on the sale of firearms. And I 16 think I heard Justice Kavanaugh said something "They're still 17 in place." 18 Well, what are we talking about? Are we talking 19 about mechanical features or what? What was he referring to? 11:43AM 20 MR. FRANK: Well, firearms regulations largely fall 21 into one of a few buckets. There's "who" questions, you know, 22 who can possess a firearm? There's "where" questions, you 23 know, sensitive places. And then there's "hardware" questions. 24 So things like assault weapons and magazine capacity.

And we're in that hardware question, well, what type

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1 of hardware can the State regulate? And at most here, right, the Heller and Bruen stated that we're not looking at -- you 3 asked -- the Court asked about metrics. And the Court said one of those important metrics is that we don't -- we don't do the analogical analysis at a high level of generality, right? So 11:43AM we need to do the opposite. We need to look specifically at 6 7 what do these laws actually do? And then go on for analogies 8 that do something -- see if there are any -- there's well-subscribed judicial laws that do similar thing. 11:44AM 10 So we are looking at -- we probably want to look at hardware laws. But I think I can probably help the Court 11 12 better understand the contours of it by looking at the 13 categories of laws that the State has pointed to. 14 to gunpowder storage law, which were purportedly 11:44AM 15 well-subscribed throughout the nation at, you know, roughly the 16

time of the ratification and thereafter. These gunpowder laws
prevented people from storing large quantities of gunpowders at
their homes.

Now, I don't know much about gunpowder, but I do know that it's an inherently combustible substance and that you don't have to do anything other than store it for potential issues, especially in the types of structures that were, you know, erected at the time in the late 1790s, they're built much differently than the ones now.

So it seams reasonable to me that that was an

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interest in preventing fire safety, and that's what scrutiny of those laws seems to show, which is that these were concerns about starting fires, and that's why we have these laws.

Now, for a gunpowder law to -- although it's very different in that respect, there's no evidence of any gunpowder laws that say that people can own a specific type of gunpowder, but they can't own another type of gunpowder because it's allegedly unsafe, because it doesn't have technology that doesn't exist.

The State hasn't presented any evidence of any type of gunpowder regulation that work like that. And that might be analogous, but it doesn't exist because there were no laws like that. And the State had plenty of time to marshal evidence of such laws, but it didn't. So citing broadly to gunpowder laws and saying these are similar to a gun law because both promote public safety is analogizing at that high level of generality which Heller and Bruen said we're not supposed to do. So that's an insufficient analogue.

The next category are trap guns. This was mentioned in the State's briefing. So a trap gun is a gun that can be -- that's optimized to be remotely triggered. So you set it up maybe inside the hallway of a private residence, and someone opens the door and there's a string or some other mechanism, and the gun shoots without any human involvement other than the human that jerry-rigged the trap in the first place.

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I haven't seen any testimony or any evidence that all Forster firearms are at all analogous to trap guns. There's nothing about an -- there's nothing about the Gen4 Glock that Agent Gonzalez carries every day that is any more or less configurable than a Gen3 Glock that you can buy on the roster. So the contours there simply show that that's not a valid analogy.

And then the third category that was mentioned in the State's briefing was laws that prevented keeping of loaded firearms around the house. Heller addressed that as a matter of law. The issue in the Heller case was that the District of Columbia ordinance said you can't have your gun assembled loaded so you can use it for self-defense, and the Supreme Court said that's ridiculous.

The purpose of owning a firearm is to have it around for self-defense. And you can't take and disassemble a gun apart, put it together, load it in the time that you would need to -- in order to defend yourself. It's impractical. said that's a destruction of the right. So, as a matter of law, that third category can't be a sufficient analogue.

And at the -- at most, the laws of the State has produced evidence of making quality checks on firearms for commercial manufacturers. Now, that might arguably support -that might arguably be analogous to the drop safety test thing and the firing test that are pre-conditions to roster

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admission, which plaintiffs here are not challenging.

THE COURT: And they're part of the UHA; right?

MR. FRANK: They are. And so even if the CLI and MDM and microstamping are preliminarily enjoined, there would still be requirements to roster admission which would be the drop testing and the firing safety. And for all I know, there are legitimate analogues to those. But in any event, we're not challenging them, and manufacturers would have to go and submit to the laboratories for testing where those guns are going to pass the test. It's not an engineering feat to ensure a gun doesn't fire when it falls.

THE COURT: Okay.

MR. FRANK: So the analogical inquiry here, the State simply just hasn't met its burden. And the State has also strangely argued that if it had more time, it would have.

But the State's been litigating this matter for a while. It's been litigating another matter in the Southern District which presents the same questions. It's a constitutional challenge to the roster under Bruen.

So there's been many, many months here for the State to do its due diligence and marshal the evidence of the proper historical tradition that's analogous, and it hasn't been able to. If it wasn't able to do so by now, it's not going to be able to do so in one or two or three or six months or a year from now.

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1 This is dispositive. The State needed to marshal 2 its evidence for this hearing and it didn't. That's a dispositive failure because the State has the burden under 3 The burden shifts to the State to prove the analogy. 11:49AM It's not plaintiffs' obligation; it's the State's. And they 6 basically admitted -- their expert admitted "Well, sorry. I can't conclusively say whether or not this particular category of laws is a -- was well-subscribed or not. I can't say whether it's an outlier or not. It may be, it may not be. I'm 11:49AM 10 not sure." Well, that sounds a lot like not meeting the burden 11 that the State was obligated to meet. 12 THE COURT: Now, I guess I'm asking you for a 13 fallback position. You may say, "Is this an all-or-nothing 14 thing?" Or is there any legitimate in-between, such as the 11:49AM 15 microstamping is unconstitutional, but the -- you pick one or 16 both of the other requirements. 17 MR. FRANK: Well, I would say that the State's 18 failure to marshal any evidence of a historical regulatory 19 tradition to support microstamping is obvious. I'd say that 11:50AM 20 that's very clear. 21 I would say that the State has also failed to 22 demonstrate that there's a sufficient historical regulatory 23 tradition to uphold the chamber load indicator with the 24 microstamping. The only plausible way they could do that is

under the interest balancing test, which is no longer the law

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of the land. So I believe that it's fairly clear that it is an all-or-nothing thing.

But in any event, it's so objectively clear that microstamping fails. Microstamping isn't even a gun safety measure. It's a law enforcement investigatory measure which has never proven to be implementable. So the failure there is abject. It's undeniable.

And like I said a few moments ago, the most that the State has produced any purported analogue -- I'm not conceding that they have. I do not believe they have shown that it's well-represented. But that would speak to the drop testing and the firing requirement, which they don't challenge. So the Court could find that those are -- that the evidence that the State has presented would support upholding those requirements. But in any event, it doesn't matter because we're not challenging them.

But I also haven't seen anything here. I haven't seen any evidence -- any sufficient evidence of a regulatory tradition to support chamber load indicators and magazine disconnect mechanisms. I mean, only at the highest level of generality. I mean, the theoretical idea that these technological features could promote gun safety.

Yeah, maybe they could, but we're not interest balancing, and the State has not shown that that -- there were any states that said that firearms have to have particular

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1 features that the market doesn't really want, that no 2 manufacturers are building in the name of gun safety or any other interest. There's no evidence of that in the record. sufficient evidence of that on the record. None to meet the burden under Bruen. 11:51AM So the Court could bifurcate them if it wanted to. 6 7 It could preliminarily enjoin the microstamping and preserve 8 CLI if it wanted to. But, in my opinion, there's sufficient evidence for the Court to declare all three preliminarily 11:52AM 10 enjoined. 11 THE COURT: I appreciate your views. Thank you. 12 MR. FRANK: Thank you, Your Honor. 13 THE COURT: It's 10 to 12:00. I in no way want to 14 limit your argument. So tell me how long do you think -- I 11:52AM 15 don't have any other new questions. So all the questions that 16 I discussed with the plaintiffs, feel free to address and 17 anything else you want. I'm just trying to plan this. 18 How long do you think you're going to want? 19 MR. SAROSY: I think plaintiffs' counsel was up 11:52AM 20 there for an hour. 21 THE COURT: Yes. 22 MR. SAROSY: So over an hour to respond to all the points that were just made. And to sufficiently answer 23 24 Your Honor's questions, I would say at least an hour as well. 11:53AM 25 THE COURT: Okay. Then why don't we go ahead and

1 take our lunch break so you're not split up and then we're not all hungry. I want to be paying attention. 3 I do have a thing to do. Would it be too much --4 just be honest with me -- if we came back at 1:30? Or is that just not going to work for your schedules? 11:53AM 6 MR. DALE: That's fine on my schedule. 7 THE COURT: You're trying to catch a plane? 8 MR. WOODS: At 4:00. But I think I'll be able to 9 catch it one way or the other. THE COURT: Okay. But you start promptly at 1:30. 11:53AM 10 MR. SAROSY: Thank you, Your Honor. 11 THE COURTROOM DEPUTY: All rise. This Court is in 12 13 recess. 14 (Lunch recess from 11:53 a.m. to 1:27 p.m.) 01:26PM 15 THE COURT: All right. Let's hear from the AG. MR. SAROSY: I apologize in advance, Your Honor. 16 have notes kind of in multiple places. 17 No apologies necessary. Let's take our 18 THE COURT: 19 But if you wouldn't mind, can we start with the first 01:27PM 20 step of the analysis. And you heard my questions to 21 plaintiffs' counsel. I'm trying to understand how I interpret 22 and apply that first step. Tell me what you think. 23 MR. SAROSY: Sure, Your Honor. Happy to start with 24 I would also like to, at some point, get to talking 01:27PM 25 about the standard of a preliminary injunction motion and what

must be shown. But I'll start with your question first.

I think throughout the evidence that we've seen over the last day and a half or so and throughout plaintiffs' argument, there is kind of a blending of handgun and semiautomatic pistol. And I want to at least first distinguish that there are multiple types of handguns.

The semiautomatic pistol is a type of handgun. It is not the only handgun. And that was, in part, the purpose of Special Agent Supervisor Gonzalez's testimony yesterday, showing the different types of handguns that are on the roster that there are revolvers, single-shot pistols, and semiautomatic pistols, and that the chamber load indicator, magazine disconnect and microstamping requirement only applies to one of those types of handguns.

And so I know plaintiff keeps saying that the quintessential self-defense weapon is a handgun, as Heller said, but they keep saying that the quintessential self-defense weapon is a semiautomatic pistol, or at least they're implying that. And that's not what Heller said.

But to actually -- so I just wanted to frame that because I think that is relevant to the first question. And your first question is how to do the plain text analysis. And what *Bruen* said at page 2134, when they were looking at the first step and applying it in that case, was:

"We, therefore, turn to whether the plain

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text of the Second Amendment protects, cautions, and matches proposed course of conduct-carrying handguns publicly for self-defense."

So the Court was looking at whether the plain text covers a specific conduct that the plaintiffs are carrying — or claiming is violated by the regulation at issue. And this wasn't really a big issue in *Bruen* itself because both sides appear to agree that the plain text covered that conduct. And that is not the case here. We do not agree that the plain text here covers plaintiffs' proposed course of conduct.

And the proposed course of conduct here is to be able to purchase on the primary market off-roster semiautomatic pistols that are available in other states. That is a proposed course of conduct. The UHA, or the Unsafe Handgun Act, does not prohibit possession. It does not take away the guns they currently own.

We saw from testimony by Mr. Boland and Mr. May that they, in fact, do currently possess multiple semiautomatic pistols including off-roster semiautomatic pistols. And so we're not actually talking about the keeping and bearing of arms here. We're not talking about a regulation that restricts or regulates how a gun is supposed to be kept in the home. We're not talking about a regulation that restricts or regulates how a gun is to be carried in public.

So we're not talking about really the keeping and

bearing of arms because plaintiffs are, in fact, keeping and bearing arms, as they testified, that they have multiple handguns, including semiautomatic pistols at home, that are all operable and can fire. They each have CCWs that they're able to carry those handguns in public.

And I think plaintiffs' counsel said that this first step is a borderline rhetorical question. And I felt like there was a lot of shifting in what plaintiffs' position was on what the first step meant. And I think at the core of it, where they ultimately landed was that the first step is a very easy hurdle to overcome for plaintiffs, that pretty much anytime you challenged a firearm regulation, that you meet the first step.

And the danger in that is that you then get to cases like the federal case -- I believe out of West Virginia -- where the court -- it was about serial numbers, the federal law requiring serial numbers for firearms. And that court found that the plain text covered that, and that there was no historical analogues to support serial numbers. And, thus, invalidated the federal law requiring serial numbers on guns. And I think I'm slightly oversimplifying that, but --

THE COURT: I don't think you are. I think in my questions I said I don't think this satisfies the first step, a serial number, because it doesn't impact, you know, the functioning of the gun, the dynamics, the cost. I don't see

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          how that impacts it. So that -- that's why -- I mean, I agree
          with you, it's got to have some meaning. The question is what
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          meaning?
                                   I think it's clear that it doesn't have
                     MR. SAROSY:
          the meaning that plaintiffs want it to have because -- and I
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          think that --
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                     THE COURT: Well, they are being -- I mean, the
          evidence, I think, is pretty undisputed. It's very
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          difficult -- very difficult for them to get their hands on new
          semiautomatic handguns.
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                     MR. SAROSY: So I think, yeah, the question is
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          whether -- and that is their proposed course of conduct; right?
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          They want to get --
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                     THE COURT: That is the most popular handgun, as I
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          understand it, in the record. And, you know, it's important.
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          I don't think it's a trivial right. But go ahead, you tell me
          why you think it's not covered.
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                     MR. SAROSY: So I think there is a disconnect
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          between what plaintiffs want to look at for history and what
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          they want to talk about what the plain text covers. They want
          to say the plain text of the Second Amendment covers what is
          the most popular handgun available today. Well -- but then for
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          history they want to talk about, well, what was the -- what
          laws were in effect around the time of the Founding?
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                     Well, we need to look at -- if you're going to look
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at the plain text, there were no semiautomatic pistols at the
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          time of the Founding. And as far as I know -- I'm not a
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          firearms historian, but as far as I know, I don't think there
          were semiautomatic pistols at the time of Reconstruction
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                   There were handguns such as revolvers -- I actually
          don't know if there were revolvers, but there were handguns at
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          the time of the Founding, just not semiautomatic pistols
          specifically.
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                      And to get to your question of how to apply this
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          first step, there is a case called Defense Distributed v. Bonta
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          from the Central District. And the cite for that is 2022
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          Westlaw 15524977. And that case applied this proposed course
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          of conduct method that I think Bruen outlines.
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                      And what is also helpful is the Ninth Circuit
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          decision in Pena v. Lindley. And I know plaintiffs will say
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          it's not relevant because it involves interest balancing.
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                      THE COURT: But on that Central District, who is the
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          judge?
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                      MR. WOODS:
                                  Judge Wu.
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                      THE COURT:
                                  Judge Wu.
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                      MR. SAROSY: Mr. Woods handled that case.
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          why he knows it offhand and I don't.
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                      Pena actually said that there is -- they rejected
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          the claim that there's a Second Amendment right to purchase a
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          particular handqun, which is a very proposed course of conduct
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Plaintiffs want to be able to purchase a specific type here. of semiautomatic pistol. And they're not saying they can't, they're not able to. They're not saying that -- and they've actually been able to. I understand that they claim it's difficult to do so, but they have done so.

And, again, it's not the State's position -- or not again, but I'll make clear it's not the State's position that there needs to be a destruction of the right for the plain text to cover. That is not what the State is saying. But this is just in terms of between the goalpost of what the Second Amendment covers and what the Second Amendment doesn't cover. This is on the side of the Second Amendment -- the plain text of the Second Amendment does not cover this.

We've heard a lot of arguments about whether the Unsafe Handgun Act is effective. And I think that is pretty much the majority of the day and a half of the evidence that we've had. But that's not the right question of whether the plain text covers the proposed course of conduct here. Second Amendment is not defined about what firearm manufacturers think is popular or what they think is, you know -- will be commercially popular.

And that is kind of a running theme in the evidence that, well, chamber load indicators are not commercially popular. Microstamping is not commercially adaptable, and magazine disconnects are not commercially popular. But just

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because the firearm industry claims it's not popular, that doesn't mean that it is, therefore, conduct covered by the Second Amendment to have a pistol that doesn't have these features.

And the question about the efficacy of these features has already been debated in the legislature. And we keep talking about 2013. The Unsafe Handgun Act has been around since 2001, and it has been added to over the years. It started in 2001. The SB 15 was the first bill that established the roster. It's passed in 1999, took effect in 2001.

SB 489 in 2003 became law in 2003 but didn't take effect -- at least what it did was it added the chamber load indicator and the magazine disconnect requirements in 2006 and 2007. So the firearm industry had three years to try to innovate guns with chamber load indicators and magazine disconnects.

And AB 1471 in 2007 comes along, and that's microstamping. But that didn't take effect until 2010, but it said DOJ has to certify that there are no patents restricting microstamping. So microstamping didn't actually become a requirement until 2013. So you had six years there where the firearms industry could have innovated and come up with technology to try to comply with the requirements of the roster, and they didn't. And --

THE COURT: Is there any state, other than

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California, that has those first two requirements, not the microstamping?

MR. SAROSY: The chamber load indicator and the magazine disconnect, off the top of my head, I don't -- I can't think of any. I can't know for sure.

THE COURT: And I assume no state has the microstamping?

MR. SAROSY: So New York and New Jersey recently adopted microstamping laws. But to be clear, they have to -- I think the AG office in those respective states has to certify -- I don't know if whether it's feasible or exactly what they need to certify, but they need to do some kind of certification about microstamping before it becomes a requirement.

THE COURT: Wasn't that in California too?

MR. SAROSY: So California, the certification -- and I know if I misstate this, plaintiffs will correct me. I think the certification was that there -- because microstamping was developed by one company, DOJ had to certify that there were no patent issues that the -- you know, there wasn't a patent restriction to microstamping, meaning that the technology -like every manufacturer didn't have to get a license from one company, right? So that is what DOJ certified in 2013, that there were no patent restrictions. The 2013 certification wasn't about feasibility.

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1 THE COURT: Got you. But if we're talking about feasibility 2 MR. SAROSY: 3 of microstamping -- and I want to be sure I -- I know I'm jumping. So --01:40PM THE COURT: No, you're not. We were talking. 6 MR. SAROSY: So microstamping feasibility, I heard 7 over the last day and a half, and I heard during plaintiffs' 8 argument different iterations of whether microstamping is feasible or whether it's commercially available. And I think I 01:40PM 10 heard them say that it was not feasible. 11 THE COURT: I heard that and it's not commercially available. 12 13 MR. SAROSY: So their own witnesses admitted 14 otherwise. And it's interesting that they bring up 01:40PM 15 Mr. Beddow's testimony, because what I recall from Mr. Beddow's 16 testimony, in my cross-examination of Mr. Beddow, is that he 17 admitted in 2008, based on his study, that microstamping with alphanumeric characters was not only feasible but was the 18 19 best -- was the best way to commercially adapt microstamping. 01:41PM 20 And the use of alphanumeric characters is exactly the method of 21 microstamping that is contemplated in the California 22 regulations related to microstamping. 23 And I believe we went through his study, which, 2.4 interestingly, plaintiffs offered Mr. Beddow but didn't offer 01:41PM 25 to admit his study. And we went through his study to -- and to

go over the various handguns that he tested and to talk about 1 2 how, of all the handguns he tested, the microstamp on the firing pin, for the most part, was still legible after either 3 hundreds or sometimes thousands of rounds of firing, and that the transfer rate of the microstamp onto the cartridge cases 01:41PM range was at least 76 percent, I believe, for almost all of the 6 7 handguns that he tested except for a rimfire gun, which already 8 had a -- a poor microstamp on the firearm and the firing pin to begin with. THE COURT: But if it's so feasible, why isn't any 01:42PM 10 11 gun manufacturer doing it? 12 MR. SAROSY: That's a fantastic question, Your Honor. And I would direct that to plaintiffs because I 13 don't know. And that's the same question that the 14 01:42PM 15 Ninth Circuit had in Pena vs. Lindley where they raised the 16 same argument. And, again, I would -- I do want to point out that 17 the firearm manufacturers are not a party here. To the extent 18 19 they claim there's any burden by these laws, they're not a 01:42PM 20 party here. So that's irrelevant to them. 21 So Pena said -- sorry, I have it. You know, it said 22 at page 983: 23 "We thus find it odd, indeed, that the 24 manufacturers indirectly assert a right to sell new 01:42PM 25 models of modern semiautomatic handguns but refuse

to modernize their firearms by installing microstamping features."

And then in Footnote 11, also on page 983, it makes an analogy to airbags and how the car industry refused to implement airbags because they said it was either not feasible, it was too costly, wouldn't actually enhance public safety.

And the Court and the Ninth Circuit said as with that debate, the airbag debate, "It may be that protest about technical ability to comply reflects a reluctance to comply."

So I'm not going to stand here and accuse the firearms manufacturers of anything. I'm just reading what the Ninth Circuit said in *Pena*. And I understand there is Judge Bybee's dissent.

But plaintiffs' counsel stood here and said that firearms manufacturers are willing to pay and have the -- well, not willing -- I think he said they have the funding for the R and D to do microstamping.

And they've talked about all the innovations that have been made to the ergonomic design of handguns, to the ambidextrous ability of handguns, and how that has improved over the last 10 to 15 years. Well, where is the R and D, and where are the innovations and microstamping? It hasn't happened. And I -- I can't personally speak to why.

But Mr. Beddow did say that in his study, that DOJ and the firearms manufacturers should work collaboratively.

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And I think I heard plaintiffs' counsel say, well, DOJ hasn't worked collaborative with firearms manufacturers. And we can point fingers at each other all day, but I asked Mr. Beddow, "Did any firearms manufacturer come to you and talk to you about your study?"

And he said "No."

And in terms of the DOJ offering to work with firearms manufacturers, on December 23rd, the DOJ actually issued a release -- a letter for preliminary -- it was an invitation for preliminary rulemaking comments. So basically it was inviting the firearms industry, firearms manufacturers to comment on a revision to microstamping regulations. And that is still an active letter; so I don't know if anybody has responded. But it's at least an indication of the DOJ offering to work with firearm manufacturers.

And if the Court would like, I do have a copy of that letter.

THE COURT: No, let's make it part of the record.

I'm still having a little bit of a disconnect, though, with the microstamping. And it certainly is not directly related to safety.

And I guess we're all a creature of our own experiences, but I have a lot of gun cases and violence and felon in possession -- I can go on and on -- drug cases.

Most -- not all, but most of the weapons are stolen. And many

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cases there's sentencing enhancements for an altered or obliterated serial number on the weapon.

So I'm having a hard time trying to figure out why the legislatures thought this was going to be a great investigative tool. I mean, I just don't see it as being a great investigative tool in the cases that I have.

Whereas, I know the plaintiffs dispute you showed me evidence about how deaths could have been avoided if they had the chamber load indicator or the magazine disconnect in a study. So that -- the microstamping doesn't really deal with the safety of the firearm. It deals with gun violence, I think, in general, and will this be an effective tool to prosecute them in.

I -- because, obviously, it must have some costs, the argument that even Mr. Beddow says, you know, you can't have a universal application about this. So a gun manufacturer would have to create a certain microstamp, as I understand it, for every model of every weapon it manufactures, and then all the gun manufacturers would do that. That's kind of complicated.

And then I also heard evidence that, you know, it's going to lose its printing -- imprinting power over time in the fires. What all, I guess, I'm getting to is I'm curious why they are pushing so hard -- California's pushing so hard for the microstamping. I don't see the -- I know I have to give

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deference and, you know, that's their call, but --

MR. SAROSY: So I can't speak for the legislature, but I would point the Court to the legislative findings in AB 2847, which is the most recent microstamping bill, and that is the one that reduced microstamping from two places — the requirement of microstamping from two places to one, and did the three-for-one provision that we've been talking about where for every new semiautomatic pistol added to the roster, three would come off.

So I would encourage the Court to look at the legislative findings for that where they talk about microstamping. And I would also say that I agree --

THE COURT: I will look at that. I know judges, particularly in the Supreme Court, say you can't really put much faith or trust or reliance in legislative findings and discussions. But, in any event, it just, on its face, sounds a little suspicious, "Okay, if you microstamp, then we can take three guns off and we'll add one," it just sounds to me that California is trying to limit the number of handguns.

MR. SAROSY: So to get back to one of your earlier points, and then I will answer that question, I agree that microstamping does not enhance the safety of the gun itself -- right? -- like chamber load indicators or magazine disconnect, but it does mean it has nothing to do with public safety, right? Being an investigative tool is part of public safety.

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That falls within the umbrella of public safety.

Because as Special Agent Supervisor Gonzalez

testified, microstamping can help law enforcement more -- at

least provide a lead and hopefully help more quickly identify a

shooter, and which is especially helpful in a serial killer

situation. And we've heard -- I know plaintiffs have put

forward all these opinions about how it's not useful, but you

can make the same arguments about serial numbers not being

useful when serial numbers on firearms became -- first came

out. You could easily remove a serial number from a gun. It

is very -- it is burdensome for manufacturers to add serial

numbers to firearms.

THE COURT: I wouldn't think it would be that burdensome, certainly not as burdensome from a technological standpoint, at least today, with it in microprint.

MR. SAROSY: But Your Honor was talking about how you have to assign a unique microstamp to each firearm. You have to assign a unique serial -- so that's what I'm speaking of. You have to assign a unique serial number to every firearm. And you can easily scratch off a serial number, but there are criminal penalties for doing so. And just because somebody can get around the law doesn't mean the law is unconstitutional. And that is ultimately the question here. Plaintiffs are not --

THE COURT: But -- no, I appreciate your argument.

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I'm not trying to beat you up. I'm just trying to challenge what you're saying.

There's a lot of things that we could do to help law We could get rid of the Fourth Amendment. enforcement. see what I'm saying? And I see that all the time.

This Supreme Court -- and I disagree with them on this one -- they're saying the pings you can get from a cell phone -- you know, person has a cell phone and you could see where they are if they're located next to the crime, that that information requires a warrant to get off. Justice Alito disagreed with that. But Justice Roberts, I think he wrote the opinion that in this modern day and age, cell phones have this special protection. But, you know, you could do monitoring and surveillance of a person, see where they go, but that would be cost prohibitive.

The point I'm trying to make is there's a lot of things we could do to aid law enforcement. But if the Constitution says there's privacy or there's the right to bear arms, you can't -- can't use the police power regulation to trump the constitutional right.

MR. SAROSY: So I --

THE COURT: You're saying in this case there isn't a constitutional right. That's your first argument because they fail on the first step.

MR. SAROSY: Well, what I'm saying is that the

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1 argument made by plaintiffs is about effectiveness of 2 microstamping. They are not -- they are not saying that it 3 burdens the right to keep and bear arms. And plaintiffs' claim that it's not feasible.

But we have evidence from two of their witnesses, from Mr. Beddow who studied it, and said in 2008 -- so almost 15 years ago -- that it actually is feasible. The alphanumeric version of microstamping is feasible.

THE COURT: I heard him to say it was not technologically feasible for commercial purposes because that was only one specific weapon that you had to do with it. think it was in response to my questions, you couldn't do it in a uniform way that would be helpful and not burdensome to the industry.

MR. SAROSY: He did test it across, I think, four different manufacturer type of firearms. He tested it across a Smith & Wesson and I think a Seecamp and AMK [sic]. I honestly forget the exact manufacturers, but it's not as if he tested it only for one manufacturer. He tested multiple semiautomatic pistols from different manufacturers.

And the theme across almost all of them was that the microstamp on the firing pin remained legible after thousands or hundreds of rounds of firing, and that the microstamp was legible at least -- there was an average transfer rate of at least 76 percent.

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And then you have Mr. Fatohi from the Trade

Association for firearm manufacturers who admitted that his

employer, NSSF -- I forget the exact name for the acronym -
that the NSSF admitted that microstamping on one place is

feasible, and they admitted that in 2017.

So this whole argument about it not being feasible, I think plaintiffs have actually conceded the opposite, that it is feasible. And the Ninth Circuit has already rejected the argument made by -- they rejected a similar argument about microstamping not being feasible, saying that just because fire manufacturers have refused to do it doesn't mean it's unfeasible.

You know, the -- you can't -- you know, I think overall in consumer product safety -- and at the end of the day, firearms are a consumer product. And I'm not a consumer product expert, but just from my personal -- seeing how consumer product safety works when it comes to airbags or baby products or cars, that there is a phaseout period where, as technology develops, you phase out the older products that are less safe. And I think that is the intended purpose of the three-for-one provision, it's to phase out those older products.

And I know plaintiffs also, you know, say the grandfathering in of the old products is problematic. But if you didn't grandfather in those products, then the list -- the

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1 roster would be substantially low. Because if you didn't grandfather those in and then the firearms manufacturers didn't 2 3 innovate, as they have not with microstamping, then there would not be -- there wouldn't be that many guns on the roster. 01:56PM THE COURT: Then you have a constitutional problem. 6 MR. SAROSY: And then you have a constitutional 7 problem. So you can't have it both ways. And --8 THE COURT: Or you could say, "No good deed goes unpunished." 01:57PM 10 MR. SAROSY: Yeah. Yeah. THE COURT: But that explains the grandfathering. 11 But I'm struggling. Help me on the law enforcement exception 12 13 because we're not talking about, you know, sometimes law 14 enforcement, depending on the assignment, they need almost 01:57PM 15 paramilitary-type weapons to deal with the threats that they 16 have to deal with. But now we're just talking about handguns. 17 Why should law enforcement have the best handguns and not a 18 law-abiding citizen? 19 MR. SAROSY: So I want to clarify the law 01:57PM 20 enforcement exceptions because I don't think they've been 21 really clarified by plaintiffs. 22 THE COURT: Okay. 23 MR. SAROSY: So the exceptions are at Penal 24 Code 32000, and there are three groups -- subdivision (b) (4), (b) (6), and (b) (7) -- and the groups are treated differently. 01:58PM 25

(b) (4) has, I would say, the most flexibility. And those are listed agencies, including DOJ, police departments, sheriffs, marshals, Highway Patrol. And that group, the (b) (4) group, can purchase off-roster firearms and then can resell them in a private party transaction. So for whatever reason, that's what the legislature decided for those groups, that that's how it would work.

And then what plaintiffs failed to clarify is that there's a (b)(6) and (b)(7) group that actually has further restrictions, and those are other law enforcement agencies—or there are other agencies that have law enforcement officers. So like Department of Parks and Recreation, Department of Fish and Wildlife.

And those -- the restrictions there are that, one, they can't resell them in private party transactions; two, they actually have stricter training requirements for officers from those entities. And I believe in the (b)(7) group for sure -- I forget off the top of my head whether the (b)(6) group -- individual officers cannot purchase them. It's the entity -- only the entities that can purchase them.

THE COURT: So am I to assume the exception for police officers is because legislature believe they will be more trained on firearms?

MR. SAROSY: I think so. And I think that it's not, only -- I think that's a correct assumption in terms of the

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average -- I think the average police officer. And the average law enforcement official in the agency listed in (b)(4) have more firearms training than the average civilian, the average law-abiding citizen.

Mr. Boland, I believe, talked about the amount of training that he had or his students had, but, you know, there was -- I think those are folks that are getting CCWs or concealed carry permits. And to get a concealed carry permit, you do have to have more training. But there is no evidence presented by plaintiffs that the amount of training that one does for a CCW or an average civilian gets is more or equal to the officials listed in (b)(4).

And, also, the whole, you know, discussion about, you know, the exceptions — law enforcement exceptions is, I think, actually not really relevant to the Second Amendment claim that plaintiffs make. In Pena, they actually raise an equal protection claim saying that, well, all these law enforcement officers have these exceptions and are able to purchase, you know, these off-roster firearms. And that's unfair because we, as average law-abiding citizens, cannot do so. And Pena not only — they rejected that claim. And plaintiffs also don't bring an equal protection claim here.

So I think -- I'm happy to help the Court understand those exceptions, but I really don't think that the -- those exceptions are really relevant to this discussion.

1 And, you know, we did have testimony from 2 Mr. Gonzalez about the amount of training that he had before becoming -- before joining the DOJ or becoming a special agent 3 and special agent supervisor at the Bureau of Firearms. the only evidence we have about the amount of training that law 02:01PM 5 enforcement officers get before using off-roster firearms. 6 THE COURT: I appreciate that. 8 Let me take you back just a bit. And I'm not trying 9 to be smug. I'm taking arguments to the extreme to test it. 02:02PM 10 Instead of the three requirements that are at issue 11 in this case, how about if California said you can only sell 12 squirt guns? Would that satisfy the first step? MR. SAROSY: I guess it would depend if a squirt gun 13 14 is considered an arm. And there are cases challenging --02:02PM 15 THE COURT: You can only sell BB guns. And assume the grandfather clauses -- so you have all of the old weapons 16 17 still on the register, and you have the law enforcement 18 exception, for whatever reason that applies. In my 19 hypothetical, would the first step be satisfied that this is 02:02PM 20 protected by the plain text of the Second Amendment? 21 MR. SAROSY: In your hypothetical, is that going 22 forward that anybody can only buy a BB gun? 23 THE COURT: You can only sell BB guns. 24 MR. SAROSY: Can only sell BB guns. So I think with 02:03PM 25 the -- you know, Heller saying that the handgun is a

1 quintessential self-defense weapon, then I would say, yes, the 2 plain text would cover that and you would move --3 THE COURT: To step two. 4 MR. SAROSY: -- to step two. 02:03PM THE COURT: So why is, in that hypothetical, step one satisfied, but in this case, these three are not? 6 7 MR. SAROSY: Because there are other handguns that 8 There are new revolvers being added to the roster because the roster does not -- there are no chamber load 02:03PM 10 indicator or magazine disconnect, microstamping requirements 11 for revolvers, one, or for single-shot pistols. And there is 12 also, you know -- and your hypothetical said you cannot sell at 13 all anything other than a BB gun. 14 And there are exceptions to the Unsafe Handgun Act 02:04PM 15 for the new semiautomatic pistols, and the plaintiffs have 16 taken advantage of those exceptions. So not only are there 17 more variety of guns available, there are also guns that are 18 actually being added to the roster that are new, in addition to 19 the similar handguns that we've talked about, and there are 02:04PM 20 exceptions in the hypothetical that you posed that there were 21 no exceptions. 22 And, you know, again, it goes back to types of 23 Semiautomatic pistols is not the only type of handguns. 24 handgun. It may be plaintiffs -- you know, what they prefer to use as a handgun, the most modern semiautomatic pistol, what

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they prefer to use as a handgun. But that is not what -- the Supreme Court did not say that the most modern semiautomatic pistol is the quintessential self-defense weapon. They said the handgun is the most quintessential self-defense weapon. And we showed the Court examples of different types of handguns that are on the roster.

And, again, we have to ask why have no new handguns been added to the roster? And Your Honor mentioned 2013. And it's not because the legislature said you cannot add more guns to the roster. That's not what it said. It said you need to have microstamping to have a gun added to the roster. And firearm manufacturers have refused to do so.

I've heard nothing from plaintiffs about attempts by manufacturers to do microstamping and it failing. There's been no evidence of that whatsoever. Everything saying -- them saying, "It's not commercially popular" or "It's not commercially feasible," "We haven't done R and D." There's been no evidence that they've even tried. And that is the very contradiction that I think the Ninth Circuit recognized in Pena.

This is not a law that is saying you can't add more guns to the roster. It's saying in order to add a gun to the roster, you need microstamping in addition to these other two requirements. And there were guns added to the roster after chamber load indicator and magazine disconnect became

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requirements.

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Before microstamping, there were guns that were added to the roster, and manufacturers did do chamber load indicator and magazine disconnect. There was that innovation microstamping. And that's not because the legislature said you can't add any more; it's because manufacturers didn't comply or

cars sold whatsoever because manufacturers refused to implement

there were about 32 handguns on the roster that have magazine disconnect mechanism and chamber load indicator. And to talk

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about the benefits of the, you know, most modern semiautomatic pistols that the plaintiffs want to buy, I believe plaintiffs' counsel describes them as mostly ergonomic. They do not improve the structural integrity of the gun. They do not improve -- you know, there are marketing claims that it improves the accuracy of the firearm, but it's still a firearm at the end of the day. Or the new ones shoot just like the older generation ones.

And I think Mr. Gonzalez, on cross-examination, talked about it being an iPhone 10 versus iPhone 14. And the changes are either ergonomic or cosmetic. And if the industry can innovate in that way to create those kind of changes, as the Ninth Circuit again said in Pena, it makes you wonder why they have not innovated -- or tried to innovate in the microstamping space.

And to take a step back, also, the conversation that we're having right now, and I think pretty much the entire plaintiffs' argument, we're only talking about the first factor, the first of the *Winter* factors. We're talking about likelihood of success in the merits.

Plaintiff said multiple times that, "We don't do interest balancing anymore because of *Bruen*." Maybe on final judgment you don't do interest balancing. That's right.

That's the *Bruen* test. But we are in a preliminary injunction, and it is the plaintiffs' burden to show all four *Winter* 

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And Bruen did not overrule Winter. Bruen was not a preliminary injunction case. And it is plaintiffs' burden to show that they meet those factors and have provided evidence of those factors. And over one and a half days of testimony, the only evidence that they presented has gone to that first factor.

And not only -- I mean, the preliminary injunction is already an extraordinary remedy that is a high burden to meet, requiring a clear showing by plaintiffs. And they are seeking to enjoin the entire Unsafe Handgun Act. That is what is in their Amended Complaint. That is what is in their motion. I know plaintiffs' counsel stood here and said, "We're only seeking to enjoin chamber load indicator, microstamping, and magazine disconnect." I -- we can't take their word on that.

THE COURT: Well, I'm not going to declare unconstitutional the dropping test nor the firing reliability test.

MR. SAROSY: Okay. I appreciate you saying that, Your Honor, because the scope of the preliminary injunction that they are seeking, at least from my perspective, keeps changing. And that is also what plaintiffs did in *Pena* as well.

So even if they are not seeking to enjoin the drop

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safety or the firing test and the lab testing that is done, the requirements they are seeking to enjoin have been around since at least 2006. And because they are seeking to change the status quo, that is something that is akin to a mandatory injunction, which is, as the Ninth Circuit has said, disfavored, and also requires a — is subject to a higher level of scrutiny. And they must show that the law, in fact, clearly favor their position.

And I think Your Honor said that the evidence presented is -- I don't think you said "in conflict," but I think maybe you said "inconsistent" or it's at least debated. So I don't think plaintiffs have made that clear showing in that they have not met that higher burden.

And moreover, they're not only seeking to change the status quo of something that's been around since 2006, they're seeking to overturn a law that the Ninth Circuit has already upheld granted before *Bruen*. I understand that. But, also, the relief they seek is identical to the relief that they are trying to get from ultimate judgment.

And we have not done discovery. We are at very early stages. And it's just -- a preliminary injunction is not the right vehicle or the appropriate vehicle for the kind of relief that they are seeking here. And they're not only seeking to enjoin enforcement of the law, it would also -- if those three requirements were to be enjoined, it would prevent

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the DOJ from continuing to regulate the market of handguns. And then you would have handguns -- or at least -- you know, I 2 understand there are handquns grandfathered in, but it would at 3 least expand the number of handguns that could be sold without those safety requirements.

> And because Penal Code 32000 does not prohibit possession. It's not like the DOJ can go out and if the injunction was lifted, go back and say, "Well, you can't possess these anymore." The DOJ couldn't do that. And so you can't unring the bell, in other words, of enjoining those provisions.

And I have, you know, some case cites about how -if you're seeking -- if plaintiffs are seeking to upset the status quo, that there is a higher burden.

I'm happy to continue to talk about the likelihood of success, but I didn't hear anything about irreparable harm or the balancing of equities and public safety. I especially didn't hear about irreparable harm. The only irreparable harm identified in the briefing by plaintiffs is that there was a Second Amendment violation.

One, we disagree that there's a Second Amendment Two, the plaintiffs testified, again, that they violation. have handguns, multiple handguns, and are able to defend themselves in their home and in public. So at least from the time from now until judgment, there's no chance -- there's no

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testimony that they were unable to defend themselves in that time. And that is the -- that's what the Second Amendment is about. It's about arms self-defense.

And they testified that they are able to defend themselves. Well, I don't know if they said they were exactly able to defend themselves, but the fact that they have handguns and long guns also, they are able to defend themselves. And it would actually be the DOJ that -- well, let me step back for a second.

The timing of the preliminary injunction, when it was sought, also demonstrates the lack of irreparable harm.

This case was filed August 1st of last year. The motion was not filed until November 15th. That's three and a half months later. Well, if there was really irreparable harm, why was a PI motion not filed soon after the case was filed?

And I think we've actually established through defense -- through Mr. Gonzalez that the DOJ would be harmed, and because being unable to enforce the law is a form of irreparable harm. That's something that the Supreme Court said in Maryland v. King. The DOJ would lose fees if the entire Unsafe Handgun Act were to be enjoined, but Your Honor said you're not inclined to do that. So I don't need to talk about that.

Then I mentioned about the unregulated -- or uncontrolled sale -- increasing sale of handguns without

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chamber load indicators and magazine disconnects. So you can't unring that bell, like I said. And --

THE COURT: You're very good on your part to remind us all that there are the Winter factors that I've got to But given I see those Winter factors and apply them so much, I feel comfortable I know what they are. I think I understand all the arguments that you made just now but also in your brief.

So I know my questions have really focused on the likelihood of success on the merits, but that's where I feel I need the most guidance from both sides. And now, after listening to you, reading your briefs, hearing the evidence, I think I understand your position on step one. But I'd appreciate your input and views on step two.

MR. SAROSY: Okay.

THE COURT: And I still -- I'm not sure I got it.

What are the metrics that I'm supposed to follow when I'm looking for analogues? It doesn't seem to me -- maybe it's a terrible analogy, but in the area of civil rights, we have what we call qualified immunities.

So, hypothetically, in an excessive force case, and maybe even tragically there's a death or serious bodily injury, first you have to determine whether there's a constitutional violation of an excessive force, but then there's qualified immunity under federal law if the right was not clearly

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And I'm not saying that that's the same analysis I have to do here, but I have to determine whether there is a similar historical analogue that was established. How do I go about -- what am I thinking about? I know the plaintiffs made the argument you can't just say "public safety." That's too broad.

Just like in the area of civil rights, it's how you define what law is clearly established. The more specific you get, nothing will be clearly established. The more general you get, everything's clearly established. In this case, is there a historical similar analogue? And what am I -- what am I looking for to find that?

MR. SAROSY: Just as a flag for myself and for you, I would like to talk about the interest balancing --

THE COURT: Sure.

MR. SAROSY: -- related to *Bruen*. But I would talk about that after answering your question, because plaintiffs' claim that interest balancing is completely irrelevant, and it is for preliminary injunction.

THE COURT: Okay.

MR. SAROSY: But to get to your question about the step two, the historical analysis, so our position is that at a preliminary injunction stage, the burden for the historical tradition is actually on plaintiffs and not on defendant. And

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it is true that typically in -- that the burdens of a preliminary injunction tracks those at trial, and that is in the First Amendment context.

But that case law, again, has to do with the First

Amendment and has to do with the Government having to show that
there is a compelling interest for the restriction. And the
compelling interest analysis is something that is completely
different from the kind of historical analysis that Bruen
requires.

Both Dr. Cornell and Mr. Cramer talked about how difficult -- and I think Mr. Cramer said it is a laborious process, it is a slow process, and that it would take a very long time to do the kind of historical analysis that Bruen requires. And Dr. Cornell said something along those same lines. And I think he said it would require three to six months for a full historical analysis.

And so if you were to take plaintiffs' view on how step one is going to work -- would work, and then you would take plaintiffs' view that the burden is on the defendant to show the historical tradition, then that sets it up so that every firearm regulation challenge in the Second Amendment in a preliminary injunction could fail, because it is so easy to get past step one.

And then in a PI, the timelines are so condensed that that kind of historical -- the full historical analysis

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          that Bruen requires cannot be done.
                     THE COURT: But the problem with that is the
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          plaintiffs say there are no historical analogues that are
          similar.
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                     So the way you're suggesting, they're supposed to
          give me the analogue that would say it's okay what the
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          Government did?
                     MR. SAROSY: In a way, I guess it seems like they
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          have to try to prove the negative. But --
                     THE COURT: See how conceptually that --
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                     MR. SAROSY: No, I understand. But --
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                     THE COURT: Because they'll come back and say,
          "There are none."
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                     And I'll say, "Well, convince me how there are
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          none."
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                     MR. SAROSY: And that's what they're -- I mean, that
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          is immediately what they are doing here. But their expert also
          did identify, you know, potential historical analogues and
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          said, you know, they're not analogous.
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                     THE COURT: That's because you identified them.
                     MR. SAROSY: I think -- well, I don't recall off the
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          top of my head if Mr. Cramer -- I thought Mr. Cramer did
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          identify something. But regardless, you know, just stating
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          that that's -- that is the position about the burden.
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                     THE COURT: So just so I understand, it's the burden
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on them to prove the negative? 2 MR. SAROSY: It's the burden on them to prove that 3 there is no historical analogues. THE COURT: Okay. MR. SAROSY: And plaintiffs could potentially point 02:22PM 6 to Baird v. Bonta which disagreed with that position, and so I'm just going to point the Court to it. It's at 2022 Westlaw 7 17542432, and that was Judge Mueller in the Eastern District. 8 THE COURT: Okay. The --So putting the burden -- you know, "who 02:22PM 10 MR. SAROSY: has the burden" issue aside, assuming defendant has the burden, 11 I think we met that burden. And how the analysis is supposed 12 to be done, at least for a law like on the Unsafe Handgun Act 13 14 which involves -- it is regulating revolvers in addition to semiautomatic pistols. But what plaintiffs are challenging are 02:23PM 15 the semiautomatic pistols. So that is a new technology. 16 17 And Bruen talks about how -- that the more nuance approach is required for unprecedented societal concerns or 18 19 dramatic technological changes. And Dr. Cornell and Mr. Cramer 02:23PM 20 both agreed that handguns in general or pistols were not as 21 common as long guns at the time of the Founding. disagreed on, you know, how much -- like they both agreed that 22 23 they were not as common. 24 And so I think the safety of semiautomatic pistols

and the consumer safety that needs to be protected from them

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falls into the category of unprecedented societal concerns or dramatic technological changes. And so in that category, you don't need historical twins, as the Supreme Court says, you need analogues.

And how you figure out or do that analogical reasoning is at page 2133 in *Bruen*, they talk about how and why the regulations burden the right to arm self-defense. So you have to look at the comparable burden between the historical analogues and the current regulation and the -- and the comparable justification of those regulations. Those are the metrics, at least to the extent that they are clear. I don't think they are. But those are the metrics outlined in *Bruen*.

And applying them here, you have the gunpowder laws where I believe those laws restricted possessing gunpowder in your home or how it was maintained in your home. And so in terms of the burden, that is a far more severe burden than what the Unsafe Handgun Act imposes with the three requirements we've been discussing for gunpowder to talk about what you do in your home, which was the very issue in *Heller* about how you exercise your Second Amendment right at home.

For the proofing law or the stamping law, my understanding of that law is that for every gun sold to a member of the public, it had to be stamped by the Government.

The Unsafe Handgun Act does not require the DOJ to give a stamp of approval to every single gun sold to a member of the public.

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What it requires is three tested models be sent to a lab and tested, and then one of those samples be sent to the DOJ.

The DOJ is not going and stamping every semiautomatic pistol that is sold in the State of California. And so that is the comparable burden. I would say the burden of the historical analogues is greater than -- than the Unsafe Handgun Act.

In terms of justification, they all had to do with public safety of a consumer product and ensuring that the ammo, at least for the gunpowder, and the gun itself did not present unnecessary or more dangers to those who possessed the guns and the people around those who did possess those guns.

THE COURT: I understand your argument with respect to the first two requirements, but I still have a problem with the justification on the microstamping.

MR. SAROSY: So, again, I think -- sorry.

THE COURT: Because, again, that's investigative -criminal investigative purposes. It's not for safety. So I
can understand gunpowder explosion, fire, that's a real danger.
And I assume the chamber load indicator and the magazine
disconnect mechanism, that's for -- to try to reduce or
mitigate accidental discharges. Again, that's pretty
important. And I think now the record is that there were 39
accidental deaths with firearms.

So that's -- that has to get your attention. But

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aiding law enforcement with the casings left at a scene, if 1 2 they're left at the scene for a firearm that was most likely 3 stolen, I'm not getting sick to my stomach thinking about death or injury. MR. SAROSY: So I think this -- the serial killer 02:27PM 6 example is an example that would fall into public safety where 7 microstamping could help in that situation. Because my understanding, at least from the testimony of Agent Gonzalez of 8 how you try to identify a shooter currently without 02:28PM 10 microstamping, is that you look at the striations on the 11 casings or the bullet -- and I'm sorry if I'm getting the 12 technology wrong or which part you look at -- but you look 13 through a microscope and compare the striations, and then you have to get the gun itself that was used in the shooting to 14 02:28PM 15 match up the striations to ensure that those bullets or 16 cartridges came from that specific gun. So you need the gun. 17 You need to find the gun itself -- right? -- to figure out --18 or to confirm that that gun was used in the shooting. And --19 THE COURT: Counsel has to catch an airplane. 02:28PM 20 MR. WOODS: I apologize, Your Honor. 21 (Mr. Woods leaves the courtroom.) 22 THE COURT: No apologies. 23 I'm just not moved by the comparison to a serial 24 Maybe it's because the death penalty habeas cases I've 02:29PM 25 had or the murder cases I've had. It's -- usually what catches

those is the DNA; it's not a serial number on the weapon. 2 lot of the serial killers, unfortunately, use knives and 3 torture. MR. SAROSY: I mean, the recent Stockton serial 5 killer was using a firearm. And I'm sure there are other 02:29PM examples as well. There's also no evidence put forth by 7 plaintiffs. I know there were a lot of arguments by plaintiffs 8 that guns used in shootings are usually stolen guns, but there is no evidence about that. 02:29PM 10 So I -- yeah, I -- I'm not sure if I can add much 11 I just -more. 12 I think you would have to agree that the THE COURT: 13 purposes behind the chamber load indicator and the magazine 14 disconnect mechanism, the public safety to avoid or limit 02:30PM 15 accidental discharges is more apparent, at least easier for me to understand than the benefits to public safety aiding law 16 17 enforcement in investigation. 18 MR. SAROSY: I agree. It's easier to see the public 19 safety benefit of something that improves the safety of the 02:30PM 20 product itself. But I think the position is still that 21 microstamping falls within the umbrella of enhancing public 22 safety. 23 THE COURT: And through what analogue? Just so I 24 know that. Assuming they've met their burden of saying there's none, what analogue would you point to for the microstamping

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for me?

MR. SAROSY: I would say the proofing or the stamping laws that Dr. Cornell talked about. Moreover, again, we are at the preliminary injunction stage. As Dr. Cornell said, I think repeatedly, because plaintiffs pushed back on him not providing every single law that he's looked at. He has not done the full historical analysis yet. And so I understand we're being pushed on, well, which historical analogues are there. And Dr. Cornell did not provide a full compendium of every potential historical analogue.

Well, you know, we've had five weeks since the Court issued the order to present this evidence, and we did present Dr. Cornell as a witness, and we presented some laws. And as he said, the laws that you find are continuing -- you continue to find new laws.

So I can't guarantee that there are going to be better analogues to microstamping, but that is why a PI -- or, sorry -- preliminary injunction is inappropriate here because that historical analysis -- the full exhaustive historical analysis needs to be done --

THE COURT: I understand that.

MR. SAROSY: -- to find those analogues.

THE COURT: I'm not trying to pick on you, but let's go back to proofing and stamping. Was that combined? In other words, proof -- did they look at the barrel and then they

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deemed it was safe and then they stamped it? Or is it
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          something separate?
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                     Maybe a better question is can you explain to me
          what the proofing requirement was all about and what the
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          stamping requirement was all about?
                     MR. SAROSY: My understanding is, unfortunately,
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          what I already said. So I don't -- unfortunately, we can
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          explain it better in supplemental briefing --
                     THE COURT: Okay.
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                     MR. SAROSY: -- to be honest. Because of the
          division of labor, that was Mr. Woods. So I don't want to make
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          up something.
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                     THE COURT: Okay. Appreciate that. I won't hold
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          you to it.
                     MR. SAROSY: So that's something we would certainly
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          address.
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                     THE COURT: Do you have any understanding? Because
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          I don't.
                     MR. SAROSY: My understanding is that a handgun that
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          was going to be sold to a private individual as opposed to one
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          sold to a militia or the military, that it needed to be
          inspected by a government official, and then it would be
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          stamped in some way.
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                     THE COURT: Inspected just like this looks --
                     MR. SAROSY: I think so, Your Honor.
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                                                            I don't,
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again, want to inaccurately describe the law.

THE COURT: All right.

MR. SAROSY: But that is something we can certainly explain further on in supplemental briefing.

THE COURT: Right. It would seem to me, for whatever it's worth, that not fully understanding the proofing and the stamping, that that would be an appropriate analogue for the drop safety and the firing reliability test. But I'm still -- I don't see the direct correlation or comparison with chamber load indicator and the magazine disconnect mechanism. But just off the top of my head.

MR. SAROSY: Well, I don't -- I think the problem of safe storage of handguns or safe storage of guns and access to firearms was different at the time of the Founding than it is today. And the proliferation of -- there are more firearms in the United States of America than there are people.

And I think Agent Gonzalez testified that of the many searches and investigations that he's done, that many firearms are not safely stored. And I know plaintiffs emphasize about firearms training. And sure, that -- I'm sure there are several firearm owners who are properly trained and properly store their firearms like Mr. Boland and Mr. May. But just because some do it, does not mean everyone does it.

And in the studies that we talked about during Mr. Gonzalez's testimony, especially the General Accounting

again, want to inaccurately describe the law.

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Office that he -- where it talked about three different 1 2 examples where a child or a teenager had access to a gun, didn't think it was loaded, fired it, and killed their sibling, their spouse, or something like that, you know, I don't know of 02:35PM a similar problem around the time of the Founding. And so I think that is where the more nuance 6 7 approach that Bruen describes about, you know, having 8 historical analogues but not historical twins. So there can be -- you can have a wider scope of what falls into the -- into the category of the historical analogue. 02:35PM 10 11 THE COURT: Understood. 12 MR. SAROSY: And I think Your Honor asked plaintiff 13 about data showing how the chamber load indicator, magazine disconnect mechanism, whether those -- if there's any data 14 showing that those reduced accidental deaths. 02:36PM 15 legislative findings for AB 2847, which is the recent 16 17 microstamping law, Subdivision (b) -- I can read it for

"Data from the CDC fatal injury reports" -which I think is what plaintiffs had talked about
briefly -- "indicate that California's rate of
unintentional shooting deaths has fallen
substantially since the Unsafe Handgun Act's
initial provisions went into effect in 2001.

"In the preceding five years between 1996 to

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Your Honor -- says that:

2000, nearly 400 Californians died as a result of unintentional shooting injuries.

"By 2014 to 2018, the most recent five years of data available from the CDC, the rate of unintentional shooting deaths in California had fallen by two thirds."

So that -- I mean, obviously, I don't have the CDC data myself, but that is what the legislature found, right?

And so there is the legislative finding that chamber load indicators, magazine disconnect mechanisms actually do and have helped prevent accidental discharges in the State of California, which is consistent with the Government or the General Accounting Office study that Agent Gonzalez talked about. It's consistent with the other two studies that he read statements from where it's something along the lines of anywhere from one third to a fourth of the accidental death -- accidental shootings that were studied could have been prevented by a chamber load indicator or magazine disconnect mechanism.

Because in each of the -- in each of those studies, what the researchers did was they looked at the case files of the shootings or the deaths and categorized them based on whether somebody said in the police report or the case file that they thought the weapon was unloaded during the shooting.

And they -- I think the General Accounting Office

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looked at multiple metropolitan areas. I think the ISMACH study, I-S-M-A-C-H study looked at death or shootings around the metropolitan Atlanta area, and the Vernick, V-e-r-n-i-c-k, 2003 study looked at deaths in Maryland and Wisconsin. So those three studies combined look at different parts of the country to see how these devices could help prevent accidental shootings.

And you combine that with this finding in AB 2847, I think that is more than sufficient to show that these devices can help prevent deaths. It may not, as Agent Gonzalez said, prevent every death. That's not the point of any safety measure is to prevent every death. Maybe that is the dream, the optimistic goal, but any public safety measure is not going to prevent every death.

In terms of the burden on the Second Amendment from a chamber load indicator, there are multiple ways to design a chamber load indicator, and you can design it in a way that meets the regulatory requirements that does not affect the cite. And I think the evidence that it does affect the sight was weak.

And the Ninth Circuit actually talked about this in Pena where it said that the chance -- we were talking about a magazine disconnect preventing firing when there's one cartridge in the chamber and you can't fire it if the magazine is out -- the Ninth Circuit did recognize that in Pena but

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characterized it as a rare occurrence.

And so -- and, you know, I think the scenario that we talked about was -- it's called a tactical reload is what is It seems like something that is a situation typically used by law enforcement rather than an average civilian who's defending themselves where they use all the rounds in the magazine. And then they need to -- you know, they can't fire that one round in the magazine after that. mean, typically you would fire -- you know, if you have ten rounds in a magazine, you would have fired nine already. And then you get another magazine and reload.

So I think the burdens are none, and there are demonstrated safety benefits from them.

THE COURT: I appreciate the points you made. would just ask you to repeat them again in your briefing.

MR. SAROSY: Sure.

I can talk about left-handed shooters.

THE COURT: I'd like you to, but I have a -- I'm not worried about the time if you're not. This is important to me. I want to -- I'm not going to shut you down. But I have a question that I neglected to ask your colleagues on the other side. And I was going to give you a short, short rebuttal, and then you'll have the last word, if you want it.

The question I have is Justice Kavanaugh's wording in Bruen said:

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"In particular, Justice Kavanaugh 1 2 emphasized" -- this is your brief -- "that 3 'presumptively lawful measures that Heller identified, including laws imposing conditions and qualifications on the commercial sale of arms 02:41PM remain constitutional.'" 7 Do you have any idea what conditions and qualifications on the commercial sale of arms he's talking about? 02:42PM 10 MR. SAROSY: I think that question is one that I think was debated a lot among courts before Bruen about what 11 12 qualifies or falls into that category because it can be 13 construed broadly. I would say the Unsafe Handqun Act does fall within that category. And I think that is what Pena 14 02:42PM 15 actually said, you know --16 THE COURT: Well, I'm a little bit clueless on this, 17 I'll confess. So I'm not holding it against you. And I know 18 you're going to say that this falls within that. But can you give me the absolute easy case that this is talking about, 19 whether it was in Pena or any other -- I really don't know what 02:42PM 20 21 conditions and qualifications. MR. SAROSY: So I know Pena said that the Unsafe 22 Handgun Act, quote, "regulates commercial sales, not 23 24 possession." And that was at page 973. 02:43PM 25 THE COURT: How about -- let me put aside the -- put

aside Pena and put aside the UHA. 1 2 My question is, what, historically, are the legitimate conditions and qualifications that had been placed 3 on the commercial sale of arms? Do you understand the question 02:43PM 5 I'm asking? It's a very basic one. I don't -- I'm not familiar with any condition or qualification on the commercial 6 7 sale of arms specifically. I think in Teixeira vs. Alameda 8 MR. SAROSY: Sure. County, 2017, Ninth Circuit case -- and Teixeira is spelled 02:43PM 10 T-e-i-x-i-e-r-a [sic], I think -- which involved, I believe, 11 possession for sale of guns on county fairgrounds. So I would say where guns can be sold. 12 13 THE COURT: Could be who? Like felons? Is that --14 MR. SAROSY: No, I think it was a restriction on 02:44PM 15 guns being sold on a county fairground. So I guess like the 16 placement of where guns can be sold could potentially fall 17 under that. You know, I think felons is a separate category that --18 19 THE COURT: That's not what he's talking about. MR. SAROSY: I think there are categories of 02:44PM 20 21 where -- I think, like, background checks falls under the 22 conditions for commercial sale. 23 THE COURT: Okay. That's what I'm asking. 24 MR. SAROSY: You have to get a background check --02:44PM 25 right? -- before you can purchase a firearm.

conditions and qualifications. 1 2 THE COURT: Got you. 3 MR. SAROSY: That is the easy one. I think that's, by far, the easiest is background checks. Arguably serial numbers could fall, I guess, into 02:45PM 6 that because you can't purchase an unserialized firearm. that goes through the whole ghost gun issue where you make your 7 own and serialize. But I think serial numbers fall within that as well. 02:45PM 10 THE COURT: Okay. Thanks. MR. SAROSY: I can move to left-handed shooters if 11 12 that's okay, Your Honor. 13 THE COURT: Sure. 14 MR. SAROSY: I didn't hear any testimony that 02:45PM 15 left-handed shooters are impacted by the chamber load indicator 16 or the magazine disconnect itself. I think the argument is 17 that there are not options on the roster for left-handed 18 shooters. But we didn't establish with Agent Gonzalez that 19 there are options for left-handed shooters. There are semiautomatic pistols on the roster with 02:45PM 20 21 an ambidextrous magazine release and an ambidextrous external And plaintiff said for Glocks, which have an internal 22 23 safety, that that's not an issue for left-handers because it's 24 internal, so you don't have to use your hand to turn the safety

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on or off.

And so I -- and we also heard testimony from 1 Mr. Gonzalez that left-handers are not -- they train themselves 2 3 to use guns that are designed for right-handers. presumably that's what they've done up until the last ten years that -- when the ambidextrous options became more widely 02:46PM available. 6 And the left-handed shooter argument was also 8 something -- and I'm sorry. I sound like a broken record

coming back to Pena. It's because a lot of these were addressed in Pena. Including this left-handed argument where one of the plaintiffs actually did not have a right arm and wanted to be able to buy a gun that was better designed for left-handed shooters, but in Footnote 8, page 978, the Court said that that was little evidence that the handguns unavailable for purchase in California are materially more effective for self-defense than handguns currently for sale in the state.

And the left-handed shooter argument they called it slim evidence, I believe. So, again, not my words. reading what Pena says. So I don't think the left-handed shooter argument is enough to carry the day here.

So I think I've answered all the questions that the Court asked plaintiff. But if I did miss something --

THE COURT: No, you didn't. That's all that I have for you.

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1 MR. SAROSY: I've been up here for a while. 2 want to say one more thing about interest balancing and then I'll step down, if that's okay. 3 THE COURT: All right. 02:48PM MR. SAROSY: Plaintiffs said multiple times that 6 interest balancing is irrelevant here because of Bruen. 7 the plaintiffs chose the remedy of preliminary injunction. 8 as the Court knows, the Winter factors require a balancing of equities, including a consideration of public safety. And so 02:48PM 10 those public safety interests were all highlighted in Pena. 11 And I'm not going to repeat them for the Court because I've 12 already, like I said, sound like a broken record. 13 So the public safety and the interest balancing is 14 relevant because plaintiffs chose the remedy of a preliminary 02:48PM 15 injunction. So it's incorrect to just say that interest 16 balancing is irrelevant. It's not. It's irrelevant for the 17 purpose of a preliminary injunction even if it's not relevant 18 for the, you know, the Second Amendment analysis that you would 19 do in final judgment. 02:48PM 20 So I just want to correct that because And -- yeah. 21 I -- there were multiple times where plaintiff said that -- and 22 they said in their briefs that interest balancing is 23 irrelevant. And it is here for the purpose of a PI. 24 I do want to say, before I forget, if the Court were 02:49PM 25 inclined to grant the preliminary injunction, we would ask that

the Court stay that -- the effectiveness of that injunction 1 2 until we have time to seek an appeal. Because there have been instances where a law was enjoined without a stay, and then 3 there was a large flow of the items that were restricted into 02:49PM the State in the interim. So I do want to just flag that for the Court. 6 7 THE COURT: I appreciate that. Thank you. 8 I need to give the court reporter a short break and then we'll have a short rebuttal if you want to take advantage 02:49PM 10 of it. I assume you want to take a short advantage of it? 11 12 MR. FRANK: I would. (Recess from 2:49 p.m. to 3:10 p.m.) 13 THE COURT: Please be seated. 14 03:01PM 15 Let's hear the rebuttals. 16 MR. FRANK: Thank you, Your Honor. 17 So my dream would be to present a very clear 18 narrative from my notes, but the reality may be a little more 19 bumpy than that. So there were several points that the Deputy 03:01PM 20 21 Attorney General raised that were a response from plaintiffs. 22 The first point was -- well, actually, just to frame the tone 23 of my rebuttal. I mentioned earlier that in the pre-Bruen, 24 Pena litigation, Judge Bybee wrote a long dissent addressing 03:02PM 25 issues that we've addressed here today, which are how do we

look at this first step question? You know, are we dealing with a law that really does implicate Second Amendment rights or not?

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And what did Justice Kavanaugh mean when he said -or I think language appears in *Bruen* and *Heller* -- what did he
mean when he said there are presumptively lawful commercial
regulations? So most of my comments are going to fit in under
those two umbrella statements here hopefully.

So, first, it's true that there were no semiautomatic firearms available at the time of the ratification of the Second Amendment. But that doesn't mean we're now in this strange carve out from Bruen where we get to bypass the analogical analysis. There were commonly circulated weapons that people back then preferred and were widely owned for self-defense purposes. So laws that regulate those would be the logical place to start. It doesn't make the historical research impossible.

Next there's a difference between the chamber load indicator, the magazine disconnect mechanism, and microstamping that relates to public safety that's important. So the CLI and MDM are end user safety. They are meant to prevent people handling guns from causing harm to themselves or others.

That's distinct and different from the microstamping, which is nothing more really than a theoretical law enforcement investigatory tool. I think that's an important difference

that the Deputy Attorney General got near, but I don't think was perfectly clear. So I wanted to highlight the difference for the Court.

Now, as far as the feasibility issue, Mr. Beddow testified in -- not testified in 2008, but wrote in 2008 that it was feasible. But he clarified that it's not feasible to be implemented throughout the entire industry for hundreds of different firearm manufacturers across hundreds of different designs. And that's an important difference.

But, yes, in a laboratory where he looked at four different manufacturers' particular models, that's hardly representative of the hundreds, if not thousands, of different models that would have to adapt this. And to that end, the State of California, only -- only after the Bruen decision came down, and only after two lawsuits were filed, invited the public to -- or the firearms community to try to figure out how to implement microstamping.

So until microstamping was in the crosshairs that were -- that *Bruen* provided, then it got serious about trying to reach out to the firearms manufacturing world to see what we could do to make microstamping leap from the laboratory into actual implementation. So it's not exactly a good faith position.

So, next, the Winter factors and the constitutional fundamental rights context are different than any other normal

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civil litigation context. It's well-established that

constitutional rights are deemed irreparable if they're

violated even for moments. And in some sense, if the Court

meets us at the first factor and finds that we have proven that

there's a likelihood that we are going to prevail on the Second

Amendment claim, that's essentially dispositive of whether or

not we're entitled to relief.

And, moreover, enjoining microstamping, if the Court were just to enjoin microstamping, that would actually, in some sense, facilitate what the UHA was intended to do, because manufacturers would still have to comply with the CLI and the MDM requirements. So nothing would change as far as disrupting the status quo, even if that were really an important factor under Winter, which it's really not in this unique fundamental rights context.

So the State's argument that we failed to meet the rest of the high bar factors that you need to meet to get preliminary injunctive relief don't apply in this context right here.

And, third -- or fourth, perhaps, I lost count -- California passed a law, Assembly Bill 1327, and it was just preliminarily enjoined in the Southern District. And what that law intended to do was make the stakes of plaintiffs seeking to enforce Second Amendment rights in courts virtually impossible. It imposed a feeship provision.

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So if any gun rights, plaintiffs were to prevail on 1 2 anything less than the entirety of their case, if they were to 3 lose anything, they would be liable to pay the State's Attorney's fees. It's patent and constitutional -- blatantly 03:06PM unconstitutional, which is why Attorney General Bonta refused to defend it and necessitated Governor Newsom to step in. 6 that was the reason for the delay in bringing this motion for preliminary injunction, because we had to tell people that wanted to be plaintiffs to vindicate their Second Amendment 03:06PM 10 constitutional rights. 11 There's a serious looming financial noose over your 12 head, my head too, as counsel. The feeship provision would 13 have applied equally to plaintiffs and counsel. So it was 14 designed really in the wake of Bruen to prevent an onslaught of Second Amendment litigation of people seeking to vindicate 03:07PM 15 16 their constitutional rights. Patently unconstitutional. that explains the delay. 17 18 Counsel, please slow down. THE REPORTER: 19 MR. FRANK: I can. I apologize. 03:07PM 20 I also heard argument that it's not the State's 21 burden here to marshal events of historically analogous loss. 22. That is not true. That contradicts the plain language of 23 Bruen. 24 Bruen, at 2135, said that:

"The burden falls on respondents to show that

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New York's proper cause requirement is consistent with its nation's historical tradition of firearm regulation."

And I can't discern any language in *Bruen* that would dispense that requirement in the motion for preliminary injunction context.

Only a few more points here.

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So proofing and stamping laws are not microstamping analogues. They are, arguably, as I believe the Court noted — they're analogous to the fire testing and drop safety requirements. The analogue here for microstamping testing seems to be focused on the sorts of laws that were technology—driven investigatory aids. That would be because that's what microstamping does, that's the law we have to look to find. And I see nothing in the record that supports the existence of such laws back then.

So Justice Kavanaugh's Bruen language relates to a point in Bybee's dissent where he says that "presumptively lawful" does not mean "conclusively lawful." And this dovetails perfectly with the core of what we get from Bruen, which is that a law might presumptively be a constitutional, you know, intrusion or regulation, however you like to look at it, of the Second Amendment right, but a plaintiff can basically force the State to prove that historically we have laws that did the same thing and, therefore, it would be a

constitutional regulation. Presumptively means presumptively. It doesn't mean conclusively.

And there's some other language from the dissent that's important here. As Judge Bybee said, if there were somehow a categorical exception for these restrictions, meaning commercial restrictions, it would follow that there would be no constitutional defect in prohibiting the commercial sale of firearms. So there is a slippery slope here.

There's that slippery slope argument that really does apply here where if the Second Amendment doesn't protect your right to own any given gun, well, then now it's okay the State would be able to get away with the UHA. But then in five or ten years they would say, "You know what? We don't like striker-fired guns because they're used disproportionately by criminals. They're easy for people with 3-D printers to make. So we're going to get rid of striker-fired guns." So there go all your blocks.

And then they say, ten years down the road, "Oh, we don't like hammer-fired guns because hammer-fired guns can be manipulated by criminals as well," and there goes hammer-fired guns. Why couldn't we do that? That really does create a slippery slope.

The Second Amendment must protect a robust marketplace in the types of firearms that people have access to. Because if it doesn't, then we begin our dissension down

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1 the slippery slope of the State being able to say the 2 constitution says -- or rather the Supreme Court has 3 interpreted the constitution to say that you have a right to own an operable handgun in your self-defense. There's one 03:10PM 5 store downtown that's open three hours a day that sells the one 6 gun that you could have. There you go. There's your right to 7 self-defense. 8 What would stop that? A faithful reading of the language from Heller, language from Bruen and a close 03:10PM 10 inspection of Bybee's dissent. Bybee's dissent explains how 11 the commercial regulations of the sort that would apply to any 12 other type or thing are presumptively lawful. So if you don't 13 want a gun stored in your school, that's probably a 14 presumptively and unlikely conclusively lawful commercial 03:11PM 15 regulation. 16 It's not hard to imagine if there are similar ones. 17 Like you'd want to have perhaps gun stores display signs that 18 say "Guns are dangerous and you should acquire firearms training prior to owning a gun." Not that the law would 19 03:11PM 20 require you to, but maybe you should if you want to be a 21 responsible gun owner. 22 That's the kind of commercial regulation that 23 doesn't -- that doesn't reach into the bundle of Second 24 Amendment rights at its core and create real problems for

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ordinary people.

And, furthermore, the evidence that these CLIs and MDMs actually promote, we can attribute the decline in accidents in California to those features is questionable because the decline here in California largely mirrors the nationwide decline. And there's really not enough evidence in the record whether or not these things are effective because ultimately they're not relevant to the constitutional analysis.

I believe that's all I have for Your Honor. would request that if the Court has made up its mind about microstamping today, to enter a preliminary injunction enjoining the microstamping feature of the UHA today or in due course if it's -- if it wants to review supplemental briefing about the other features, I would understand it would be more complex for the Court, that's understandable, but plaintiffs would respectfully request that enjoining microstamping be enjoined immediately. Thank you.

THE COURT: One question. The chamber load indicator, magazine disconnect mechanism, I heard argument that gun manufacturers actually produced handguns with those. it wasn't until the microstamping that everything came to a halt. So it's obviously technologically feasible. I know you're saying those are problematic. We went over the reasons why you felt they're problematic. But from a legal standpoint on a preliminary injunction, would you at least agree it's -from your standpoint, it's not as powerful as the

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          microstamping? Your case.
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                     MR. FRANK: Powerful in what sense?
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                     THE COURT:
                                  Persuasive. That those should be
          enjoined.
                     MR. FRANK: Well, I don't -- I believe that --
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                     THE COURT: Because you were able to do it; right?
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          With microstamping, your position has been and you argue, the
          evidence indicates it's not technologically feasible and it's
          not commercially viable --
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                     MR. FRANK: Right.
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                     THE COURT: -- at this point.
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                     MR. FRANK:
                                 Uh-huh.
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                     THE COURT: But it's technologically feasible, the
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          other two requirements, and it's obviously commercially viable
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          because you did it for -- what? How many years did you do
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          that? You meaning the gun manufacturers.
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                     MR. FRANK: Yeah, I appreciate the credit for that,
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          Your Honor, but I can't accept it.
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                     THE COURT: And I'm not trying to give you a loaded
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                     I've always been inspired by the creativity of
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          American business, that they can get things done, if it makes
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          sense. And even with microstamping, if a gun manufacturer --
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          all it takes is one thought, you know, this is something
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          viable, they can make it, they'd do it. With the other two
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          restrictions -- chamber load indicator, magazine disconnect
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mechanism -- they did it. Might not have been happy about it, but they were able to do it.

MR. FRANK: I think that the State has failed to satisfy its burden under Bruen for all three. And I think on that basis, the Court can enjoin all three.

Now, I know for a fact that MDMs and CLIs exist.

believe the State -- Mr. -- or Agent Gonzalez testified that there are 32 SKUs on the roster of roughly 100 firearms that I'm not sure if that 32 figure represents individual distinct models. I'm almost positive it doesn't. There's probably a handful of distinct models and what accounts for the 32-figure -- the fact that there's one in stainless steel, one in stainless steel in blue finish, et cetera, et cetera.

The technical legal conclusion about all three is that I haven't seen the State marshal evidence of the sufficiently well-subscribed historical tradition to support any of them. And the wider marketplace does not want these features because they're redundant to the proper exercise of the four rules against safety which are fundamental everywhere.

So consumers don't want them. They make guns hard to use. They make guns more finicky. They make them more likely to malfunction. The only people who can benefit from MDMs are law enforcement. And no law enforcement agency seems to take notice of that because they're not using these guns.

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So who do these features really serve? 1 2 these practical reasons that I think the firearm makers can 3 absolutely equip guns with these, probably. I mean, maybe not all of them, but the big ones probably would. I can't speak 5 I don't know. But I think ultimately the proper 03:16PM for them. legal conclusion for all three of them -- I mean, especially in 6 7 microstamping, and I think the Court understands that -- is that there are no sufficient analogues to justify the monitoring existence of these features under the UHA. Now, the CLI and MDM, I think manufacturers can live 03:16PM 10 11 with that for the time being, but ultimately, the legal correct 12 resolution would be to declare it unconstitutional for -- to 13 require them. 14 Now, there may be manufacturers that still offer 03:16PM 15 guns with them. That's kind of another thing we had not 16 discussed, is that I'm sure there would be some people out 17 there that might want guns with these features. 18 experienced shooter myself, I don't. I wouldn't recommend it 19 to anybody, but there may be people out there that are 03:17PM 20 first-time consumers and want extra, you know, nannies, so to 21 speak, the way that you might want a lane departure warning in 22 a car or a radar cruise control. 23 Experienced drivers maybe don't see the need. 24 actually, that's a good analogy of all the analogies that have

been offered, which is that you still need to be a safe driver.

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Delegating your safety, your responsibility to be a safe driver to technology on your car is a bad idea. It inculcates bad habits. Technology can fail. You're better off paying attention to using a dangerous instrumentality.

I understand why the legislature wants to buffer that, however it can, but it still can only buffer it within the contours of what the Constitution will tolerate. And here, the Constitution won't tolerate that. There's a clear test that establishes what the Constitution will tolerate in the states. And the states basically shrug their shoulders and say, "Yeah, it takes longer to get the evidence we might need that might prove it, but we don't have it yet, even though we've been litigating these cases for months and months."

The State failed to meet its burden. So the proper legal resolution is to declare all three unconstitutional. But if the Court wants to take a look at its own briefing, I understand that as well.

THE COURT: Well, I get your historical analogue argument. I understand it. So don't get frustrated with me, but there is evidence in the record that it might be an outdated study. The General Administrative Office have indicated that the chamber load indicator actually saved lives. I mean, it's not a legislative finding. So I find it a little bit more reliable. You know, maybe there's a lot of holes that you could poke through, but I do have that study that that may

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make a difference. 1 2 That study is irrelevant if the Court MR. FRANK: 3 believes that the UHA doesn't get the plain text of the Second I just said many words about the analogues, but I 5 think that issue is inextricable from the analogical inquiry. 03:19PM 6 Because if the Court looks at the UHA and says, "Yeah, this 7 implicates people keeping and bearing arms," well, then it has 8 to proceed to the analogical inquiry. 9 And that evidence that it could save lives is one 03:19PM 10 step too many. We don't interest balance away Second Amendment 11 rights in the name of public safety experiments anymore and 12 Second Amendment litigation. That's not part of the inquiry 13 into the what the scope of the Second Amendment is anymore. 14 THE COURT: Didn't the Supreme Court say the burden 03:19PM 15 is a factor I can consider in the historical analogue analysis? 16 And so it's kind of the other side of the coin, you know, how 17 much of a burden it is on you, especially when you can be 18 achieving some benefits. And then, of course, this is an 19 injunction, and I do have the balance of interest. 03:20PM 20 I understand the constitutional right. I understand 21 your argument, but --22 MR. FRANK: The Court said to look to how a law 23 impacts the exercise of the core right and if the Court is

having trouble doing the analogical analysis. It's a subcontour, I guess, of it. That was my reading of what the

majority opinion said, which is that it may be difficult in some cases to figure out what analogues are.

I believe the State mentioned that there are maybe unprecedented societal concerns or strange technological issues that arise that make analogical reasons difficult. And if we're in that sort of difficult space, well, then, a guidepost of the analysis would be, well, how does -- how does this law impact the core right to exercise self-defense? Just a useful question to ask along the way. Those are my interpretations of it.

THE COURT: Thank you.

MR. FRANK: Thank you, Your Honor.

MR. SAROSY: Couple points, Your Honor.

Sorry, Your Honor, I lost something in the pages of notes I have.

I think I heard that the higher standard for preliminary injunctions — I think it was insinuated that it does not apply in the Second Amendment context. And there are two cases where it did apply in the Second Amendment context, including the recent Baird vs. Bonta case that I mentioned earlier. The Court did apply and describe that higher burden for PI involving the Second Amendment challenge.

And there's also a case -- and I was trying to find the citation for it -- Tracy Rifle and Pistol Association -- probably -- v. California or versus the Attorney General at the

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So there are the higher PI burden where it did apply.

And then on the point of evidence about chamber load indicators and magazine disconnects being -- I think the word was "finicky," other than maybe one or two anecdotes from Mr. Boland, there's been no evidence submitted by plaintiffs that chamber load indicators and magazine disconnects do not work compared to the evidence that we submitted and the GAO study that you mentioned and the other two studies regarding the benefit of how chamber load indicators and magazine disconnect mechanisms could save lives.

And then there actually were four manufacturers that produced semiautomatic pistols with chamber load indicators and magazine disconnects in that time before microstamping became effective. I don't know exactly how many unique models, you know, of the 32. There are some that are similar, but there were four manufacturers that did do so.

And then I think there was a point that the DOJ just conveniently now, post-Bruen, is trying to engage its manufacturers about microstamping. With the microstamping regulations that are currently in effect for any regulations, there's always a public comment period. And I don't know if the firearms industry submitted comments in response to that, but there was at least that opportunity for engagement whenever those microstamping regulations were adopted. And those were adopted years ago. But there was at least that opportunity.

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I do have that letter that I mentioned about the 1 2 preliminary invitation for a comment. THE COURT: Make it part of the record. Make it an 3 exhibit. What number would it be? MR. DALE: 03:24PM 5 28. 6 THE COURT: Defense Exhibit 28 will be received into 7 evidence. 8 (Exhibit Number 28 received.) 9 MR. SAROSY: I think I only have one copy. MR. DALE: That's fine. We can deal with it when we 03:24PM 10 get to the list. 11 12 MR. SAROSY: Oh, I also will say that Bruen itself 13 involved the motion to dismiss, not a preliminary injunction, for whatever that's worth. But that's all I have unless the 14 03:24PM 15 Court has any further questions. THE COURT: No. I found the arguments on both sides 16 very engaging, and I appreciate it from both sides. 17 18 MR. SAROSY: We're happy to address issues further 19 in supplemental briefing. 03:24PM 20 THE COURT: That's what I wanted to address next. 21 Not to frustrate everybody, but I feel this is an important 22 decision. I would appreciate supplemental briefing. In my 23 mind, the sooner the better, but I don't want to rush it. I 24 don't know if -- you know, if I were sitting in your position, 03:25PM 25 I would want the transcripts of the hearings and then make your

points. You might be duping and revising your briefs, but I 1 think the hearing and then the arguments today, hopefully you have kind of honed in on the issues that I'm thinking about, 3 and you can address that. 03:25PM You know, I really think brevity is key, especially 6 when it comes to persuasion. The shorter the better. But at 7 the same time, I don't want to pressure either side if they got 8 something to say. So with that, I'll start with the plaintiffs, then I'll go to the defense. 03:26PM 10 How many pages and how much time do you need before 11 you can submit the supplemental brief? 12 MR. DALE: I would suggest ten pages. I think we 13 can cover what we need to cover in ten. 14 MR. FRANK: Sure. 03:26PM 15 MR. DALE: My suggestion would be probably no later 16 than Friday of next week. 17 THE COURT: Okay. That's your suggestion. Tell me what the State would like. 18 19 MR. SAROSY: Your Honor, I think in terms of pages, 03:26PM 20 given that we've been at it for almost two days, I think 25 is 21 at least -- a limit of 25 is needed. And in terms of days, I 22 mean -- when the clock starts, I would say 30 days at least 23 from when we get the transcript. We do -- you know, the DOJ 24 has a large organization that has multiple levels of review. 03:27PM 25 And as you said, these are important issues and we want to be

assured that we address the Court's questions.

THE COURT: All right. Let me just go off the record with the court reporter, see how long she thinks today -- and if she knows how long yesterday. She might not know because it was a different court reporter.

# (Discussion held off the record.)

THE COURT: I think out of an abundance of caution, I don't think you'll have the transcripts until the earliest the end of next week. And then I'm inclined -- and I think what I'll do is simultaneous briefing, no rebuttals. You all know now what the other side's arguments are. And I'll give you up to 25 pages.

Yes, sir?

MR. MOROS: Your Honor, if the State presents new analogues that have not been discussed today, do we get a chance to rebut those? That's my only concern about the simultaneous briefing.

THE COURT: That's a good point. That's a good point. Does the State anticipate doing that?

MR. SAROSY: I can't say for sure one way or another. And it would require us discussing with Dr. Cornell.

Given -- I can't say -- it's certainly possible given that most of the arguments about this historical analogue, we didn't provide enough.

THE COURT: Okay. So I think the point's well

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1 taken. So what I would do is from the time you get the 2 transcript, you have 20 days. Submit your initial briefs. And 3 you have 20 pages in your initial briefs. And then your rebuttal briefs, we'll do that two weeks or one week after? MR. SAROSY: I would say two weeks, Your Honor. 03:31PM MR. DALE: And we were going to say one week, so. 6 7 THE COURT: Let's just do two weeks. No one's going 8 to say we weren't given due process. All right. Two weeks and ten pages length. 03:31PM 10 So I think that will be enough because we're only really talking about Bruen here; right? And you've said a lot 11 12 already. And that's still part of the record. So this is just 13 to kind of hone in onto the issues, the step analysis, what it 14 is, why it is, and then the rest of the Winter factors. 03:32PM 15 So unless someone can convince me, and I know the 16 plaintiffs won't disagree because that's more than you said you 17 needed, is 20 pages enough for initial and 10 pages for 18 rebuttal enough? You feel comfortable with that? 19 MR. SAROSY: Yes, Your Honor. 03:32PM 20 THE COURT: Okay. So, again, I guess we do things 21 in seven days in court. So 21 days after receiving the 22 transcripts. I'm wondering if we just should set it 21 days 23 after next Friday because we should have the transcripts by then, I would think. 24 03:32PM 25 All right. So let me --

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Rolls, 21 days from next Friday is when?
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                     THE COURTROOM DEPUTY: February 17, Your Honor.
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                     THE COURT: Okay. And then the rebuttal is two
          weeks after that?
                     MR. SAROSY: I'm sorry, Your Honor, February 17, is
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          that a --
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                     THE COURTROOM DEPUTY: It's a Friday.
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                     MR. SAROSY: I know President's Day is in that area.
                     THE COURTROOM DEPUTY: That's the 20th.
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                     MR. SAROSY: Thank you. Sorry.
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                     THE COURT: So it would be 14 days later, Rolls?
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                     THE COURTROOM DEPUTY: 14 days -- so 14 days after
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          February 17, which is a Friday, is going to be March 3rd,
          Your Honor.
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                      THE COURT: March 3rd. And that will be 10 pages.
          The initial is 20 pages.
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                     And you'll electronically file all the exhibits that
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          we received.
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                      Is there anything else we need to discuss this
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          afternoon from the plaintiffs?
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                     MR. DALE: Not on plaintiffs' side.
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                      THE COURT: Okay.
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                      MR. SAROSY: Is the Court going to outline those
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          dates in an order?
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                      THE COURT: I wasn't going to.
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                      MR. SAROSY: Okay.
                      THE COURT: Would you like it? We can issue a
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          minute order.
                      MR. SAROSY: I think that could be helpful just for
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          the record.
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                      THE COURT: We'll issue a very short minute order
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          just with the briefing dates. And, obviously, no hearing.
          Okay? All right. Thank you.
                      THE COURTROOM DEPUTY: All rise. This Court is in
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          recess.
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                      (Proceedings concluded at 3:34 p.m.)
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## EXHIBIT 7

	1 2 3 4 5 6 7 8	ROB BONTA Attorney General of California MARK R. BECKINGTON Supervising Deputy Attorney General ROBERT L. MEYERHOFF, SBN 298196 GABRIELLE D. BOUTIN, SBN 267308 S. CLINTON WOODS, SBN 246054 CHARLES J. SAROSY, SBN 302439 300 South Spring Street, Suite 1702 Los Angeles, CA 90013-1230 Telephone: (213) 269-6356 Fax: (916) 731-2119 E-mail: Charles.Sarosy@doj.ca.gov Attorneys for Rob Bonta, in his official ca Attorney General of the State of California	pacity as a		
	9	IN THE UNITED STATES DISTRICT COURT			
	-1A-	FOR THE CENTRAL DISTRICT OF CALIFORNIA			
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		LANCE BOLAND, ET AL.,	Case No. 8:22-cv-01421-CJC-ADS		
	14	Plaintiffs,	DECLARATION OF SALVADOR		
	15		GONZALEZ IN SUPPORT OF		
	16	<b>v.</b>	DEFENDANT'S FIRST CLOSING BRIEF FOLLOWING		
	17	DOD DON'TA IN THE OPPICIAL	EVIDENTIARY HEARING ON		
	17	ROB BONTA, IN HIS OFFICIAL CAPACITY AS ATTORNEY GENERAL OF	PLAINTIFFS' MOTION FOR A   PRELIMINARY INJUNCTION		
,	18	THE STATE OF CALIFORNIA, ET AL.,	Courtroom: 9B		
	19	Defendants.			
	20		Judge: Hon. Cormac J. Carney Trial Date: None set Action Filed: August 1, 2022		
<b>8</b>					
	Contraction of the Contraction o				
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I, Salvador Gonzalez, declare under penalty of perjury that:

2 3

I am over the age of 18 years and competent to make this declaration, which is based on my personal knowledge.

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I am a Special Agent Supervisor for the California Department of Justice 2.

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- ("CA DOJ"), Bureau of Firearms ("BOF"). I submitted a declaration in support of Defendant's Opposition to
- Plaintiffs' Motion for a Preliminary Injunction, to which was attached my curriculum vitae. ECF No. 30-2. I also testified as an expert on the Roster of Certified Handguns (the "Roster") and its requirements during the January 23, 2023 evidentiary hearing on Plaintiffs' Motion. Prelim. Inj. Hr'g Day 1 Tr. (Jan. 23, 2023), ECF No. 54 ("PI Day 1 Tr."), at 156-253.
- 4. At the evidentiary hearing, I testified there were 32 semiautomatic pistols currently on the Roster with a chamber load indicator ("CLI") and magazine disconnect mechanism ("MDM"). PI Day 1 Tr. 179.
- 5. These 32 semiautomatic pistols are manufactured by four companies: Kahr Arms, Sig Sauer, FMK Firearms, and Smith & Wesson. All four companies added at least one of these semiautomatic pistols to the Roster before the microstamping requirement took effect on May 17, 2013.
- Of the 32 semiautomatic pistols with a CLI and MDM currently on the Roster, 17 of these pistols were added to the Roster before May 17, 2013. Of those 17 pistols, 15 of them were added to the Roster after passing the drop safety and firing tests in a certified laboratory pursuant to Penal Code sections 31910, 32010, and 32015. The remaining two were added to the Roster as a "similar" by FMK Firearms pursuant to Penal Code section 32030.
- 7. Of the 32 semiautomatic pistols with a CLI and MDM currently on the Roster, the remaining 15 of these pistols were added to the Roster after May 17, 2013. All 15 were added to the Roster as a "similar" by Smith & Wesson pursuant to Penal Code section 32030. They were added to the Roster in 2019 and 2022.

- 8. Before May 17, 2013, Sturm, Ruger, & Co. added to the Roster 15 semiautomatic pistols with a CLI and MDM. Of those 15 pistols, 11 of them were added to the Roster after passing the drop safety and firing tests in a certified laboratory pursuant to Penal Code sections 31910, 32010, and 32015, while the remaining four were added as a "similar" pursuant to Penal Code section 32030. However, none of these 15 pistols are currently on the Roster because Sturm, Ruger, & Co. failed to pay the annual fee required under Penal Code section 32015 to keep these pistols on the Roster.
- 9. Before May 17, 2013, in addition to the pistols described in paragraphs 6 and 7, Sig Sauer and FMK Firearms also each added to the Roster one semiautomatic pistol with a CLI and MDM after passing the drop safety and firing tests in a certified laboratory pursuant to Penal Code sections 31910, 32010, and 32015. However, these pistols are not currently on the Roster because Sig Sauer and FMK Firearms failed to pay the annual fee required under Penal Code section 32015 to keep these pistols on the Roster.
- 10. After May 17, 2013, Sig Sauer added to the Roster another semiautomatic pistol with a CLI and MDM as a "similar" pursuant to Penal Code section 32030. However, this pistol is not currently on the Roster because Sig Sauer failed to pay the annual fee required under Penal Code section 32015 to keep the pistol on the Roster.

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11. The below chart summarizes what is explained in paragraphs 5 through 10:

	Added to the Roster before May 17, 2013	Added to the Roster after May 17, 2013	Currently on the Roster
Tested semiautomatic pistols with CLI & MDM		0	15
Similar semiautomatic pistols with CLI & MDM		16	17

SALVADOR GONEALEZ

# **EXHIBIT 8**

era understood the right to bear arms, as well as the understanding of the right to bear arms held at the time of the ratification of the Fourteenth Amendment to the United States Constitution. In *N.Y. State Rifle & Pistol Association, Inc. v. Bruen*, the U.S. Supreme Court underscored that text, history, and tradition are the foundation of modern Second Amendment jurisprudence. This modality of constitutional analysis requires that courts analyze history and evaluate the connections between modern gun laws and earlier approaches to firearms regulation in the American past. My report explores these issues in some detail. Finally, I have been asked to evaluate the statute at issue in this case, particularly regarding its connection to the tradition of firearms regulation in American legal history.

2. This declaration is based on my own personal knowledge and experience, and if I am called to testify as a witness, I could and would testify competently to the truth of the matters discussed in this declaration.

#### **BACKGROUND AND QUALIFICATIONS**

3. I am the Paul and Diane Guenther Chair in American History at Fordham University. The Guenther Chair is one of three endowed chairs in the history department at Fordham and the only one in American history. In addition to teaching constitutional history at Fordham University to undergraduates and graduate students, I teach constitutional law at Fordham Law School. I have been a Senior Visiting research scholar on the faculty of Yale Law School, the University of Connecticut Law School, and Benjamin Cardozo Law School. I have given invited lectures, presented papers at faculty workshops, and participated in conferences on the topic of the Second Amendment and the history of gun regulation at Yale Law School, Harvard Law School, Stanford Law School, UCLA Law School, the University of Pennsylvania Law School, Columbia Law School,

Duke Law School, Pembroke College Oxford, Robinson College, Cambridge, Leiden University, and McGill University.<sup>1</sup>

4. My writings on the Second Amendment and gun regulation have been widely cited by state and federal courts, including the majority and dissenting opinions in Bruen.<sup>2</sup> My scholarship on this topic has appeared in leading law reviews and top peer-reviewed legal history journals. I authored the chapter on the right to bear arms in The Oxford Handbook of the U.S. Constitution and coauthored the chapter in *The Cambridge History of Law in America* on the Founding era and the Marshall Court, the period that includes the adoption of the Constitution and the Second Amendment.<sup>3</sup> Thus, my expertise not only includes the history of gun regulation and the right to keep and bear arms, but also extends to American legal and constitutional history broadly defined. I have provided expert witness testimony in Rocky Mountain Gun Owners, Nonprofit Corp. v. Hickenlooper, No. 14-cv-02850 (D. Colo.); Chambers, v. City of Boulder, No. 2018 CV 30581 (Colo. D. Ct., Boulder Cty.), Zeleny v. Newsom, No. 14-cv-02850 (N.D. Cal.), and Miller v. Smith, No. 2018-cv-3085 (C.D. III.); Jones v. Bonta, 3:19-cv-01226-L-AHG (S.D. Cal.); Baird v. Bonta, No. 2:19-cv-00617 (E.D. Cal.); Worth v. Harrington, No. 21cv-1348 (D. Minn.); *Miller v. Bonta*, No. 3:19-cv-01537-BEN-JLB (S.D. Cal.); Duncan v. Bonta, No. 3:17-cv-01017-BEN-JLB (S.D. Cal.); Rupp v. Bonta, No. 8:17-cv-00746-JLS-JDE (C.D. Cal.); and Nat'l Assoc. for Gun Rights, et al., v. Campbell, No. 1:22-cv-11431-FDS (D. Mass.).

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<sup>&</sup>lt;sup>1</sup> For a full *curriculum vitae* listing relevant invited and scholarly presentations, *see* Defendant's Exhibit 23, already entered into evidence.

<sup>&</sup>lt;sup>2</sup> N.Y. State Rifle & Pistol Ass'n v. Bruen, 142 S. Ct. 2111 (2022).

<sup>&</sup>lt;sup>3</sup> Saul Cornell, *The Right to Bear Arms*, *in* THE OXFORD HANDBOOK OF THE U.S. CONSTITUTION 739–759 (Mark Tushnet, Sanford Levinson & Mark Graber eds., 2015); Saul Cornell & Gerald Leonard, *Chapter 15: The Consolidation of the Early Federal System*, *in* 1 THE CAMBRIDGE HISTORY OF LAW IN AMERICA 518–544 (Christopher Tomlins & Michael Grossberg eds., 2008).

#### RETENTION AND COMPENSATION

5. I am being compensated for services performed in the above-entitled case at an hourly rate of \$500 for reviewing materials, participating in meetings, and preparing reports; \$750 per hour for depositions and court appearances; and an additional \$100 per hour for travel time. My compensation is not contingent on the results of my analysis or the substance of any testimony.

#### BASIS FOR OPINION AND MATERIALS CONSIDERED

6. The opinion I provide in this report is based on my review of the amended complaint filed in this lawsuit, my review of the local ordinances at issue in this lawsuit, my education, expertise, and research in the field of legal history. The opinions contained herein are made pursuant to a reasonable degree of professional certainty.

#### **SUMMARY OF OPINIONS**

- 7. Understanding text, history, and tradition require a sophisticated grasp of historical context. One must canvass the relevant primary sources, secondary literature, and jurisprudence to arrive at an understanding of the scope of permissible regulation consistent with the Second Amendment's original understanding.
- 8. It is impossible to understand the meaning and scope of Second Amendment protections without understanding the way Americans in the Founding era approached legal questions and rights claims. In contrast to most modern lawyers, the members of the First Congress who wrote the words of the Second Amendment and the American people who enacted the text into law were well schooled in English common law ideas. Not every feature of English common law survived the American Revolution, but there were important continuities between English law and the common law in America. Each of the new states, either by

<sup>&</sup>lt;sup>4</sup> William B. Stoebuck, Reception of English Common Law in the American

statute or judicial decision, adopted multiple aspects of the common law, focusing primarily on those features of English law that had been in effect in the English colonies for generations.<sup>5</sup> No legal principle was more important to the common law than the concept of the peace.<sup>6</sup> As one early American justice of the peace manual noted: "the term peace, denotes the condition of the body politic in which no person suffers, or has just cause to fear any injury." Blackstone, a leading source of early American views about English law, opined that the common law "hath ever had a special care and regard for the conservation of the peace; for peace is the very end and foundation of civil society."

9. In *Bruen*, Justice Kavanaugh reiterated *Heller*'s invocation of Blackstone's authority as a guide to how early Americans understood their inheritance from England. Specifically, Justice Kavanaugh stated in unambiguous terms that there was a "well established historical tradition of prohibiting the carrying of dangerous and unusual weapons." The dominant understanding of

Colonies, 10 WM. & MARY L. REV. 393 (1968); MD. CONST. OF 1776, DECLARATION OF RIGHTS, art. III, § 1; Lauren Benton & Kathryn Walker, Law for the Empire: The Common Law in Colonial America and the Problem of Legal Diversity, 89 CHI.-KENT L. REV. 937 (2014).

<sup>&</sup>lt;sup>5</sup> 9 Statutes at Large of Pennsylvania 29-30 (Mitchell & Flanders eds. 1903); Francois Xavier Martin, A Collection of Statutes of the Parliament of England in Force in the State of North-Carolina 60–61 (Newbern, 1792); *Commonwealth v. Leach*, 1 Mass. 59 (1804).

<sup>&</sup>lt;sup>6</sup> Laura F. Edwards, The People and Their Peace: Legal Culture and The Transformation of Inequality in the Post-Revolutionary South (University of North Carolina Press, 2009).

<sup>&</sup>lt;sup>7</sup> JOSEPH BACKUS, THE JUSTICE OF THE PEACE 23 (1816).

<sup>&</sup>lt;sup>8</sup> 1 WILLIAM BLACKSTONE, COMMENTARIES \*349.

<sup>&</sup>lt;sup>9</sup> District of Columbia v. Heller, 554 U.S. 570, 626–627 (2008), and n. 26. Blackstone and Hawkins, two of the most influential English legal writers consulted by the Founding generation, described these types of limits in slightly different terms. The two different formulations related to weapons described as dangerous and unusual in one case and sometimes as dangerous or unusual in the other instance, see Saul Cornell, *The Right to Carry Firearms Outside of the Home:* Separating Historical Myths from Historical Realities, 39 FORDHAM URB. L.J.

the Second Amendment and its state constitutional analogues at the time of their adoption in the Founding period forged an indissoluble link between the right to keep and bear arms with the goal of preserving the peace.<sup>10</sup>

with the scope they were thought to have when the people adopted them." Included in this right was the most basic right of all: the right of the people to regulate their own internal police. Although modern lawyers and jurists are accustomed to thinking of state police power, the Founding generation viewed this concept as a right, not a power. The first state constitutions clearly articulated such a right — including it alongside more familiar rights such as the right to bear arms. Pennsylvania's Constitution framed this estimable right succinctly: "That

<sup>1695134 (2012).</sup> It is also possible that the phrase was an example of an archaic grammatical and rhetorical form hendiadys; see Samuel Bray, 'Necessary AND Proper' and 'Cruel AND Unusual': Hendiadys in the Constitution, 102 VIRGINIA L. REV. 687 (2016).

<sup>&</sup>lt;sup>10</sup> On Founding-era conceptions of liberty, *see* JOHN J. ZUBLY, THE LAW OF LIBERTY (1775). The modern terminology to describe this concept is "ordered liberty." *See Palko v. Connecticut*, 302 U.S. 319, 325 (1937). For a more recent elaboration of the concept, *see generally* JAMES E. FLEMING & LINDA C. MCCLAIN, ORDERED LIBERTY: RIGHTS, RESPONSIBILITIES, AND VIRTUES (Harvard University Press, 2013). On Justice Cardozo and the ideal of ordered liberty, see *Palko v. Connecticut*, 302 U.S, 319, 325 (1937); John T. Noonan, Jr., *Ordered Liberty: Cardozo and the Constitution*, 1 CARDOZO L. REV. 257 (1979); Jud Campbell, *Judicial Review, and the Enumeration of Rights*, 15 GEO. J.L. & PUB. POL'Y 569 (2017).

<sup>&</sup>lt;sup>11</sup> Heller, 554 U.S. at 634–35; William J. Novak, Common Regulation: Legal Origins of State Power in America, 45 HASTINGS L.J. 1061, 1081–83 (1994); Christopher Tomlins, Necessities of State: Police, Sovereignty, and the Constitution, 20 J. POL'Y HIST. 47 (2008).

<sup>12</sup> On the transformation of the Founding era's ideas about a "police right" into the more familiar concept of "police power," *See generally* Aaron T. Knapp, *The Judicialization of Police*, 2 CRITICAL ANALYSIS OF L. 64 (2015); *see also* MARKUS DIRK DUBBER, THE POLICE POWER: PATRIARCHY AND THE FOUNDATIONS OF AMERICAN GOVERNMENT (2005); Christopher Tomlins, *Necessities of State: Police, Sovereignty, and the Constitution*, 20 J. OF POL'Y HIST. 47 (2008).

<sup>&</sup>lt;sup>13</sup> PA. CONST. of 1776, ch. I, art. III; MD. DECLARATION OF RIGHTS, art. IV

the people of this State have the sole, exclusive and inherent right of governing and regulating the internal police of the same." Thus, if Justice Scalia's rule applies to the scope of the right to bear arms, it must also apply to the scope of the right of the people to regulate their internal police, a point that Chief Justice Roberts and Justice Kavanaugh have each asserted in their interpretations of *Heller* and subsequent jurisprudence. The history of gun regulation in the decades after the right to bear arms was codified in both the first state constitutions and the federal bill of rights underscores this important point.

11. In the years following the adoption of the Second Amendment and its state analogues, firearm regulation increased. Indeed, the individual states exercised their police powers to address longstanding issues and novel problems created by firearms in American society. Over the eighteenth and nineteenth century, American regulation increased with the advancement of firearm technology, from the manufacturing, storage, and sale of gunpowder, to regulating where firearms and other dangerous weapons cannot be carried.

## I. THE HISTORICAL INQUIRY REQUIRED BY BRUEN, McDonald, AND HELLER

12. The United States Supreme Court's decisions in *Heller*, *McDonald*, <sup>14</sup> and *Bruen* have directed courts to look to text, history, and tradition when evaluating the scope of permissible firearms regulation under the Second Amendment. In another case involving historical determinations, Justice Thomas, the author of the majority opinion in *Bruen*, has noted that judges must avoid approaching history, text, and tradition with an "ahistorical literalism." Legal

<sup>(1776);</sup> N.C. DECLARATION OF RIGHTS, art. I, § 3 (1776); and Vt. DECLARATION OF RIGHTS, art. V (1777).

<sup>&</sup>lt;sup>14</sup> McDonald v. City of Chicago, 561 U.S. 742 (2010).

<sup>&</sup>lt;sup>15</sup> Franchise Tax Board of California v. Hyatt, 139 S. Ct. 1485, 1498 (2019) (Thomas, J.) (criticizing "ahistorical literalism").

- straightjacket nor a regulatory blank check." <sup>17</sup> The Court acknowledged that when novel problems created by firearms are issue the analysis must reflect this fact: "other cases implicating unprecedented societal concerns or dramatic technological changes may require a more nuanced approach." *Bruen* differentiates between cases in which contested regulations are responses to long standing problems and situations in which modern regulations address novel problems with no clear historical analogues from the Founding era or the era of the Fourteenth Amendment. Finally, as *Bruen* makes clear a more "nuanced" approach is required to understand the nature of the problems early gun laws sought to remediate and the potential burden they posed for the exercise of self-defense.
- 14. In the years between *Heller* and *Bruen*, historical scholarship has expanded our understanding of the history of arms regulation in the Anglo-American legal tradition, but much more work needs to be done to fill out this picture.<sup>18</sup> Indeed, such research is still ongoing: new materials continue to emerge;

<sup>&</sup>lt;sup>16</sup> See Jonathan Gienapp, *Historicism and Holism: Failures of Originalist Translation*, 84 FORDHAM L. REV. 935 (2015).

<sup>&</sup>lt;sup>17</sup> Bruen, 142 S. Ct. 2111.

<sup>&</sup>lt;sup>18</sup> Eric M. Ruben & Darrell A. H. Miller, *Preface: The Second Generation of Second Amendment Law & Policy*, 80 L. & CONTEMP. PROBS. 1 (2017).

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and since Bruen was decided, additional evidence about the history of regulation has surfaced and new scholarship interpreting it has appeared in leading law reviews and other scholarly venues.<sup>19</sup>

- As Justice Scalia noted in *Heller*, and Justice Thomas reiterated in 15. Bruen, the original Second Amendment was a result of interest balancing undertaken by the people themselves in framing the federal Constitution and the Bill of Rights. Bruen, 142 S. Ct. at 2131; Heller, 554 U.S. at 635. Although "freestanding balancing" by judges is precluded by *Heller*, the plain meaning of the text recognizes a role for regulation explicitly and further asserts that actions inimical to a free state fall outside of the scope of the right instantiated in the text.<sup>20</sup> Thus, from its outset, the Second Amendment recognizes both the right to keep and bear arms and the right of the people to regulate arms to promote the goals of preserving a free state. Although rights and regulation are often cast as antithetical in the modern gun debate, the Founding generation saw the two goals as complimentary.
- 16. Comparing the language of the Constitution's first two amendments and their different structures and word choice makes this point crystal clear. The First Amendment prohibits "abridging" the rights it protects. In standard American English in the Founding era, to "abridge" meant to "reduce." Thus, the First Amendment prohibits a diminishment of the rights it protects. The Second Amendment's language employs a very different term, requiring that the right to bear arms not be "infringed." In Founding-era American English, the word

<sup>&</sup>lt;sup>19</sup> Symposium — The 2nd Amendment at the Supreme Court: "700 Years Of History" and the Modern Effects of Guns in Public, 55 U.C. DAVIS L. REV. 2495 (2022); NEW HISTORIES OF GUN RIGHTS AND REGULATION: ESSAYS ON THE PLACE OF GUNS IN AMERICAN LAW AND SOCIETY (Joseph Blocher, Jacob D. Charles & Darrell A.H. Miller eds., forthcoming 2023).

<sup>&</sup>lt;sup>20</sup> *Heller* at 635.

<sup>&</sup>lt;sup>21</sup> The distinction emerges clearly in a discussion of natural law and the law of nations in an influential treatise on international law much esteemed by the Founding generation: "Princes who infringe the law of nations, commit as great a

- "infringement" meant to "violate" or "destroy." In short, when read with the Founding era's interpretive assumptions and legal definitions in mind, the two Amendments set up radically different frameworks for evaluating the rights they enshrined in constitutional text. Members of the Founding generation would have understood that the legislature could regulate the *conduct* protected by the Second Amendment and comparable state arms bearing provisions as long as such regulations did not destroy the underlying *right*. An exclusive focus on rights and a disparagement of regulation is thus antithetical to the plain meaning of the text of the Second Amendment.
- 17. John Burn, author of an influential eighteenth-century legal dictionary, illustrated the concept of infringement in the context of his discussion of violations of rights protected by the common law. Liberty, according to Burns, was not identical to that "wild and savage liberty" of the state of nature. True liberty, by contrast, only existed when individuals created civil society and enacted laws and regulations that promoted *ordered* liberty. Regulation was the indispensable correlate of rights in Founding era constitutionalism.<sup>22</sup>
- 18. Similarly, Nathan Bailey's *Dictionarium Britannicum* (1730) defined "abridge" as to "shorten," while "infringe" was defined as to "break a law." And his 1763 *New Universal Dictionary* repeats the definition of "abridge" as "shorten" and "infringe" as "to break a law, custom, or privilege." Samuel Johnson's

crime as private people, who violate the law of nature," J.J. BURLAMAQUI, THE PRINCIPLES OF NATURAL LAW (Thomas Nugent trans., 1753) at 201. This book was among those included in the list of important texts Congress needed to procure, *see* Report on Books for Congress. [23 January] 1783." *Founders Online*. National Archives, <a href="https://founders.archives.gov/documents/Madison/01-06-02-0031">https://founders.archives.gov/documents/Madison/01-06-02-0031</a>.

<sup>&</sup>lt;sup>22</sup> Liberty, A NEW LAW DICTIONARY (1792) See also, Jud Campbell, Natural Rights, Positive Rights, and the Right to Keep and Bear Arms, 83 LAW & CONTEMP. PROBS. 31, 32–33 (2020)

<sup>&</sup>lt;sup>23</sup> Abridge, DICTIONARIUM BRITANNICUM (1730).

<sup>&</sup>lt;sup>24</sup> Abridge, NEW UNIVERSAL DICTIONARY (1763).

Dictionary of the English Language (1755) defines "infringe" as "to violate; to break laws or contracts" or "to destroy; to hinder." Johnson's definition of "abridge" was "to shorten" and "to diminish" or "to deprive of." And Noah Webster's An American Dictionary of the English Language (1828) largely repeats Johnson's definitions of "infringe" and "abridge." Although today the two terms are conflated by some, the meanings of abridge and infringe were and remain distinct. The Founding generation was far more nuanced in distinguishing between the differences between these two terms.

19. For the framers, ratifiers, and other relevant legal actors in the Founding era, robust regulation was not understood to be an "infringement" of the right to bear arms, but rather the necessary foundation for the proper exercise of that right as required by the concept of ordered liberty. As one patriotic revolutionary era orator observed, almost a decade after the adoption of the Constitution: "True liberty consists, not in having *no government*, not in a *destitution of all law*, but in our having an equal voice in the formation and execution of the laws, according as they effect [sic] our persons and property."<sup>29</sup>

<sup>&</sup>lt;sup>25</sup> *Infringe*, DICTIONARY OF THE ENGLISH LANGUAGE (1755).

<sup>&</sup>lt;sup>26</sup> Abridge, Dictionary of the English Language (1755).

 $<sup>^{27}</sup>$  Abridge, Infringe, An American Dictionary of the English Language (1828).

<sup>&</sup>lt;sup>28</sup> Dan Edelstein, Early-Modern Rights Regimes: A Genealogy of Revolutionary Rights, 3 CRITICAL ANALYSIS L. 221, 233–34 (2016). See generally GERALD LEONARD & SAUL CORNELL, THE PARTISAN REPUBLIC: DEMOCRACY, EXCLUSION, AND THE FALL OF THE FOUNDERS' CONSTITUTION, 1780s–1830s, at 2; Victoria Kahn, Early Modern Rights Talk, 13 YALE J.L. & HUMAN. 391 (2001) (discussing how the early modern language of rights incorporated aspects of natural rights and other philosophical traditions); Joseph Postell, Regulation During the American Founding: Achieving Liberalism and Republicanism, 5 AM. POL. THOUGHT 80 (2016) (examining the importance of regulation to Founding political and constitutional thought).

<sup>&</sup>lt;sup>29</sup> Joseph Russell, An Oration; Pronounced in Princeton, Massachusetts, on the Anniversary of American Independence, July 4, 1799, at 7 (July 4, 1799), (text available in the Evans Early American Imprint Collection) (emphasis in original).

By allowing individuals to participate in politics and enact laws aimed at promoting the health, safety, and well-being of the people, liberty flourished.<sup>30</sup>

20. The key insight derived from taking the Founding era conception of rights seriously and applying the original understanding of the Founding era's conception of liberty is the recognition that regulation and liberty are both hard wired into the Amendment's text. The inclusion of rights guarantees in constitutional texts was not meant to place them beyond the scope of legislative control. "The point of retaining natural rights," originalist scholar Jud Campbell reminds us "was not to make certain aspects of natural liberty immune from governmental regulation. Rather, retained natural rights were aspects of natural liberty that could be restricted only with just cause and only with consent of the body politic." Rather than limit rights, regulation was the essential means of preserving rights, including self-defense. In fact, without robust regulation of

<sup>&</sup>lt;sup>30</sup> See generally QUENTIN SKINNER, LIBERTY BEFORE LIBERALISM (1998) (examining neo-Roman theories of free citizens and how it impacted the development of political theory in England); THE NATURE OF RIGHTS AT THE AMERICAN FOUNDING AND BEYOND (Barry Alan Shain ed., 2007) (discussing how the Founding generation approached rights, including the republican model of protecting rights by representation).

<sup>&</sup>lt;sup>31</sup> Jud Campbell, *The Invention of First Amendment Federalism*, 97 TEX. L. REV. 517, 527 (2019) (emphasis in original). *See generally* Saul Cornell, *Half Cocked: The Persistence of Anachronism and Presentism in the Academic Debate Over the Second Amendment*, 106 J. OF CRIM. L. AND CRIMINOLOGY 203, 206 (2016) s (noting that the Second Amendment was not understood in terms of the simple dichotomies that have shaped modern debate over the right to bear arms).

<sup>&</sup>lt;sup>32</sup> See Jud Campbell, *Judicial Review and the Enumeration of Rights*, 15 GEO. J.L. & PUB. POL'Y 569, 576–77 (2017). Campbell's work is paradigmshifting, and demonstrates that Justice Scalia's unsubstantiated claim in *Heller* that the inclusion of the Second Amendment in the Bill of Rights placed certain forms of regulation out of bounds is totally anachronistic. This claim has no foundation in Founding-era constitutional thought, but reflects the contentious modern debate between Justice Black and Justice Frankfurter over judicial balancing, on Scalia's debt to this modern debate, *see generally* SAUL CORNELL, THE POLICE POWER AND THE AUTHORITY TO REGULATE FIREARMS IN EARLY AMERICA 1–2 (2021), <a href="https://www.brennancenter.org/sites/default/files/2021-06/Cornell final.pdf">https://www.brennancenter.org/sites/default/files/2021-06/Cornell final.pdf</a>

arms, it would have been impossible to implement the Second Amendment and its state analogues. Mustering the militia required keeping track of who had weapons and included the authority to inspect those weapons and fine individuals who failed to store them safely and keep them in good working order.<sup>33</sup> The individual states also imposed loyalty oaths, disarming those who refused to take such oaths. No state imposed a similar oath as pre-requisite to the exercise of First Amendment-type liberties. Thus, some forms of prior restraint, impermissible in the case of expressive freedoms protected by the First Amendment or comparable state provisions, were understood by the Founding generation to be perfectly consistent with the constitutional right to keep and bear arms.<sup>34</sup>

21. In keeping with the clear public meaning of the Second Amendment's text and comparable state provisions, early American governments enacted laws to preserve the rights of law-abiding citizens to keep and bear arms and promote the equally vital goals of promoting public safety. The proper metric for deciding if such laws were constitutional was and remains the same today: whether a regulation infringes on the core right protected by the Second Amendment. <sup>35</sup>

### II. FROM MUSKETS TO PISTOLS: CHANGE AND CONTINUITY IN EARLY AMERICAN FIREARMS REGULATION

22. Guns have been regulated from the dawn of American history.<sup>36</sup> At the time *Heller* was decided, there was little scholarship on the history of gun

<sup>[</sup>https://perma.cc/J6QD-4YXG] and Joseph Blocher, Response: Rights as Trumps of What?, 132 HARV. L. REV. 120, 123 (2019).

<sup>&</sup>lt;sup>33</sup> H. RICHARD UVILLER & WILLIAM G. MERKEL, THE MILITIA AND THE RIGHT TO ARMS, OR, HOW THE SECOND AMENDMENT FELL SILENT 150 (2002).

<sup>&</sup>lt;sup>34</sup> Saul Cornell, Commonplace or Anachronism: The Standard Model, the Second Amendment, and the Problem of History in Contemporary Constitutional Theory 16 CONSTITUTIONAL COMMENTARY 988 (1999).

<sup>&</sup>lt;sup>35</sup> Saul Cornell and Nathan DeDino, *A Well Regulated Right: The Early American Origins of Gun Control*, 73 FORDHAM L. REV. 487 (2004).

<sup>&</sup>lt;sup>36</sup> Robert J. Spitzer, Gun Law History in the United States and Second

regulation and a paucity of quality scholarship on early American gun culture.<sup>37</sup> Fortunately, a burgeoning body of scholarship has illuminated both topics, deepening scholarly understanding of the relevant contexts needed to implement *Bruen*'s framework.<sup>38</sup>

- 23. The common law that Americans inherited from England always acknowledged that the right of self-defense was not unlimited but existed within a well-delineated jurisprudential framework. The entire body of the common law was designed to preserve the peace and the right of self-defense existed within this larger framework.<sup>39</sup> Statutory law, both in England and America functioned to further secure the peace and public safety. Given these indisputable facts, the Supreme Court correctly noted, the right to keep and bear arms was never understood to prevent government from enacting a broad range of regulations to promote the peace and maintain public safety.<sup>40</sup> To deny such an authority would be to convert the Constitution into a suicide pact and not a charter of government. In keeping with this principle, the Second Amendment and its state analogues were understood to enhance the concept of ordered liberty, not undermine it.<sup>41</sup>
- 24. *Bruen*'s methodology requires judges to distinguish between the relevant history necessary to understand early American constitutional texts and a series of myths about guns and regulation that were created by later generations to

Amendment Rights, 80 L. & CONTEMP. PROBS. 55 (2017).

<sup>&</sup>lt;sup>37</sup> *Id*.

<sup>&</sup>lt;sup>38</sup> Ruben & Miller, *supra* note 18, at 1.

<sup>&</sup>lt;sup>39</sup> Saul Cornell, *The Right to Keep and Carry Arms in Anglo-American Law: Preserving Liberty and Keeping the Peace*, 80 L. & CONTEMP. PROBS. 11 (2017).

<sup>&</sup>lt;sup>40</sup> *McDonald*, 561 U.S. at 785 (noting "'[s]tate and local experimentation with reasonable firearms regulations will continue under the Second Amendment'").

<sup>&</sup>lt;sup>41</sup> See generally Saul Cornell, The Long Arc Of Arms Regulation In Public: From Surety To Permitting, 1328-1928, 55 U.C. DAVIS L. REV. 2547 (2022)

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sell novels, movies, and guns themselves.<sup>42</sup> Unfortunately, many of these myths continue to cloud legal discussions of American gun policy and Second Amendment jurisprudence.<sup>43</sup>

- 25. Although it is hard for many modern Americans to grasp, there was no comparable societal ill to the modern gun violence problem for Americans to solve in the era of the Second Amendment. A combination of factors, including the nature of firearms technology and the realities of living life in small, face-to-face, and mostly homogenous rural communities that typified many parts of early America, militated against the development of such a problem. In contrast to modern America, homicide was not the problem that government firearm policy needed to address at the time of the Second Amendment.<sup>44</sup>
- 26. The surviving data from New England is particularly rich and has allowed scholars to formulate a much better understanding of the dynamics of early American gun policy and relate it to early American gun culture.<sup>45</sup> Levels of gun violence among those of white European ancestry in the era of the Second Amendment were relatively low compared to modern America. These low levels of violence among persons of European ancestry contrasted with the high levels of

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<sup>&</sup>lt;sup>42</sup> PAMELA HAAG, THE GUNNING OF AMERICA: BUSINESS AND THE MAKING OF AMERICAN GUN CULTURE (2016).

<sup>&</sup>lt;sup>43</sup> RICHARD SLOTKIN, GUNFIGHTER NATION: THE MYTH OF THE FRONTIER IN TWENTIETH-CENTURY AMERICA (1993); JOAN BURBICK, GUN SHOW NATION: GUN CULTURE AND AMERICAN DEMOCRACY (2006).

<sup>&</sup>lt;sup>44</sup> RANDOLPH ROTH, AMERICAN HOMICIDE 56, 315 (2009).

<sup>&</sup>lt;sup>45</sup> It is important to recognize that there were profound regional differences in early America. See JACK P. GREENE, PURSUITS OF HAPPINESS: THE SOCIAL DEVELOPMENT OF EARLY MODERN BRITISH COLONIES AND THE FORMATION OF AMERICAN CULTURE (1988). These differences also had important consequences for the evolution of American law. See generally David Thomas Konig, Regionalism in Early American Law, in 1 THE CAMBRIDGE HISTORY OF LAW IN AMERICA 144 (Michael Grossberg & Christopher Tomlins eds., 2008).

violence involving the tribal populations of the region. The data presented in Figure 1 is based on the pioneering research of Ohio State historian Randolph Roth. It captures one of the essential facts necessary to understand what fears motivated American gun policy in the era of the Second Amendment. The pressing problem Americans faced at the time of the Second Amendment was that citizens were reluctant to purchase military style weapons which were relatively expensive and had little utility in a rural society. Americans were far better armed than their British ancestors, but the guns most Americans owned and desired were those most useful for life in an agrarian society: fowling pieces and light hunting muskets. <sup>46</sup> Killing pests and hunting birds were the main concern of farmers, and their choice of firearm reflected these basic facts of life. Nobody bayoneted turkeys, and pistols were of limited utility for anyone outside of a small elite group of wealthy, powerful, and influential men who needed these weapons if they were forced to face an opponent on the field of honor in a duel, as the tragic fate of Alexander Hamilton so vividly illustrates. <sup>47</sup>

27. Limits in Founding-era firearms technology also militated against the use of guns as effective tools of interpersonal violence in this period. Eighteenth-century muzzle-loading weapons, especially muskets, took too long to load and were therefore seldom used to commit crimes. Nor was keeping guns loaded a viable option because the black powder used in these weapons was not only corrosive, but it attracted moisture like a sponge. Indeed, the iconic image of rifles and muskets hung over the mantle place in early American homes was not primarily a function of aesthetics or the potent symbolism of the hearth, as many today

<sup>&</sup>lt;sup>46</sup> Kevin M. Sweenev, *Firearms Ownership and Militias in Seventeenth and Eighteenth Century England and America*, in A RIGHT TO BEAR ARMS?: THE CONTESTED ROLE OF HISTORY IN CONTEMPORARY DEBATES ON THE SECOND AMENDMENT (Jennifer Tucker et al. eds., 2019).

<sup>&</sup>lt;sup>47</sup> Joanne B. Freeman, Affairs of Honor: National Politics in the New Republic (2001).

assume. As historian Roth notes: "black powder's hygroscopic, it absorbs water, it corrodes your barrel, you can't keep it loaded. Why do they always show the gun over the fireplace? Because that's the warmest, driest place in the house." Similar problems also limited the utility of muzzle-loading pistols as practical tools for self-defense or criminal offenses. Indeed, at the time of the Second Amendment, over 90% of the weapons owned by Americans were long guns, not pistols. 49

#### Figure 1

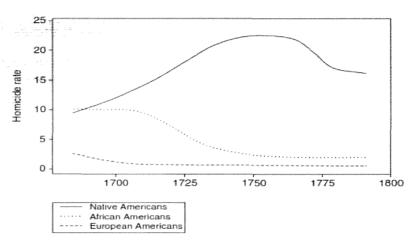


Figure 2.3 Unrelated-adult homicide rates in New England by race, 1677–1797 (per 100,000 persons per year).

28. As Roth's data makes clear, there was not a serious homicide problem looming over debates about the Second Amendment. Nor were guns the primary weapon of choice for those with evil intent during this period.<sup>50</sup> The skill and time required to load and fire flintlock muzzle loading black powder weapons meant that

<sup>&</sup>lt;sup>48</sup> Randolph Roth, Transcript: *Why is the United States the Most Homicidal in the Affluent World*, NATIONAL INSTITUTE OF JUSTICE (Dec. 1, 2013), <a href="https://nij.ojp.gov/media/video/24061#transcript--0">https://nij.ojp.gov/media/video/24061#transcript--0</a>.

<sup>&</sup>lt;sup>49</sup> Sweeney, *supra* note 46.

<sup>&</sup>lt;sup>50</sup> HAAG, *supra* note 42.

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these types of firearms were less likely to be used in crimes of passion. The preference for storing them unloaded also meant they posed fewer dangers to children from accidental discharge.

- 29. In short, the Founding generation did not confront a gun violence problem similar in nature or scope to the ills that plague modern America. Rather, they faced a different, but no less serious problem: American reluctance to purchase the type of weapons needed to effectively arm their militias. Despite repeated efforts to exhort and legislate to promote this goal, many states were failing to adequately equip the militia with suitable firearms that could withstand the rigors of the type of close-quarters hand-to-hand combat required by military tactics. A gun had to be able to receive a bayonet and serve as a bludgeon if necessary. The lightweight guns favored by the overwhelmingly rural population of early America were well designed to put food on the table and rid fields of vermin, but were not well suited to eighteenth-century ground wars. When the U.S. government surveyed the state of the militia's preparedness shortly after Jefferson took office in 1800, the problem had not been solved. Although Massachusetts boasted above 80% of its militia armed with military quality weapons, many of the southern states lagged far behind, with Virginia and North Carolina hovering at about less than half the militia properly armed.<sup>51</sup>
- 30. As a result, the government took an active role in encouraging the manufacturing of arms and had a vested interest in determining what types of weapons would be produced.<sup>52</sup> The American firearms industry in its infancy was thus largely dependent on government contracts and subsidies.

<sup>&</sup>lt;sup>51</sup> Sweeney, *supra* note 46.

<sup>&</sup>lt;sup>52</sup> Lindsay Schakenbach Regele, *A Different Constitutionality for Gun Regulation*, 46 HASTINGS CONST. L.O. 523, 524 (2019); Andrew J. B. Fagal, *American Arms Manufacturing and the Onset of the War of 1812*, 87 New Eng. Q. 526, 526 (2014).

32. In 1805 Massachusetts enacted a law requiring all guns to be inspected before they could be sold in the Commonwealth.<sup>53</sup> As stated in the law's preamble, the law's purpose was to prevent harm to residents from the sale of unsafe firearms. The law required the appointment of inspectors, up to two per county, who would "prove," i.e. test and inspect, all musket barrels and pistol barrels. The law detailed the manner in which these inspections were to be conducted, which included testing the firearm to ensure it would not fail and that it could carry a shot over a certain distance. If the firearm passed inspection, then the inspector would stamp it with the inspector's initials and the year onto the barrel so that the stamp could not be erased or disfigured. Only firearms that passed inspection and were stamped could be sold, and the sale of firearms without a stamp was subject to a fine. The standards that all muskets and pistols had to meet to pass inspection were updated in 1814.<sup>54</sup>

<sup>&</sup>lt;sup>53</sup> 1804 Mass. Acts. 111, ch. 81, "An Act to Provide for the Proof of Fire Arms Manufactured Within this Commonwealth."

<sup>&</sup>lt;sup>54</sup> 1814 Mass. Acts 464, An Act In Addition To An Act, Entitled "An Act To Provide For The Proof Of Fire Arms, Manufactured Within This Commonwealth," ch. 192, § 1 ("All musket barrels and pistol barrels, manufactured within this Commonwealth, shall, before the same shall be sold, and before the same shall be stocked, be proved by the person appointed according to the provisions of an act . . . . . . "); § 2 ("That if any person of persons, from and after the passing of this act, shall manufacture, within this Commonwealth, any musket or pistol, or shall sell and deliver, or shall knowingly purchase any musket or pistol, without having the

- 33. Maine imposed a similar requirement on firearms in 1821, and continued the practice through the end of the century.<sup>55</sup> Similar to the Massachusetts proving law, the Maine law required the governor to appoint inspectors of firearms who would then ensure that firearms met certain safety standards and stamped prior to their sale. The Maine and Massachusetts laws persisted throughout the nineteenth century.<sup>56</sup>
- 34. The federal armory in Springfield, Massachusetts began producing muskets in 1794. The presence of the armory served as a spur to innovation among local gun smiths. In fact, this confluence of factors helped Western Massachusetts become the leading small arms producer in America on the eve of the War of 1812. The Springfield armory, a federal entity, was governed by federal law (not Massachusetts law) but it nonetheless extensively scrutinized and inspected all arms made at its facilities and any arms produced by local gunsmiths under government contract. This quality of these weapons, literally being stamped with government approval, made these guns particularly valuable in the civilian arms market when government surplus guns were sold to consumers.<sup>57</sup> Federal weapons not made in Massachusetts were also stamped to discourage theft. In 1776, George Washington ordered all Continental Army firearms stamped with an insignia: "U.S.XIII." Government marked weapons in this fashion to make it easier to identify cases where arms were being illegally sold in a secondary market to private individuals.<sup>58</sup>

barrels first proved according to the provisions of the first section of this act, marked and stamped according the provisions of the first section of the act.")

<sup>&</sup>lt;sup>55</sup> "An Act to Provide for the Proof of Fire Arms," 2 Laws State of Maine (1821) at 685-6.

<sup>&</sup>lt;sup>56</sup> 1 The General Statutes of the Commonwealth of Massachusetts: Enacted December 28 1859 to Take Effect June 1, 1860 (2d ed., William A. Richardson & George P. Sanger, eds.) 255 (1873).

<sup>&</sup>lt;sup>57</sup> Lindsay Schakenbach Regele, MANUFACTURING ADVANTAGE: WAR, THE STATE, AND THE ORIGINS OF AMERICAN INDUSTRY, 1776–1848 (2019) at 63-65.

<sup>&</sup>lt;sup>58</sup> E. Wayne Carp's TO STARVE THE ARMY AT PLEASURE:

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In 1780, George Washington also ordered that the Continental Army ensure all gun barrels were sufficiently proved to avoid buying poor quality guns.<sup>59</sup>

- 35. Stamping and marking firearms to help government keep track of weapons and enforce manufacturing standards were practices well known to the Founding generation. These types of policies were understood at the time of the Second Amendment and its various state analogs to be perfectly consistent with the right to keep and bear arms.
- The market for firearms in early America shared very few features 36. with the contemporary world of firearms commerce. Today's Americans have a myriad of choices of the type and style of weapon when they wish to acquire a firearm. Gun shows, gun supermarkets, and internet sales are a few of the many ways Americans acquire firearms today. Although estimates vary, it is likely that there are now more guns than people in contemporary America.
- 37. Early America firearms production in the era of the Second Amendment, in contrast, was dominated by artisan production. Local gun smiths, not big box stores such as Walmart, were responsible for selling most firearms. Most sellers and buyers of firearms in early America were members of the same community. Moreover, given the nature of eighteenth-century firearms technology gun owners needed to maintain an on-going relationship with their local gun smith to keep their guns in good working order. The informal ties of kin and community that defined the close-knit communities of early American meant that individuals

CONTINENTAL ARMY ADMINISTRATION AND AMERICAN POLITICAL CULTURE, 1775-1783 (1984) at 66-67.

<sup>&</sup>lt;sup>59</sup> Letter from George Washington to Henry Knox (Nov. 30, 1780). *in* The Writings of George Washington from the Original Manuscript Sources 1745-1799 (John C. Fitzpatrick ed.) ("I think it will be best for you to give orders to the Officer superintending the Laboratory to have the Barrels sufficiently proved before they are delivered to Mr. Buel, as I suspect that they are most of them of the trash kind which Mr. ... Lee charges Mr. Deane[']s Agent with purchasing.")

were effectively vetted and monitored by their neighbors in ways that share little with the largely anonymous world of modern firearms commerce. <sup>60</sup>

38. The calculus of individual self-defense changed dramatically in the decades following the adoption of the Second Amendment.<sup>61</sup> The early decades of the nineteenth century witnessed a revolution in the production and marketing of guns. 62 The same technological changes and economic forces that made wooden clocks and other consumer goods such as Currier and Ives prints common items in many homes also transformed American gun culture. 63 These same changes also made handguns and a gruesome assortment of deadly knives, including the dreaded Bowie knife, more common. The culmination of this gradual evolution in both firearms and ammunition technology was the development of Samuel Colt's pistols around the time of the Mexican-American War.<sup>64</sup> Economic transformation was accompanied by a host of profound social changes that gave rise to America's first gun violence crisis. As cheaper, more dependable, and easily concealable handguns proliferated in large numbers, Americans, particularly southerners, began sporting them with alarming regularity. The change in behavior was most noticeable in the case of handguns. 65

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PENNSYLVANIA MAGAZINE OF HISTORY AND BIOGRAPHY 253 (2012). Pennsylvania was one of the main regions of early American gunsmithing, M.L. Brown, FIREARMS IN COLONIAL AMERICA: THE IMPACT ON HISTORY AND TECHNOLOGY, 1492-1792 (1980).

<sup>&</sup>lt;sup>22</sup> Cornell, *supra* note 3, at 745.

<sup>&</sup>lt;sup>62</sup> Lindsay Schakenbach Regele, *Industrial Manifest Destiny: American Firearms Manufacturing and Antebellum Expansion*, 93 BUS. HIST. REV. 57 (2018).

<sup>&</sup>lt;sup>63</sup> Sean Wilentz, *Society, Politics, and the Market Revolution*, in THE NEW AMERICAN HISTORY (Eric Foner ed., 1990).

<sup>&</sup>lt;sup>64</sup> WILLIAM N. HOSLEY, COLT: THE MAKING OF AN AMERICAN LEGEND (1st ed. 1996).

<sup>&</sup>lt;sup>65</sup> Cornell, *supra* note 3, at 716.

39. The response of states to the emergence of new firearms that threatened the peace was more regulation. When faced with changes in technology and consumer behavior, as well as novel threats to public safety, the individual states enacted laws to address these problems. In every instance apart from a few outlier cases in the Slave South, courts upheld such limits on the unfettered exercise a right to keep and bear arms. The primary limit identified by courts in evaluating such laws was the threshold question about infringement: whether the law negated the ability to act in self-defense. In keeping with the clear imperative hard-wired into the Second Amendment, states singled out weapons that posed a particular danger for regulation or prohibition. Responding in this fashion was entirely consistent with Founding-era conceptions of ordered liberty and the Second Amendment.

#### III. THE POLICE POWER AND FIREARMS REGULATION

40. The 1776 Pennsylvania Constitution, the first revolutionary constitution to assert a right to bear arms, preceded the assertion of this right by affirming a more basic rights claim: "That the people of this State have the sole, exclusive and inherent right of governing and regulating the internal police of the same." The phrase "internal police" had already become common, particularly in laws establishing towns and defining the scope of their legislative authority. By

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<sup>&</sup>lt;sup>66</sup> On southern gun rights exceptionalism, see Eric M. Ruben & Saul Cornell, Firearms Regionalism and Public Carry: Placing Southern Antebellum Case Law in Context, 125 YALE L.J. F. 121, 128 (2015).

<sup>&</sup>lt;sup>67</sup> PA. CONST. OF 1776, Ch. I, art iii.

<sup>&</sup>lt;sup>68</sup> For other examples of constitutional language similar to Pennsylvania's provision, N.C. Const. of 1776, Declaration of Rights, art. II; Vt. Const. of 1777, Declaration of Rights, art. IV. For other examples of this usage, *see* An Act Incorporating the residents residing within limits therein mentioned, *in* 2 New York Laws 158 (1785) (establishing the town of Hudson, NY); An Act to incorporate the Town of Marietta, *in* Laws Passed in the Territory Northwest of the River Ohio 29 (1791). For later examples, *see* 1 Statutes of the State of New Jersey 561 (rev. ed. 1847); 1 Supplements to the Revised Statutes. Laws of the Commonwealth of Massachusetts, Passed subsequently to the

- 41. The power to regulate firearms and gunpowder has always been central to the police power and historically was shared among states, local municipalities, and the federal government when it was legislating conduct on federal land and in buildings.<sup>71</sup> The adoption of the Constitution and the Bill of Rights did not deprive states of their police powers. Indeed, if it had, the Constitution would not have been ratified and there would be no Second Amendment today. Ratification was only possible because Federalists offered Anti-Federalists strong assurances that nothing about the new government threatened the traditional scope of the individual state's police power authority, including the authority to regulate guns and gun powder.<sup>72</sup>
- 42. Federalists and Anti-Federalists bitterly disagreed over many legal issues, but this one point of accord was incontrovertible. Brutus, a leading Anti-Federalist, emphatically declared that "[I]t ought to be left to the state governments

REVISED STATUTES: 1836 TO 1849, INCLUSIVE 413 (Theron Metcalf & Luther S. Cushing, eds. 1849).

 $<sup>^{69}</sup>$  Ernst Freund, The Police Power: Public Policy and Constitutional Rights 2, n.2 (1904).

<sup>&</sup>lt;sup>70</sup> 10 ENCYCLOPEDIA AMERICANA 214 new edition (Francis Lieber ed.).

<sup>&</sup>lt;sup>71</sup> Harry N. Scheiber, *State Police Power*, in 4 ENCYCLOPEDIA OF THE AMERICAN CONSTITUTION 1744 (Leonard W. Levy et al. eds., 1986).

 $<sup>^{72}</sup>$  Saul Cornell, The Other Founders: Antifederalism and the Dissenting Tradition in America, 1788-1828 (1999).

to provide for the protection and defence [sic]of the citizen against the hand of private violence, and the wrongs done or attempted by individuals to each other ...." Federalist Tench Coxe concurred, asserting that: "[t]he states will regulate and administer the criminal law, exclusively of Congress." States, he assured the American people during ratification, would continue to legislate on all matters related to the police power "such as unlicensed public houses, nuisances, and many other things of the like nature." State police power authority was at its pinnacle in matters relating to guns or gun powder. To

- 43. Every aspect of the manufacture, sale, and storage of gun powder was regulated due to the substance's dangerous potential to detonate if exposed to fire or heat. Firearms were also subject to a wide range of regulations, including laws pertaining to the manufacture, sale, and storage of weapons.<sup>76</sup>
- 44. Thus, Massachusetts enacted a law that prohibited storing a loaded weapon in a home, a firearms safety law that recognized that the unintended discharge of firearms posed a serious threat to life and limb.<sup>77</sup> New York City even granted broad power to the government to search for gun powder and transfer powder to the public magazine for safe storage:

it shall and may be lawful for the mayor or recorder, or any two Alderman of the said city, upon application made by any inhabitant or inhabitants of the said city, and upon his or their making oath of

<sup>&</sup>lt;sup>73</sup> Brutus, *Essays of Brutus VII*, reprinted in 2 THE COMPLETE ANTIFEDERALIST 358, 400–05 (Herbert J. Storing ed., 1981).

<sup>&</sup>lt;sup>74</sup> Tench Coxe, A Freeman, *Pa. Gazette*, Jan. 23, 1788, reprinted in FRIENDS OF THE CONSTITUTION: WRITINGS OF THE "OTHER" FEDERALISTS 82 (Colleen A. Sheehan & Gary L. McDowell eds., 1998).

<sup>&</sup>lt;sup>75</sup> CORNELL, *supra* note 34.

<sup>&</sup>lt;sup>76</sup> Cornell and DeDino, *supra* note 35; public carry by contrast was limited by common law and criminal statutes, see, Cornell, *supra* note 39.

<sup>&</sup>lt;sup>77</sup> Act of Mar. 1, 1783, ch. XIII, 1783 Mass. Acts 37, An Act in Addition to the Several Acts Already Made for the Prudent Storage of Gun Powder within the Town of Boston, § 2.

reasonable cause of suspicion (of the sufficiency of which the said mayor or recorder, or Aldermen, is and are to be the judge or judges) to issue his or their warrant or warrants, under his or their hand and seal, or hands and seals for searching for such gun powder, in the day time, in any building or place whatsoever.<sup>78</sup>

- 45. New Hampshire further enacted a law in 1825 penalizing the sale or offer to sell "by retail any gunpowder in any highway, or in any street, lane, or alley, or on any wharf, or on parade or common."<sup>79</sup>
- 46. Other examples of state laws delegating authority to local governments to regulate the sale of gunpowder for public safety include but are not limited to:
  - a. 1845 Iowa Laws 119, An Act to Incorporate and Establish the City of Dubuque, chap 123, § 12 (delegating authority to cities "to regulate by ordinance the keeping and sale of gunpowder within the city");
    - b. An Act Incorporating the Cities of Hartford, New Haven, New London, Norwich and Middletown, 1836 Conn. Acts 105 (Reg. Sess.), chap. 1, § 20 (delegating authority to "prohibit[] and regulat[e] the bringing in, and conveying out" of gunpowder);
    - c. An Act to Reduce the Law Incorporating the City of Madison, and the Several Acts Amendatory thereto Into One Act, and to Amend the Same, 1847 Ind. Acts 93, chap 61, § 8, pt. 4 (delegating authority "[t]o regulate and license, or provide by ordinance for regulating and licensing . . . the keepers of gunpowder"). 80

<sup>&</sup>lt;sup>78</sup> An Act to Prevent the Storing of Gun Powder, within in Certain Parts of New York City, 2 Laws Of The State Of New-York, Comprising The Constitution, And The Acts Of The Legislature, Since The Revolution, From The First To The Fifteenth Session, Inclusive at 191-2 (Thomas Greenleaf, ed., 1792).

<sup>&</sup>lt;sup>79</sup> 1825 N.H. Laws 74, ch. 61, § 5.

<sup>80</sup> See also Survey of Relevant Historical Analogues at Exhibit 31, filed

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47. The purpose of these gunpowder regulations was to promote public safety. Early American governments recognized the danger posed by gun powder and regulated every aspect of its production, sale, and storage. Early American governments also regulated shooting galleries for similar reasons.<sup>81</sup>

48. There were also "proving" laws that required the inspection of gunpowder. In 1809, Massachusetts established requirements for the quality and composition of gunpowder; authorized the appointment of provers to inspect gunpowder before it was placed in any public magazine; required provers to place gunpowder that passed inspection in casks marked with the inspector's initials; authorized inspectors to mark as "condemned" gunpowder that failed inspection; and forbade the sale of gunpowder that was marked condemned or that had not yet passed inspection.<sup>82</sup> Four other states, including Rhode Island, New Jersey, New Hampshire, and Pennsylvania, adopted similar gunpowder inspection laws in the late eighteenth and early nineteenth centuries.<sup>83</sup>

concurrently with this declaration.

<sup>81</sup> John C. White, Digest of the Laws and Ordinances of the Parish of East Feliciana, Adopted by the Police Jury of the Parish Page 80 (1848); Ordinances and Joint Resolutions of the City of San Francisco; Together with a List of the Officers of the City and County, and Rules and Orders of the Common Council Page 220 (1854); Chas. Ben. Darwin, Ordinances of the City of Burlington, with Head Notes and an Analytic Index Page 149-150 (1856); Rhode Island: 1851 R.I. Pub. Laws 9, An Act In Amendment Of An Act Entitled An Act Relating To Theatrical Exhibitions And Places Of Amusement, §§ 1-2; Samuel Ames, The Revised Statutes of the State of Rhode Island and Providence Plantations: To Which are Prefixed, The Constitutions of the United States and of the State Page 204-205(1857); William H. Bridges, Digest of the Charters and Ordinances of the City 205(1857); William H. Bridges, Digest of the Charters and Ordinances of the City of Memphis, Together with the Acts of the Legislature Relating to the City, with an Appendix Page 148-149 (1863); Henry Jefferson Leovy, The Laws and General Ordinances of the City of New Orleans, Together with the Acts of the Legislature, Decisions of the Supreme Court. And Constitutional Provisions Relating to the City Government. Revised and Digested, Pursuant to an Order of the Common Council. New Edition Page 257 (1870); Exh. 31.

82 1808 Mass. Acts 444, ch. 52, An Act Providing for the Appointment of Inspectors, and Regulating the Manufactory of Gun-Powder.

83 1776 R.I. Pub. Laws 25 (Oct. Sess.); 1776-77 N.J. Laws 6-7, ch. 6; 1820
 N.H. Laws 274, ch. 25; 1794 Pa. Laws 764, ch. 337; Exh. 31.

- 49. The application of the police power to firearms and ammunition was singled out as the quintessential example of state police power by Chief Justice John Marshall in his 1827 discussion of laws regulating gun powder in *Brown v*. *Maryland*. This was so even though gunpowder was essential to the operation of firearms at that time and gun powder regulations necessarily affected the ability of gun owners to use firearms for self-defense, even inside the home.
- 50. A slow process of judicializing this concept of police, transforming the Founding era's idea of a "police right" into a judicially enforceable concept of the "police power" occurred beginning with the Marshall Court and continuing with the Taney Court.<sup>85</sup>
- 51. Nor was Chief Justice John Marshall unique in highlighting the centrality of this idea to American law. <sup>86</sup> The ubiquity of the police power framework for evaluating the constitutionality of legislation regarding firearms reflected the centrality of this approach to nearly every question of municipal legislation touching health or public safety in early America. <sup>87</sup> Massachusetts

<sup>&</sup>lt;sup>84</sup> 25 U.S. (12 Wheat.) 419, 442-43 (1827) ("The power to direct the removal of gunpowder is a branch of the police power").

<sup>85</sup> Eras of Supreme Court history are typically defined by the tenure of the Chief Justice. The Marshall Court Period covered the years 1801-1835. For a brief overview, see "The Marshall Court, 1801-1835", SUPREME COURT HISTORICAL SOCIETY (last visited Oct. 5, 2022), <a href="https://supremecourthistory.org/history-of-the-court-history-of-the-courts-the-marshall-court-1801-1835/">https://supremecourts/history-of-the-courts-history-of-the-courts-history-of-the-court-history-of-the-courts-history-of-the-

<sup>&</sup>lt;sup>86</sup> In the extensive notes he added as editor of the 12<sup>th</sup> edition of James Kent's classic *Commentaries an American Law*, Oliver Wendell Holmes, Jr., wrote that regulation of firearms was the *locus classicus* of the police power. *See* 2 JAMES KENT COMMENTARIES ON AMERICAN LAW (340) 464 n.2 (Oliver Wendell Holmes, Jr., ed. 12 ed. 1873).

<sup>&</sup>lt;sup>87</sup> FREUND, *supra* note 69, at 2, n.2 (1904). WILLIAM J. NOVAK, THE PEOPLE'S WELFARE: LAW AND REGULATION IN NINETEENTH-CENTURY AMERICA (1996); Christopher Tomlins, *To Improve the State and Condition of Man: The Power to* 

Judge Lemuel Shaw, one of the most celebrated state jurists of the pre-Civil War era elaborated this point in his influential 1851 opinion in *Commonwealth v. Alger*, a decision that became a foundational text for lawyers, judges, and legislators looking for guidance on the meaning and scope of the police power. Shaw described the police power in the following manner:

[T]he power vested in the legislature by the constitution, to make, ordain and establish all manner of wholesome and reasonable laws, statutes and ordinances, either with penalties or without, not repugnant to the constitution, as they shall judge to be for the good and welfare of the commonwealth, and of the subjects of the same. It is much easier to perceive and realize the existence and sources of this power, than to mark its boundaries, or prescribe limits to its exercise. There are many cases in which such a power is exercised by all well-ordered governments, and where its fitness is so obvious, that all well regulated minds will regard it as reasonable. Such are the laws to prohibit the use of warehouses for the storage of gunpowder.<sup>88</sup>

52. In short, there was unanimous agreement among leading antebellum jurists, at both the federal and state level, that the regulation of arms and gun powder was at the core of the police power enjoyed by legislatures. Indeed, the scope of government power to regulate, prohibit, and inspect gunpowder has been among the most far reaching of any exercise of the police power throughout American history. A Maine law enacted in 1821 authorized town officials to enter any building in town to search for gun powder:

Be it further enacted, That it shall, and may be lawful for any one or more of the selectmen of any town to enter any building, or other place, in such town, to search for gun powder, which they may have

Police and the History of American Governance, 53 Buff. L. Rev. 1215 (2005); Dubber, supra note 12; Gary Gerstle, Liberty and Coercion: The Paradox of American Government, From the Founding to the Present (Princeton Univ. Press, 2015).

<sup>&</sup>lt;sup>88</sup> Commonwealth v. Alger, 61 Mass. (7 Cush.) 53 (1851). For another good discussion of how state jurisprudence treated the concept, see Thorpe v. Rutland, 27 Vt. 140, 149 (1855).

<sup>&</sup>lt;sup>89</sup> CORNELL, THE POLICE POWER, *supra* note 32.

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reason to suppose to be concealed or kept, contrary to the rules and regulations which shall be established in such town, according to the

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provisions of this Act, first having obtained a search warrant therefore according to law.<sup>90</sup> 53. No jurisdiction enumerated the full contours of the police power they

possessed in a single text or in a single statute or ordinance. Rather, it was well understood that the exercise of this power would need to adapt to changing circumstances and new challenges as they emerged. This conception of law was familiar to most early American lawyers and judges who had been schooled in common law modes of thinking and analysis.<sup>91</sup> Throughout the long sweep of Anglo-American legal history, government applications of the police power were marked by flexibility, allowing local communities to adapt to changing circumstances and craft appropriate legislation to deal with the shifting challenges they faced. 92 This vision of the police power was articulated forcefully by the Supreme Court in the License Cases when Justice McClean wrote this about the scope of state police power:

It is not susceptible of an exact limitation, but must be exercised under the changing exigencies of society. In the progress of population, of wealth, and of civilization, new and vicious indulgences spring up, which require restraints that can only be imposed by new legislative power. When this power shall be exerted, how far it shall be carried, and where it shall cease, must mainly depend upon the evil to be remedied.<sup>93</sup>

One of the most important early American gun-related cases discussed in Heller, State v. Reid, offers an excellent illustration of the way police power jurisprudence was used by antebellum judges to adjudicate claims about gun rights

<sup>&</sup>lt;sup>90</sup> 1821 Me. Laws 98, An Act for the Prevention of Damage by Fire, and the Safe Keeping of Gun Powder, chap. 25, § 5.

<sup>91</sup> KUNAL M. PARKER, COMMON LAW HISTORY, AND DEMOCRACY IN AMERICA, 190-1900: LEGAL THOUGHT BEFORE MODERNISM (2013).

<sup>&</sup>lt;sup>92</sup> William J. Novak, A State of Legislatures, 40 POLITY 340 (2008).

<sup>&</sup>lt;sup>93</sup> License Cases (Thurlow v. Massachusetts; Fletcher v. Rhode Island; Peirce v. New Hampshire), 5 How. (46 U.S.) 504, 592 (1847).

and the right of the people to regulate.<sup>94</sup> The case is a classic example of antebellum police power jurisprudence. The Supreme Court of Alabama evaluated the statute by focusing on the scope of state police power authority over guns. "The terms in which this provision is phrased," the court noted, "leave with the Legislature the authority to adopt such regulations of police, as may be dictated by the safety of the people and the advancement of public morals."<sup>95</sup> In the court's view, the regulation of arms was at the very core of state police power.<sup>96</sup> The judicial determination was straightforward: was the challenged law a legitimate exercise of the police power or not?

### IV. RECONSTRUCTION AND THE EXPANSION OF STATE POLICE POWER TO REGULATE FIREARMS (1863-1877)

55. Founding-era constitutions treated the right of the people to regulate their internal police separately from the equally important right of the people to bear arms. These two rights were separate in the Founding era but were mutually reinforcing: both rights were exercised in a manner that furthered the goal of ordered liberty. Reconstruction-era constitutions adopted a new textual formulation of the connection between these two formerly distinct rights, fusing the two together as one single constitutional principle. This change reflected two profound transformations in American politics and law between 1776 and 1868. First, the judicial concept of police power gradually usurped the older notion of a police right grounded in the idea of popular sovereignty. As a result, state constitutions no

<sup>94</sup> See State v. Reid, 1 Ala. 612, 612 (1840).

<sup>&</sup>lt;sup>95</sup> *Id.* at 616.

<sup>&</sup>lt;sup>96</sup> Apart from rare outlier decisions, such as *Bliss v. Commonwealth*, 12 Ky. (2 Litt.) 90, 92 (1822) courts employed a police power framework to adjudicate claims about the scope of state power to regulate arms. For a useful discussion of *Bliss* in terms of the police power, *see* FREUND, *supra* note 69, at 91.

longer included positive affirmations of a police right. Secondly, the constitutional "mischief to be remedied" had changed as well.<sup>97</sup> Constitution writers in the era of the American Revolution feared powerful standing armies and sought to entrench civilian control of the military. By contrast, constitution writers in the era of the Fourteenth Amendment were no longer haunted by the specter of tyrannical Stuart Kings using their standing army to oppress American colonists. In place of these ancient fears, a new apprehension stalked Americans: the proliferation of especially dangerous weapons and the societal harms they caused.<sup>98</sup>

56. The new language state constitutions employed to describe the right to bear arms enacted during Reconstruction responded to these changed circumstances by adopting a new formulation of the venerable right codified in 1776, linking the right to bear arms inextricably with the states broad police power to regulate conduct to promote health and public safety. For example, the 1868 Texas Constitution included new language that underscored the indissoluble connection that Anglo-American law had long recognized between the right to keep and bear arms and regulation of guns. "Every person shall have the right to keep and bear arms, in the lawful defence of himself or the government, under such regulations as

Rep. 637 (KB) — the legal principle that the meaning of a legal text was shaped by an understanding of the state of the common law prior to its enactment and the mischief that the common law had failed to address and legislation had intended to remedy — continued to shape Anglo-American views of statutory construction, and legal interpretation more generally, well into the nineteenth century. For Blackstone's articulation of the rule, see 1 BLACKSTONE, *supra* note 8, at \*61. The relevance of common law modes of statutory construction to interpreting antebellum law, including the mischief rule, is clearly articulated in 1 ZEPHANIAH SWIFT, A DIGEST OF THE LAWS OF THE STATE OF CONNECTICUT 11 (New Haven, S. Converse 1822). For a modern scholarly discussion of the rule, *see* Samuel L. Bray, *The Mischief Rule*, 109 GEO. L.J. 967, 970 (2021).

<sup>&</sup>lt;sup>98</sup> See McDonald, 561 U.S. at 767–68.

<sup>&</sup>lt;sup>99</sup> Saul Cornell, The Right to Regulate Arms in the Era of the Fourteenth Amendment: The Emergence of Good Cause Permit Schemes in Post-Civil War America, 55 U.C. DAVIS L. REV. 65 (2022).

the Legislature may prescribe."<sup>100</sup> Texas was not an outlier in this regard. Sixteen state constitutions adopted during this period employed similarly expansive language.<sup>101</sup> Millions of Americans living in the newly organized western states and newly reconstructed states of the former confederacy adopted constitutional provisions that reflected this new formulation of the right to bear arms. Thus, millions of Americans were living under constitutional regimes that acknowledged that the individual states' police power authority over firearms was at its apogee when regulating guns.<sup>102</sup>

- 57. This expansion of regulation was entirely consistent with the Fourteenth Amendment's emphasis on the protection of rights and the need to regulate conduct that threatened the hard-won freedoms of recently free people of the South and their Republican allies. The goals of Reconstruction were therefore intimately tied to the passage and enforcement of racially neutral gun regulations. <sup>103</sup>
- 58. Reconstruction ushered in profound changes in American law, but it did not fundamentally alter the antebellum legal view that a states' police powers were rooted in the people's right to make laws to protect the peace and promote public safety. Nor did Reconstruction challenge the notion that these powers were at their zenith when dealing with guns and gun powder. In fact, the Republicans who wrote the Fourteenth Amendment were among the most ardent champions of

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<sup>&</sup>lt;sup>100</sup> Tex. Const. of 1868, Art. I, § 13; for similarly expansive constitutional provision enacted after the Civil War, *see* IDAHO CONST. OF 1889, art. I, § 11 ("The people have the right to bear arms for their security and defense; but the legislature shall regulate the exercise of this right by law."); UTAH CONST OF 1896, art. I, § 6 ("[T]he people have the right to bear arms for their security and defense, but the legislature may regulate the exercise of this right by law.").

<sup>&</sup>lt;sup>101</sup> Cornell, *supra* note 99, at 75–76.

 $<sup>^{102}</sup>$  *Id*.

<sup>&</sup>lt;sup>103</sup> ERIC FONER, THE SECOND FOUNDING: HOW THE CIVIL WAR AND RECONSTRUCTION REMADE THE CONSTITUTION (2019); Brennan Gardner Rivas, *Enforcement of Public Carry Restrictions: Texas as a Case Study*, 55 U.C. DAVIS L. REV. 2603 (2022).

an expansive view of state police power. As heirs to the antebellum Whig vision of a well-regulated society, Reconstruction-era Republicans used government power aggressively to protect the rights of recently freed slaves and promote their vision of ordered liberty.<sup>104</sup>

- 59. Indeed, the passage of the Fourteenth Amendment was premised on the notion that the individual states would not lose their police power authority to the federal government. The author of Section One of the Fourteenth Amendment, John Bingham, reassured voters that the states would continue to bear the primary responsibility for "local administration and personal security." As long as state and local laws were racially neutral and favored no person over any other, the people themselves, acting through their representatives, were free to enact reasonable measures necessary to promote public safety and further the common good. <sup>106</sup>
- 60. It would be difficult to understate the impact of this new paradigm for gun regulation on post-Civil War legislation. Across the nation legislatures took advantage of the new formulation of the right to bear arms included in state constitutions and enacted a staggering range of new laws to regulate arms. Indeed, the number of laws enacted skyrocketed, increasing by over four hundred percent

<sup>&</sup>lt;sup>104</sup> Robert J. Kaczorowski, Congress's Power to Enforce Fourteenth Amendment Rights: Lessons from Federal Remedies the Framers Enacted, 42 HARV. J. ON LEGIS. 187 (2005); Christopher Tomlins, To Improve the State and Condition of Man: The Power to Police and the History of American Governance 53 BUFFALO L. REV. 1215 (20052006).

<sup>&</sup>lt;sup>105</sup> John Bingham, *Speech*, CINCINNATI DAILY GAZETTE (Sept. 2, 1867), as quoted in Saul Cornell and Justin Florence, *The Right to Bear Arms in the Era of the Fourteenth Amendment: Gun Rights or Gun Regulation*, 50 SANTA CLARA L. REV. 1043, 1058 (2010).

<sup>&</sup>lt;sup>106</sup> For a discussion of how the courts wrestled with the meaning of the Amendment, *see* WILLIAM E. NELSON, THE FOURTEENTH AMENDMENT: FROM POLITICAL PRINCIPLE TO JUDICIAL DOCTRINE (1998).

- 61. Henry Campbell Black, the author of *Black's Law Dictionary*, described the police power as "inalienable" and echoed the view of a long line of jurists who noted that the scope of the power was not easily defined and the determination of its limits was best left to courts on a case-by-case basis. <sup>109</sup> Indeed, even the most ardent critics of the police power, such as conservative legal scholar Christopher G. Tiedeman, acknowledged that "police power of the State extends to the protection of the lives, limbs, health, comfort and quiet of all persons, and the protection of all property within the State." <sup>110</sup>
- 62. In keeping with the larger goals of Reconstruction, Republicans sought to protect the rights of African Americans to bear arms but were equally insistent on enacting strong racially neutral regulations aimed at public safety. Violence directed against African Americans, particularly the campaign of terror orchestrated by white supremacist para-military groups prompted Republican dominated legislatures in the Reconstruction South to pass a range of racially neutral gun regulations. The racially neutral gun laws enacted by Republicans were in part a reaction to the discriminatory black codes passed by neo-confederate legislatures earlier in Reconstruction. The Black Codes violated the Second Amendment, but

<sup>&</sup>lt;sup>107</sup> See Spitzer, supra note 36, at 59–61 tbl. 1.

<sup>&</sup>lt;sup>108</sup> *Id*.

<sup>&</sup>lt;sup>109</sup> HENRY CAMPBELL BLACK, HANDBOOK OF CONSTITUTIONAL LAW, 334–344 (2d ed., 1897).

<sup>&</sup>lt;sup>110</sup> Christopher G. Tiedeman, A Treatise On The Limitations Of The Police Power In The United States 4–5 (1886) (citing *Thorpe v. Rutland R.R.*, 27 Vt. 140, 149-50 (1854)).

<sup>111</sup> Mark Anthony Frassetto, *The Law and Politics of Firearms Regulation in Reconstruction Texas*, 4 Tex. A&M L. Rev. 95, 113–17 (2016); Brennan G. Rivas, *An Unequal Right to Bear Arms: State Weapons Laws and White Supremacy in Texas*, 1836-1900, 121 SOUTHWESTERN QUARTERLY 284 (2020).

 the wave of firearms legislation passed by Republican controlled state legislatures in the South were consciously crafted to honor the Second Amendment and protect individuals from gun violence.<sup>112</sup>

- 63. The laws enacted during Reconstruction underscore the fact that robust regulation of firearms during Reconstruction was not a novel application of the police power, but an expansion and continuation of antebellum practices. Moreover, these efforts illustrated a point beyond dispute: the flexibility inherent in police power regulations of guns. American states had regulated arms since the dawn of the republic and Reconstruction simply renewed America's commitment to the idea of well-regulated liberty.
- 64. Another important change relevant to understanding firearms regulation in the Reconstruction era derives from changes in firearms technology, specifically the profoundly increased lethality of weapons manufactured at that time. By the ratification of the Fourteenth Amendment, firearms became more deadly, lighter, easier to use, more accurate, and required far less training to be effective than did the muskets of the eighteenth century. Although comparisons of weapons from different eras is inherently subjective, one effort to compile a comparative lethality index for military weapons is instructive. Military historian and defense analyst Trevor DuPuy's theoretical lethality index captures the exponential growth in the lethality of battlefield firearms between the era of the Second Amendment and the Fourteenth and beyond. Of course, the lethality index, an intellectual construct developed to compare weapons on the battlefield offers an imperfect gauge for the increased lethality of modern weapons in a civilian context. The improvements associated with weapons in the Civil War era were significant,

<sup>112</sup> See Darrell A. H. Miller, Peruta, The Home-Bound Second Amendment, and Fractal Originalism, 127 HARV. L. REV. 238, 241 (2014); see also Robert J. Kaczorowski, Congress's Power to Enforce Fourteenth Amendment Rights: Lessons from Federal Remedies the Framers Enacted, 42 HARV. J. ON LEGIS. 187, 205 (2005) (discussing Republican use of federal power to further their aims, including to enforce the Fourteenth Amendment).

Dupuy's Theoretical Lethality Index<sup>74</sup>

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Weapon TLI Sword, pike, etc. 23 Longbow 36 17th c. musket 19 18th c. flintlock 43 Early 19th c. rifle 36 102 Mid-19th c. rifle/conoidal bullet Late 19th c. breech-loading rifle 153 495 Springfield Model 1903 rifle (magazine) World War I machine gun 3,463 World War II machine gun 4,973

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but they pale in comparison to the carnage that that modern semi-automatic weapons can inflict in densely populated areas and sensitive places. Nevertheless, Depuy's innovative and useful scale, designed for battlefield comparisons invariably understates the increase in the level of destruction today's weapons can inflict upon a civilian population. <sup>113</sup>The expansion of gun laws after the Civil War, in part, reflects the improvements in firearms lethality and their wider availability to the civilian population. The ease of use of these weapons compared to earlier firearms also increased their popularity. The rise of easily concealed weapons, especially pocket pistols, contributed to rising urban crime and violence. The expansion of arms in the post-Civil War era made these and other arms more readily available for use in crimes of violence so states and localities enacted laws to regulate the baneful consequences of arms proliferation. <sup>114</sup>

#### V. Bruen's Framework and the Scope of Permissible Regulation

65. The power to regulate and in some cases prohibit dangerous or unusual weapons has always been central to the police power authority of states and localities.<sup>115</sup>

<sup>&</sup>lt;sup>113</sup> Darrell Miller and Jennifer Tucker, *Common Use Lineage, and Lethality* 55 U.C DAVIS. L. REV 2495, 2509 (2022).

<sup>114</sup> Cornell, supra note 99.

<sup>&</sup>lt;sup>115</sup> Spitzer, *supra* note 36.

66. Political scientist Robert Spitzer's overview of the history of firearms regulation underscores a basic point about American law: "The lesson of gun regulation history here is that new technologies bred new laws when circumstances warranted." States and localities have regulated arms and ammunition since the earliest days of the American Republic. The statutes at issue in this case are analogous to a long-established tradition of firearms regulation in America, beginning in the colonial period and stretching across time to the present. This venerable tradition of using police power authority to craft specific laws to meet shifting challenges has continued to the present day. The adaptability of state and local police power provided the flexibility governments needed to deal with the problems created by changes in firearms technology and gun culture.

<sup>&</sup>lt;sup>116</sup> *Id*.

<sup>&</sup>lt;sup>117</sup> GERSTLE, *supra* note 87.

## DEFENDANT'S EXHIBIT 31

#### Boland, Lance, et al. v. Robert Bonta, et al., No. 8:22-cv-01421-CJC-ADS Survey of Relevant Historical Analogues (Pre-Founding – 1899)

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Year of Enactment	Jurisdiction	Citation	Description of Regulation	Subject of Regulation
		Founding Era to the	Civil War	
1757-68	Maryland	Md. Acts 53, An Act Prohibiting All Trade With The Indians, For The Time Therin Mentioned, § 3 <sup>1</sup>	That it shall not be lawful for any person or persons within this Province, to sell or give to any Indian Woman or Child, any gunpowder, shot, or lead, whatsoever, nor to any Indian Man within this province, more than the quantity of one pound of gunpowder and six pounds of shot or lead, at any one time, and not those, or lesser quantities of powder or lead oftener than once in Six months, under the Penalty of Five Pounds Current Money for every pound of gunpowder.	Gunpowder

<sup>&</sup>lt;sup>1</sup> Laws such as this which were based on race, nationality, or enslaved status were enacted before ratification of the Thirteenth and Fourteenth Amendments, are morally repugnant, and would obviously be unconstitutional today. They are provided only as evidence of a regulatory tradition that the courts have already recognized. The Attorney General in no way condones laws that target certain groups on the basis of race, gender, nationality, or other protected characteristic, but these laws are part of the history of the Second Amendment and may be relevant to determining the traditions that define its scope, even if they are inconsistent with other constitutional guarantees. See New York State Rifle & Pistol Ass'n v. Bruen, 142 S. Ct. 2111, 2150-2151 (2022) (citing *Dred Scott v. Sandford*, 19 How. 393 (1857) (enslaved party)). Reference to a particular historical analogue does not endorse the analogue's application in the past. Rather, it can confirm the existence of the doctrine and corresponding limitation on the Second Amendment right. See William Baude & Stephen E. Sachs, Originalism & the Law of the Past, 37 L. & Hist. Rev. 809, 813 (2019) ("Present law typically gives force to past doctrine, not to that doctrine's role in past society."); see also Adam Winkler, Racist Gun Laws and the Second Amendment, 135 Harv. L. Rev. F. 537, 539 (2022) ("Yet there will arise situations in which even a racially discriminatory gun law of the past might provide some basis for recognizing that lawmakers have a degree of regulatory authority over guns.")

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Year of	Jurisdiction	Citation	Description of	Subject of
Enactment			Regulation	Regulation
1775	New Hampshire	8 Documents and Records Relating to the State of New Hampshire During the Period of the American Revolution from 1776-1783 at 15-16 (Nathaniel Bouton ed. 1874), Jan. 12, 1775.	Requiring each firearm sold in the colony to possess certain specifications and pass inspection involving the safe firing of the gun	Firearm proving
1775	Maryland	Resolution of the Maryland Council of Safety, August 19, 1775	Approving purchase of muskets with detailed manufacturing specifications and requiring that they be proved before purchase	Firearm proving
1775	Pennsylvania	Resolution of the Pennsylvania Committee on Safety, Oct. 27, 1775, Col. Rec. Penn. 10:383	Requiring that all muskets be "proved" prior to purchase	Firearm proving
1776	New Jersey	"Act for the Inspection of Gunpowder", 1776- 1777, N.J. Laws 6, ch. 6	Required the inspection of gunpowder prior to sale, and appointed state inspectors to "mark" lots that passed inspection.	Gunpowder
1776	Rhode Island	"An Act for the Inspection of Gunpowder Manufactured Within This State" 1776 R.I. Public Laws 25 (Oct. Session)	Requiring that before gunpowder could be sold it needed to pass inspection or adhere to certain safety standards	Gunpowder
1776	Continental Army	E. Wayne Carp's To Starve The Army At Pleasure: Continental Army Administration And American Political Culture, 1775-1783 (1984) at 66-67	George Washington ordered all Continental Army firearms stamped with an insignia: "U.S.XIII." in order to make it easier to identify cases where arms were being	Firearm proving

#### Boland, Lance, et al. v. Robert Bonta, et al., No. 8:22-cv-01421-CJC-ADS Survey of Relevant Historical Analogues (Pre-Founding – 1899)

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Year of	Jurisdiction	Citation	Description of	Subject of
Enactment			Regulation	Regulation
			illegally sold in a	
			secondary market to	
			private individuals	
1780	Continental	Letter from George	"I think it will be best	Firearm
	Army	Washington to Henry	for you to give orders	proving
		Knox (Nov. 30,	to the Officer	
Ξ		1780), in The Writings	superintending the	
		of George Washington	Laboratory to have the	
		from the Original	Barrels sufficiently	
		Manuscript Sources	proved before they are	
		1745-1799 (John C.	delivered to Mr. Buel,	
		Fitzpatrick, ed.)	as I suspect that they	
			are most of them of the	
			trash kind which Mr Lee charges Mr.	
			Deane[']s Agent with	·
			purchasing."	·
1770.4		D 1 767	-	
1794	Pennsylvania	Pa. Laws 764, An Act	Whereas gun-powder	Gunpowder
		Providing For The	imported from abroad, and manufactured	
		Inspection Of Gunpowder chap. 337	within this state, have	
		Gunpowaer chap. 557	frequently been found	
			to vary much in its	
			strength, and	
			sometimes of inferior	
			qualities, and its defects	
			not discovered until	
			brought into actual use	
			: and whereas the	
			modes herefore rules to	
			prove the force thereof	
			have been found	
			uncertain and variable;	
			and whereas Joseph	
			Leacock, of the city of	
			Philadelphia, hath	
			invented an engine,	
			called a pendulum powder proof, with a	
			graduated arch and	
			catch pall, by which it	
			is conceived that the	
			force of gunpowder	

Year of	Jurisdiction	Citation	Description of	Subject of
Enactment			Regulation	Regulation
			may be proved by experiment, and the article reduced to certain and uniform standards of strength, whereby the manufacture may be advanced towards ultimate perfection, and the purchaser and consumer protected against fraud and imposition.	
1805	Massachusetts	1804 Mass. Acts. 111,	To prevent harm to	Firearm
		ch. 81, An Act to Provide for the Proof of Fire Arms Manufactured Within this Commonwealth.	residents from the sale of unsafe firearms. The law required the appointment of inspectors, up to two per county, who would "prove," i.e. test and inspect, all musket barrels and pistol barrels. The law detailed the manner in which these inspections were to be conducted, which included testing the firearm to ensure it would not fail and that it could carry a shot over a certain distance. If the firearm passed inspection, then the inspector would stamp it with the inspector's initials and the year onto the barrel so that	proving
			the stamp could not be erased or disfigured.	
1811	New Hampshire	N.H. Laws 74, An Act To Regulate The Keeping And Selling,	That if any person or persons shall sell or offer for sale by retail	Gunpowder

### Case 8:22-cv-01421-CJC-ADS Document 56-3 Filed 02/24/23 Page 45 of 55 Page ID #:1856

#### Boland, Lance, et al. v. Robert Bonta, et al., No. 8:22-cv-01421-CJC-ADS Survey of Relevant Historical Analogues (Pre-Founding – 1899)

Year of	Jurisdiction	Citation	Description of	Subject of
Enactment			Regulation	Regulation
		And Transporting Of Gunpowder, chap. 61, § 5	any gunpowder in any highway, or in any street, lane, or alley, or on any wharf, or on parade or common, such person so offending shall forfeit and pay for each and every offense a sum not more than five dollars nor less than one dollar, to be recovered and applied as aforesaid.	
1811	New Jersey	N.J. Laws 300, An Act To Regulate Gun Powder Manufactories And Magazines Within This State	No person or persons whatsoever shall be permitted within this state to erect or establish or cause to be erected or established any manufactory which shall be actually employed in manufacturing gun powder either by himself or any other person, either on his own land or another, within the distance of a quarter of a mile from any dwelling house, barn or out house, without the consent under hand and seal of all and every the owner or owners of such dwelling house.	Gunpowder
1814	Massachusetts	1814 Mass. Acts 464, An Act In Addition To An Act, Entitled "An Act To Provide For The Proof Of Fire Arms, Manufactured Within This	§ 1 ("All musket barrels and pistol barrels, manufactured within this Commonwealth, shall, before the same shall be sold, and before the	Firearm proving

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### Case 8:22-cv-01421-CJC-ADS Document 56-3 Filed 02/24/23 Page 46 of 55 Page ID #:1857

Year of	Jurisdiction	Citation	Description of	Subject of
Enactment			Regulation	Regulation
		Commonwealth," ch. 192,	same shall be stocked, be proved by the person appointed according to the provisions of an act"); § 2 ("That if any person of persons, from and after the passing of this act, shall manufacture, within this Commonwealth, any musket or pistol, or shall sell and deliver, or shall knowingly purchase any musket or pistol, without having the barrels first proved according to the provisions of the first section of this act, marked and stamped according the provisions of the first section of the act.")	
1820	New Hampshire	N.H. Laws 274, An Act To Provide For The Appointment Of Inspectors And Regulating The Manufacture Of Gunpowder, chap XXV, §§ 1-9	The Governor is herby authorized to appoint an inspector of gunpowder for every public powder magazine, and at every manufactory of gunpowder in this state § 2. And be it further enacted that from and after the first day of July next, all gunpowder which shall be manufactured within this estate shall be composed of the following proportions and quality of materials § 3. It shall be the duty of each of said inspectors	Gunpowder

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Year of	Jurisdiction	Citation	Description of	Subject of
Enactment			Regulation	Regulation
			to inspect examine and	
			prove all gunpowder	
			which after the first day	
	:		of July shall not be	
			deposited at any public	
			powder magazine, or	
			manufactory of this	
			state § 4: No	
			gunpowder within this	
			state shall be	
			considered to be of	
			proof unless one ounce	
			thereof, placed in a	
			chamber of a four inch	
			howitzer and elevated	
			so as to form an angle	
			of forty five degrees	
			with the horizon, will,	
			upon being fired throw	
			a twelve pound shot	
			seventy five yards at	
			· · ·	
			the lease. § 5: When	
			ever any of said	
			inspectors shall	
			discover any	
			gunpowder, deposited	
			at any public powder	
			magazine, or any other	
			place within this state,	
			which is not well	
			manufactured or which	
			is composed of impure	
			materials the	
			inspector in such case,	
			shall mark each cask	
			containing such impure	
			ill manufactured or	
			deficient gunpowder. §	
			6. If any person shall	
			knowingly sell any	
			condemned gunpowder	
			every such person,	
			so offending, shall	
			forfeit and pay not less	

### Case 8:22-cv-01421-CJC-ADS Document 56-3 Filed 02/24/23 Page 48 of 55 Page ID #:1859

Year of Enactment	Jurisdiction	Citation	Description of	Subject of
			Regulation  than two hundred dollars nor more than five hundred dollars § 7. Each inspector be shown to the faithful and impartial discharge of the duties of his office, and each inspector one cent for each pound gunpowder, by him examined inspected and proved § 8. That if any manufacturer of gunpowder meant to be sold inspected shall forfeit not less than two dollars § That if any person with within this state shall knowingly shall forfeit not less than 5 dollars nor more than 500 dollars.	Regulation
1821	Maine	1821 Laws of the State of Maine 685-86, vol. 2, § 3, An Act to Provide for the Proof of Fire Arms.	Required the governor to appoint inspectors of firearms who would then ensure that firearms met certain safety standards and stamped prior to their sale.	Firearm Proving
1836	Connecticut	Acts 105 (Reg. Sess.) An Act Incorporating The Cities of Hartford, New Haven, New London, Norwich and Middletown, chap. 1, § 20	Relative to prohibiting and regulating the bringing in, and conveying out, or storing of gunpowder in said cities.	Gunpowder
1845	Iowa	Iowa Laws 119, An Act to Incorporate and Establish the City of	They shall have power from time to time to make and publish all such laws and	Gunpowder

#### Boland, Lance, et al. v. Robert Bonta, et al., No. 8:22-cv-01421-CJC-ADS Survey of Relevant Historical Analogues (Pre-Founding – 1899)

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Year of	Jurisdiction	Citation	Description of	Subject of
Enactment			Regulation	Regulation
		Dubuque, chap 123, § 12	ordinances as to them shall seem necessary to provide for the safety, preserve health, promote the prosperity and improve the morals, order, comfort and convenience of said city, and the inhabitants thereof, to impose fines, forfeitures and penalties on all persons offending against the laws and ordinances of said city, and provide for the prosecution, recovery and collection thereof, and shall have power to regulate by ordinance the keeping and sale of gunpowder within the city.	
1847	Indiana	Ind. Acts 93, An Act To Reduce the Law Incorporating the City of Madison, and the Several Acts Amendatory thereto Into One Act, And To Amend the Same, chap 61, § 8, pt. 4	To regulate and license, or provide by ordinance for regulating and licensing for the keepers of gunpowder and other explosive compounds.	Gunpowder
1849	Ohio	Ohio Laws 408, An Act To Incorporate The Town Of Ripley In The County Of Brown, § 4	That the said town council of Ripley shall have power to ordain and establish laws and ordinances to regulate the sale of gunpowder therein.	Gunpowder
1859	Massachusetts	1 The General Statutes of the Commonwealth of Massachusetts: Enacted December 28,	Renewing and updating firearm proving and gunpowder safety inspection laws	Firearm proving

### Case 8:22-cv-01421-CJC-ADS Document 56-3 Filed 02/24/23 Page 50 of 55 Page ID #:1861

Year of Enactment	Jurisdiction	Citation	Description of Regulation	Subject of Regulation
		1859, to Take Effect June 1, 1860 (2d ed., William A. Richardson & George P. Sanger, eds.) 255 (1873)		
1865	Vermont	Vt. Acts & Resolves 213, An Act To Amend An Act Entitled "An Act To Incorporate The Village Of Rutland,: "Approved November 15, 1847, § 10	and said fire wardens may inspect the manner of manufacturing and keeping gun-powder, lime, ashes, matches, lights, fire-works of all kinds, and other combustibles, and said fire-wardens may, if they deem the same to be dangerous, order the persons manufacturing and keeping such gun powder in what manner to manufacture and keep the same.	Gunpowder
1867-68	Tennessee	Tenn. Pub. Acts 26, An Act To Amend The Charter Of The City Of Memphis, And For Other Purposes, pt. 20	To provide for the prevention and extinguishment of fires to regulate and prevent carrying on manufactures dangerous in causing or producing fire	Gunpowder
	Reconst	ruction Era and Post-14	th Amendment to 1899	
Year of Enactment	Jurisdiction	Citation	Description of Regulation	Subject of Regulation
1866	New Jersey	1886 N.J. Laws 358, An Act To Regulate The Manufacture And Storage Of Gun Powder, Dynamite And Other Explosive, § 1	No person or persons or corporations shall after the passage of this act, be permitted within this state to erect, have or maintain, or cause to	Gunpowder

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#### Boland, Lance, et al. v. Robert Bonta, et al., No. 8:22-cv-01421-CJC-ADS Survey of Relevant Historical Analogues (Pre-Founding – 1899)

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Year of	Jurisdiction	Citation	Description of	Subject of
Enactment			Regulation	Regulation
			be erected, had or maintained any establishment, storehouse or building in which in which shall be manufactured, stored or kept any gun powder, blasting powder, dualin, dynamite, forcite, giant powder, nitroglycerine, or any powder or materials of which nitro-glycerine is an essential ingredient or forms a component part, or any other explosive within the distance of one thousand feet from any public road	
1869	Nebraska	Neb. Laws 53, An Act To Incorporate Cities Of The First Class In The State Of Nebraska, § 47	The City Council shall have power to license all vendors of gunpowder	Gunpowder
1871	Maine	The Revised Statutes of the State of Maine, Passed January 25, 1871 326 (1871)	Renewing and updating firearm proving and gunpowder safety inspection laws	Firearm proving
1874	Kentucky	Ky. Acts 327, An Act to Revise and Amend the Charter of the City of Newport, § 6	To prohibit the manufacture of gunpowder or other explosive, dangerous or noxious compounds or substances in said city, and to regulate their sale and storage by license.	Gunpowder

Year of	Jurisdiction	Citation	Description of	Subject of
Enactment	- 112		Regulation	Regulation
1883	California	Cal. Stat. 156, § 153	The Municipal Council shall provide by ordinance for the payment into a "Fireman's Charitable Fun" of such city, or city and county, of all moneys received for licenses for the storage, manufacture, or sale of gunpowder, blasting powder, gun cotton, fireworks, nitro-glycerine, dualine, or any explosive oils or compounds, or as a municipal tax upon the same; slao all fines collected in the police court for violations of fire ordinances.	Gunpowder
1885	Rhode Island	R.I. Pub. Laws 6, An Act In Amendment Of And in Addition To Chapter 242 Of The Public Statutes, Entitles "Of Offenses Against Private Property." § 1	Every person who shall knowingly deliver or cause to be delivered to any person or carrier any box, can or other package of nitro-glycerine, gunpowder, naptha or other equally explosive material, not marked with a plain and legible label describing its contents, or who shall remove or cause to be removed any such label or mark shall be fined not more than ten thousand dollars or imprisoned not more than five years.	Gunpowder

#### Boland, Lance, et al. v. Robert Bonta, et al., No. 8:22-cv-01421-CJC-ADS Survey of Relevant Historical Analogues (Pre-Founding – 1899)

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Year of	Jurisdiction	Citation	Description of	Subject of
Enactment			Regulation	Regulation
1889	Ohio	Ohio Laws 164, An Act To Amend Section 2669 Of The Revised Statutes, As Amended April 22, 1885, § 2669	The council of the city or village may provide by ordinance for licensing all exhibiters of shows or performances of any kind, not prohibited by law, hawkers, peddlers, auctioneers of horses and other animals on the highways or public grounds of the corporation, vendors of gun powder and other explosives, taverns and houses of public entertainment, and hucksters in the public streets or markets, and in granting such license, may extract and receive such sum of money as it may think reasonable	Gunpowder
1890	Oklahoma	Okla. Sess. Laws 447, Crime and Punishment, § 24	Every person guilty of making or keeping gunpowder or saltpeter within any city or village, in any quantity of manner such as is prohibited by law or by and ordinance of said city or village, in consequence whereof any explosion occurs whereby any human being is killed, is guilty of manslaughter.	Gunpowder

Year of	Jurisdiction	Citation	Description of	Subject of
Enactment 1890	Oklahoma	Okla. Sess. Laws 474, Crime and Punishment, § 4	Regulation  Every person who makes or keeps gunpowder or saltpeter within any city or village, and every person who carries gunpowder through the streets thereof, in any quantity or manner such as is prohibited by law, or by any ordinance of such city or village, is guilty of a misdemeanor.	Regulation Gunpowder
1891	New Hampshire	N.H. Laws 332, Safe-keeping Of Gunpowder And Other Explosives, § 7	If any person shall carry from town to town, or from place to place, any gunpowder for the purpose of peddling or selling it by retail in quantities less than twenty-five pounds, or shall sell, or offer to sell by retail, any gunpowder in any highway or street, or on any wharf, parade, or common, or if any person shall sell or deal out any gunpowder in the night time, between sunset and sunrise, he shall forfeit for each offense a sum not more than five dollars.	Gunpowder
1895	Nebraska	Neb. Laws 233, Statutes Relating To The government Of The City Of Lincoln, § 17	No person shall keep, sell, or give away any gunpowder or guncotton in any quantity without permission in writing signed by the Chief of	Gunpowder

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Year of Enactment	Jurisdiction	Citation	Description of Regulation	Subject of Regulation
			Fire Department and City Clerk, and sealed with the corporate seal, under a penalty of twenty-five dollars for every offense: Provided, any person may keep for his own defense a quantity of gunpowder or guncotton not exceeding one pound.	
1899	Tennessee	Tenn. Pub. Acts 327, An Act To Repeal The Charter Of The Town Of Waverly, In Humphreys county, And to Incorporate Said Town And Define Its Rights, Powers, etc., § 10	To regulate, restrain, or prevent the carrying on of manufactories dangerous in causing or producing fires, and to prevent and suppress the sale of firearms, fireworks, Roman candles, crackers, sky rockets, etc., and toy pistols.	Gunpowder

# EXHIBIT 9



MAURA HEALEY Governor

KIM DRISCOLL Lt. Governor

# The Commonwealth of Massachusetts Executive Office of Public Safety and Security One Ashburton Place, Room 2133

Boston, Massachusetts 02108

Tel: (617) 727-7775 TTY Tel: (617) 727-6618 Fax: (617) 727-4764 www.mass.gov/eops

TERRENCE M. REIDY Secretary

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#### APPROVED FIREARMS ROSTER 03/2022

This Roster Supersedes All Previous Rosters

#### Firearms added to this Roster edition are highlighted in YELLOW

This roster has been compiled in accordance with M.G.L. c.140, § 131¾ and 501 CMR 7.00. It contains weapons determined by Massachusetts approved independent testing laboratories to have satisfactorily completed the testing requirements of M.G.L. c. 140, § 123; clauses 18th; 19th; 20th; and 21st. The reports resulting from said tests were reviewed by the Gun Control Advisory Board and those makes and models listed herein were subsequently approved by the Secretary of Public Safety and Security as having complied with the statutory handgun testing provisions of M.G.L. c. 140, § 123.

Modifications to this roster are likely to occur periodically, and licensees and law enforcement personnel should always utilize the most recent roster for purposes of determining statutory compliance. The Approved Firearms Roster posted on the website of the Firearms Records Bureau (www.mass.gov/firearms-services) will contain the most recently approved models.

Massachusetts licensed firearms dealers should note that the transfers of handguns are also subject to the Attorney General's Handgun Sales Regulations, 940 CMR 16.00, et seq. Firearms on this Approved Firearms Roster do not necessarily comply with the requirements of the Attorney General's Handgun Sales Regulations. Information about those regulations, as well as the Enforcement Notice may be obtained from the Office of the Attorney General and may be accessed on the website of the Attorney General (www.ago.state.ma.us)."

Manufacturer	Model	Caliber
Armatix	iP1	.22LR
Armscor Precision	Rock Island 1911 A-1 GI	.45 ACP
Armscor Precision	Rock Island 1911 A-1 GS CS Blue	.45 ACP
Armscor Precision	Rock Island 1911 A1-FS	.45 ACP
Armscor Precision	Rock Island 1911 A-2 GI FS Blue	.45 ACP
Armscor Precision	Rock Island 1911 A-2 GI MS Blue	.45 ACP
Auto Ordnance	1911-A1	.45 ACP
Beretta	84FS Cheetah	.380 ACP

Beretta	84FS Cheetah – Nickel	.380 ACP	1
Beretta	85FS Cheetah	.380 ACP	<b>-</b> ].
Beretta	85FS Cheetah – Nickel	.380 ACP	
Beretta	92FS	9mm	
Beretta	92FS Brigadier Inox	9mm	
Beretta	92FS Compact Inox	9mm	
Beretta	92FS Compact Type M	9mm	
Beretta	92FS Compact Type M Inox	9mm	
Beretta	92FS Inox	9mm	
Beretta	92FS Vertec	9mm	1
Beretta	92FS Vertec Inox	9mm	
Beretta	92x	9mm	
Beretta	M9A4 Centurion	9mm	
Beretta	, 9000S	9mm	
Beretta	96	.40 S&W	
Beretta	96 Brigadier	.40 S&W	
Beretta	96 Brigadier Inox	.40 S&W	
Beretta	96 Inox	.40 S&W	
Beretta	96 Vertec	.40 S&W	1
Beretta	96 Vertec Inox	.40 S&W	]
Beretta	9000S Type F	.40 S&W	
Bond Arms	MASS	.45/410	
Bond Arms	MATD	.45/410	
Bond Arms	MARW	.45/410	
Bond Arms	MAOG	.45/410	
Browning	Buck Mark Camper SS	.22 LR	
Browning	Buck Mark SE MS Lt Splash 7.25	.22 LR	
Canik	SFX Rival	9mm	
Canik	TP9 DA w/10rd Mag (PartHG4227-N)	9mm	
Canik	TP9 SF Elite	9mm	
Canik	TP9 SFL w/10rd Mag (PartHG4583)	- 9mm	
Canik	TP9 SFX w/10rd Mag (PartHG4192G-N)	9mm	
Canik	TP-9SA	9mm	
Canik	TP9SF (HG4071-N)	9mm	
Canik	TP-9SF-9 (HG3790-N)	9mm	
Century Arms	METE SFX	9mm	
Century Arms	METE SFT	9mm	
Charter Arms	Pathfinder 12242	.22 LR	
Charter Arms	Target Pathfinder 72242	.22 LR	
Charter Arms	69920	9mm	i .
Charter Arms	79920	9mm	

Charter Arms	Southpaw	.38 Spl
Charter Arms	Southpaw – Pink	.38 Spl
Charter Arms	13811 Undercover	.38 Spl
Charter Arms	13820 Undercover	.38 Spl
Charter Arms	13825 Tiger	.38 Spl
Charter Arms	23830 Gator	.38 Spl
Charter Arms	23872 Old Glory	.38 Spl
Charter Arms	53711 Off Duty (Black Anodize - Black Finish)	.38 Spl
Charter Arms	53811 Off Duty	.38 Spl
Charter Arms	53820 Under Cover Lite	.38 Spl
Charter Arms	53823 Under Cover Lite	.38 Spl
Charter Arms	53824 Under Cover Lite	.38 Spl
Charter Arms	53830 Pink Lady	.38 Spl
Charter Arms	53833 Cougar	.38 Spl
Charter Arms	53834 Under Cover Lite	.38 Spl
Charter Arms	53835 Pink Lady (with blued SS parts)	.38 Spl
Charter Arms	53838 Gunblaster	.38 Spl
Charter Arms	53839 Chic Lady	.38 Spl
Charter Arms	53840 Lavender Lady	.38 Spl
Charter Arms	53844 Shamrock	.38 Spl
Charter Arms	53849 Chic Lady (Lavender)	.38 Spl
Charter Arms	53850 All American	.38 Spl
Charter Arms	53851 Pink Lady (Pink Anodize – Matte Finish)	.38 Spl
Charter Arms	53852 Chic Lady (Pink Anodize – High Polish Finish)	.38 Spl
Charter Arms	53853 Chic Lady (Lavender Anodize – High Polish Finish)	.38 Spl
Charter Arms	53859 Rosebud	.38 Spl
Charter Arms	53860 Santa Fe Sky	.38 Spl
Charter Amrs	53863 Earthborn	.38 Spl
Charter Arms	53864 Santa Fe Sky	.38 Spl
Charter Arms	53870 Undercover Lite	.38 Spl
Charter Arms	53871 Undercover	.38 Spl
Charter Arms	53873 Panther	.38 Spl
Charter Arms	53879 Blue Diamond	.38 Spl
Charter Arms	53883 Under Cover Lite	.38 Spl
Charter Arms	53889 The Leopard (with leopard tone frame)	.38 Spl
Charter Arms	53890 Goldfinger	.38 Spl
Charter Arms	53899 Gold Chic	.38 Spl
Charter Arms	53911 Off Duty (Black Anodize – Matte Finish)	.38 Spl
Charter Arms	53921 Undercover	.38 Spl
Charter Arms	68320 Nitide	.38 Spl

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Charter Arms	73811 Undercover	.38 Spl
Charter Arms	73820 Undercover, Stainless Std	.38 Spl
Charter Arms	73824 Laser	.38 Spl
Charter Arms	13520 Mag Pug (Black Finish)	.357 Mag
Charter Arms	23520 Mag Pug (Tiger Stripe Finish)	.357 Mag
Charter Arms	73520 Mag Pug	.357 Mag
Charter Arms	14420	.44 Spl
Charter Arms	24420 Tiger	.44 Spl
Charter Arms	74420 Bulldog	.44 Spl
FMK	9C-1	9mm
FMK	9C1 GEN II	9mm
FN America	FN 503	9mm
FN America	FN 503 + FLASHLT	9mm
FN America	FN509	9mm
FN America	FN-9 MS BK/BK-FT-S	9mm (4 ) 4 4 4 4 4 4 4 4 4 4 4 4 4 4 4 4 4
FN America	FNX-9	9mm - 2 2 2 2 2 2 2 2 2 2 2 2 2 2 2 2 2 2
FN America	FNX-9 MS BK/WT-FT-S	9mm
FN America	FN 509 Tactical	9mm
FN America	FN 509 Tactical, FDE	9mm
FN America	FN 509C Tactical	9mm
FN America	FN 509C Tactical + Vortex	9mm
FN America	FN 509 Midsize	9mm
FN America	FN 509C MRD	9mm
FN America	FN 509C MRD FDE	9mm
FN America	FN 509C MRD + Vortex	9mm
FN America	FNX-40	.40 S&W
FN America	FNX-40 MS BK/BK-FT-S	.40 S&W
FN America	FNX-40 MS BK/WT-FT-S	.40S&W
FN America	FNX-45	.45 ACP
FN America	FNX-45 BK/BK DS	.45 ACP
FN America	FNX-45 BK/WT DS	.45 ACP
FN America	FNX-45 FDE/BK DS	.45 ACP
FN America	FNX-45 Tactical	.45 ACP
FN America	FNX-45 Tactical BK/BK	.45 ACP
FN America	FNX-45 Tactical FDE/FDE NS	.45 ACP
FN America	Five-seveN	5.7x28mm
FN America	Five-seveN FDE	5.7x28mm
Glock	44	.22 LR
Glock	42	.380 ACP
Glock	17	9mm
Glock	17 Gen4	9mm

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Glock	17 Gen5	9mm
Glock	17C	9mm
Glock	17RTF	9mm
Glock	19	9mm
Glock	19 Gen4	9mm
Glock	19 Gen5	9mm
Glock	19C	9mm
Glock	19RTF2	9mm
Glock	19X	9mm
Glock	26	9mm
Glock	26 Gen4	9mm
Glock	26 Gen5	9mm
Glock	34	9mm
Glock	34 Gen4	9mm
Glock	34 Gen5	9mm
Glock	Glock 43	9mm
Glock	Glock 43X	9mm
Glock	Glock 45	9mm
Glock	Glock 48	9mm
Glock	31	.357 Sig
Glock	31 Gen4	.357 Sig
Glock	31C	.357 Sig
Glock	32	.357 Sig
Glock	32 Gen4	.357 Sig
Glock	32C	.357 Sig
Glock	33	.357 Sig
Glock	33 Gen4	.357 Sig
Glock	22	.40 S&W
Glock	22 Gen4	.40 S&W
Glock	22 Gen5	.40 S&W
Glock	22C	.40 S&W
Glock	22RTF2	.40 S&W
Glock	23	.40 S&W
Glock	23 Gen4	.40 S&W
Glock	23 Gen5	.40 S&W
Glock	23C	.40 S&W
Glock	23RTF	.40 S&W
Glock	27	.40 S&W
Glock	27 Gen4	.40 S&W
Glock	27 Gen5	.40 S&W
Glock	35	.40 S&W

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Glock	35 Gen4	.40 S&W	
Glock	20	10mm	
Glock	20 Gen4	10mm	
Glock	20C	10mm	
Glock	20SF	10mm	
Glock	29	10mm	
Glock	29 Gen4	10mm	
Glock	29SF	10mm	
Glock	40 Gen4	10mm	
Glock	21 Gen4	.45 ACP	
Glock	21C	.45 ACP	
Glock	21SF	.45 ACP	
Glock	30	.45 ACP	
Glock	30 Gen4	.45 ACP	gue des co
Glock	30S	.45 ACP   8 may 0 mg	
Glock	30SF	.45 ACP	
Glock	36	.45 ACP Rain, Land	and the second
Glock	41 Gen4	.45 ACP	
Glock	37	.45 GAP	
Glock	37 Gen4	.45 GAP	
Glock	38	.45 GAP	
Glock	39	.45 GAP	
Heckler & Koch	P2000	9mm	
Heckler & Koch	P2000 SK-V3	9mm	
Heckler & Koch	P2000-V3	9mm	
Heckler & Koch	P30LS-V3	9mm	
Heckler & Koch	P30SKS-V3	9mm	
Heckler & Koch	P30SK-V3	9mm	
Heckler & Koch	P30S-V3	9mm	
Heckler & Koch	USP	9mm	
Heckler & Koch	VP9	9mm	
Heckler & Koch	P2000 SK-V3	.357 Sig 🐷 🚾 📖 🐷	
Heckler & Koch	P2000SK	.357 Sig	
Heckler & Koch	P2000 SK-V3	.40 S&W	
Heckler & Koch	P2000-V3	.40 S&W	
Heckler & Koch	P30LS-V3	.40 S&W	
Heckler & Koch	P30S-V3	.40 S&W	
Heckler & Koch	USP	.40 S&W	
Heckler & Koch	USP Comp LEM	.40 S&W	
Heckler & Koch	VP40	.40 S&W	
Heckler & Koch	HK45	.45 ACP	

Heckler & Koch	HK45 Compact	.45 ACP
ISSC	M22	.22 LR
ISSC	M22BT	.22 LR
ISSC	M22D	.22 LR
ISSC	M22DC	.22 LR
ISSC	M22PT	.22 LR
Kahr Arms	CWP9	9mm
Kahr Arms	K9093	9mm
Kahr Arms	K9093A	9mm
Kahr Arms	K9093NA	9mm
Kahr Arms	K9096	9mm
Kahr Arms	K9096A	9mm
Kahr Arms	K9096NA	9mm
Kahr Arms	M9093	9mm
Kahr Arms	M9093A	9mm
Kahr Arms	M9093NA	9mm
Kahr Arms	M9096	9mm
Kahr Arms	M9096A	9mm
Kahr Arms	M9096NA	9mm
Kahr Arms	P9	9mm
Kahr Arms	PM9	9mm
Kahr Arms	K4043	.40-S&W
Kahr Arms	K4043A	.40 S&W
Kahr Arms	K4043NA	.40 S&W
Kahr Arms	K4046	.40 S&W
Kahr Arms	K4046A	.40 S&W
Kahr Arms	K4046NA	.40 S&W
Kahr Arms	M4043	.40 S&W
Kahr Arms	M4043A	.40 S&W
Kahr Arms	M4043NA	.40 S&W
Kahr Arms	M4046	.40 S&W
Kahr Arms	M4046A	.40 S&W
Kahr Arms	M4046NA	.40 S&W
Kahr Arms	P40	.40 S&W
Kahr Arms	PM40	.40 S&W
Kahr Arms	KP45	.45 ACP
Mauser	M2	.40 S&W
Mauser	M2	.45 ACP
Mossberg	MC1sc	9mm
Mossberg	MC2c – MA Compliant (Loaded Chamber View Port)	9mm
Mossberg	MC2c- MA Compliant (Loaded Chamber View Port), Two-Tone	9mm

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Mossberg	MC2sc- MA Compliant (Loaded Chamber View Port), Optics Ready, Black	9mm
Mossberg	MC2c- MA Compliant (Loaded Chamber View Port), Optics Ready, Black	9mm
Para Ordnance	189 Steel	9mm
Para Ordnance	CTX189B	9mm
Para Ordnance	D189 Steel	9mm
Para Ordnance	DX189E	9mm
Para Ordnance	DX189S	9mm
Para Ordnance	PX189S	9mm
Para Ordnance	RHX129E	9mm
Para Ordnance	RX189E	9mm
Para Ordnance	RX189S	9mm
Para Ordnance	TX189E	9mm
Para Ordnance	TX189S	9mm
Para Ordnance	PX938P	.38 Super
Para Ordnance	PX938S	.38 Super
Para Ordnance	1440 Steel	.40 S&W
Para Ordnance	1640 Stainless	.40 S&W
Para Ordnance	1640 Steel	.40 S&W
Para Ordnance	1640 Steel	.40 S&W
Para Ordnance	D1640 Stainless	.40 S&W
Para Ordnance	D1640 Steel	.40 S&W
Para Ordnance	L1440 Steel	.40 S&W
Para Ordnance	P1640 Steel	.40 S&W
Para Ordnance	RHX1640E	.40 S&W
Para Ordnance	RX1640S	.40 S&W
Para Ordnance	S1640 Stainless	.40 S&W
Para Ordnance	SX1640E	.40 S&W
Para Ordnance	SX1640S	.40 S&W
Para Ordnance	1045 Alloy	.45 ACP
Para Ordnance	1045 Stainless	.45 ACP
Para Ordnance	1245 Alloy	.45 ACP
Para Ordnance	1245 Stainless	.45 ACP
Para Ordnance	1245 Steel	.45 ACP
Para Ordnance	1345 Stainless	.45 ACP
Para Ordnance	1345 Steel	.45 ACP
Para Ordnance	1445 Alloy	.45 ACP
Para Ordnance	1445 Stainless	.45 ACP
Para Ordnance	1445 Steel	.45 ACP
Para Ordnance	745 Stainless	.45 ACP
Para Ordnance	745 Steel	.45 ACP

Para Ordnance	C6 Stainless	.45 ACP
Para Ordnance	C7 Stainless	.45 ACP
Para Ordnance	Carry Stainless	.45 ACP
Para Ordnance	CCWX745S	.45 ACP
Para Ordnance	CCWX745S	.45 ACP
Para Ordnance	Companion Stainless	.45 ACP
Para Ordnance	CT1345 Stainless	.45 ACP
Para Ordnance	CTX1245N Stainless	.45 ACP
Para Ordnance	CTX1345G Stainless	.45 ACP
Para Ordnance	CTX1345S Stainless	.45 ACP
Para Ordnance	CWX645B Stainless	.45 ACP
Para Ordnance	CWX645S Stainless	.45 ACP
Para Ordnance	CWX745S	.45 ACP
Para Ordnance	CWX745S	.45 ACP
Para Ordnance	CX745S	.45 ACP
Para Ordnance	D1445 Steel	.45 ACP
Para Ordnance	D1445ER	.45 ACP
Para Ordnance	D1445SR	.45 ACP
Para Ordnance	D745 Stainless	.45 ACP
Para Ordnance	D745 Steel	.45 ACP
Para Ordnance	DCX1445E	.45 ACP
Para Ordnance	DCX745E	.45 ACP
Para Ordnance	DX1445E	.45 ACP
Para Ordnance	DX1445S	.45 ACP
Para Ordnance	DX745S	.45 ACP
Para Ordnance	L1245 Steel	.45 ACP
Para Ordnance	NHX1045N	.45 ACP
Para Ordnance	P1045 Alloy	.45 ACP
Para Ordnance	P1045 Steel	.45 ACP
Para Ordnance	P1245 Alloy	.45 ACP
Para Ordnance	P1245 Steel	.45 ACP
Para Ordnance	P1345 Steel	.45 ACP
Para Ordnance	P1445 Alloy	.45 ACP
Para Ordnance	P1445 Steel	.45 ACP
Para Ordnance	P1445ER	.45 ACP
Para Ordnance	P1445RR	.45 ACP
Para Ordnance	P1445SR	.45 ACP
Para Ordnance	PCWX745E Steel	.45 ACP
Para Ordnance	PCWX745S Stainless	.45 ACP
Para Ordnance	PCX745R	.45 ACP
Para Ordnance	PCX745S	.45 ACP

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Para Ordnance	PRX745B	.45 ACP
Para Ordnance	PRX745S	.45 ACP
Para Ordnance	PSHX645S	.45 ACP
Para Ordnance	PX1445S	.45 ACP
Para Ordnance	PX144EMB	.45 ACP
Para Ordnance	PX745E	.45 ACP
Para Ordnance	PX745EM	.45 ACP
Para Ordnance	PX745EMB	.45 ACP
Para Ordnance	RHX1045E	.45 ACP
Para Ordnance	RX1445E	.45 ACP
Para Ordnance	RX1445S	.45 ACP
Para Ordnance	S1045 Stainless	.45 ACP
Para Ordnance	S1245 Stainless	.45 ACP
Para Ordnance	S1345 Stainless	.45 ACP
Para Ordnance	S1445 Stainless	.45 ACP
Para Ordnance	SX1245S	.45 ACP
Para Ordnance	SX1445S	.45 ACP
Para Ordnance	TX1640S	.45 ACP
Para Ordnance	TX745S Stainless	.45 ACP
Para Ordnance	WHX1045R Steel/Alloy	.45 ACP
Para Ordnance	WHX1045S	.45 ACP
Para Ordnance	WHX129R	.45 ACP
Remington Arms	1911R1	.45 ACP
Remington Arms	1911R1 Chain Ramac 96325	.45 ACP
Remington Arms	1911R1 Centennial/Ramac 96340	.45 ACP
Remington Arms	1911R1 Limited/Ramac 96341	.45 ACP
Remington Arms	1911R1 OD Frame/Ramac 96350	.45 ACP
Remington Arms	1911R1 Stainless/Ramac 96324	.45 ACP
Remington Arms	1911R1 Talo/Ramac 96343	.45 ACP
Remington Arms	1911R1 Enhanced/Ramac 96328	.45 ACP
Remington Arms	1911R1 Enhanced Threaded Barrel/Ramac 96339	.45 ACP
SAR USA	B69BL10	9mm
SAR USA	B69CBL10	9mm
SAR USA	SAR9BL10	9mm
SAR USA	SAR9CBL10	9mm
Seecamp	LWS32	.32 ACP
Sig Sauer	Mosquito	.22 LR
Sig Sauer	322C-BAS-MA	.22 LR
Sig Sauer	P232 Stainless	.380 ACP
Sig Sauer	P238	.380 ACP
Sig Sauer	238M-380-BSS	.380 ACP

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Sig Sauer	365-380-BSS-MS-MA	.380 ACP
Sig Sauer	M17-EMP-10	9mm
Sig Sauer	M18-EMP-10	9mm
Sig Sauer	226RM-9-Legion	9mm
Sig Sauer	226RM-9-Legion-SAO	9mm
Sig Sauer	229RM-9-Legion	9mm
Sig Sauer	250C-9-BSS-MA	9mm
Sig Sauer	938M-9-SAS-AMBI	9mm
Sig Sauer	MK-25-MA	9mm
Sig Sauer	P225	9mm
Sig Sauer	P226	9mm
Sig Sauer	P226 Rail	9mm
Sig Sauer	P226 Stainless	9mm
Sig Sauer	226RM-9-Legion-R2	9mm
Sig Sauer	P228	9mm
Sig Sauer	P229	9mm
Sig Sauer	229RM-9-Legion-SAO	9mm
Sig Sauer	229RM-9-Legion-R2	9mm
Sig Sauer	P239	9mm
Sig Sauer	P320 PN 320C-9-BSS-MS-MA (Chamber witness hole is milled out in a circle shape)	9mm
Sig Sauer	P320 PN 320C-9-BSS-MS-MA (Chamber witness hole is milled out in a square shape)	9mm
Sig Sauer	320F-9-M17-MS-MA	9mm
Sig Sauer	365-9-BXR3-MS-MA	9mm
Sig Sauer	P938	9mm
Sig Sauer	938M-9-Legion	9mm
Sig Sauer	P938 BRG	9mm
Sig Sauer	P938 EXTREME	9mm
Sig Sauer	P938 SCORPION	9mm
Sig Sauer	SP2009	9mm
Sig Sauer	SP2022M-9-BSS	9mm
Sig Sauer	226RM-9-BSS-RX	9mm
Sig Sauer	229RM-9-BSS-RX	9mm
Sig Sauer	1911UTM-9-TSS	9mm
Sig Sauer	320CA-9-M18-MS-10	9mm
Sig Sauer	365XL-9-BXR3-MS-10	9mm
Sig Sauer	365XL-9-BXR3P-MS-10	9mm
Sig Sauer	250C-357-BSS-MA	.357 Sig
Sig Sauer	P226	.357 Sig
Sig Sauer	P226 Rail	.357.Sig
Sig Sauer	P226 Stainless	.357 Sig

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Sig Sauer	P229	.357 Sig
Sig Sauer	P239	.357 Sig
Sig Sauer	P320 PN 320C-357-BSS-MS-MA	.357 Sig
Sig Sauer	SP2340	.357 Sig
Sig Sauer	250C-40-BSS-MA	.40 S&W
Sig Sauer	P226	.40 S&W
Sig Sauer	P226 DAK	.40 S&W
Sig Sauer	P226 Rail	.40 S&W
Sig Sauer	P229	.40 S&W
Sig Sauer	P229 DAK	.40 S&W
Sig Sauer	P239	.40 S&W
Sig Sauer	P239 DAK	.40 S&W
Sig Sauer	P320 PN 320C-40-BSS-MS-MA	.40 S&W
Sig Sauer	SP2022	,40 S&W
Sig Sauer	SP2340	.40 S&W
Sig Sauer	1911-45-S Part Set 188	.45 ACP
Sig Sauer	1911FCAM-45-NMR	.45 ACP
Sig Sauer	1911M-45-STX	.45 ACP
Sig Sauer	1911RM-45-ESCPN	.45 ACP
Sig Sauer	220RM-45-Legion	.45 ACP
Sig Sauer	P220	.45 ACP
Sig Sauer	P220 Stainless	.45 ACP
Sig Sauer	P245	.45 ACP
Sig Sauer	P250C	.45 ACP
Sig Sauer	P250F	.45 ACP
Sig Sauer	P320C PN 320C-45-BSS-MS-MA	.45 ACP
Smith & Wesson	647	.17 Hornady
Smith & Wesson	647-1	.17 Hornady
Smith & Wesson	648-2	.22 MRF
Smith & Wesson	17-9	.22 LR
Smith & Wesson	22A-1	.22 LR
Smith & Wesson	22S-1	.22 LR
Smith & Wesson	317-2	.22 LR
Smith & Wesson	317-3	.22 LR
Smith & Wesson	317LS	.22 LR
Smith & Wesson	41	.22 LR
Smith & Wesson	617-5	.22 LR
Smith & Wesson	617-6	.22 L'R
Smith & Wesson	63-4	.22 LR
Smith & Wesson	351 PD	.22 WMR
Smith & Wesson	48-7	.22 WMR

Smith & Wesson	351C	.22 WMR
Smith & Wesson	331-2	.32 H&R Mag.
Smith & Wesson	332-1	.32 H&R Mag.
Smith & Wesson	431 PD	.32 H&R Mag.
Smith & Wesson	432 PD	.32 H&R Mag.
Smith & Wesson	632-1	.327 Mag.
Smith & Wesson	Bodyguard 380	.380 ACP
Smith & Wesson	M&P 380 Shield, TS	.380 ACP
Smith & Wesson	M&P 380 Shield, NTS	.380 ACP
Smith & Wesson	M&P Shield 380 Performance Center	.380 ACP
Smith & Wesson	Shield EZ	30 Super Carry
Smith & Wesson	1911	9mm
Smith & Wesson	3913LS	9mm
Smith & Wesson	3913TSW	9mm
Smith & Wesson	5903TSW	9mm
Smith & Wesson	5906TSW	9mm
Smith & Wesson	908	9mm
Smith & Wesson	908S	9mm
Smith & Wesson	910	9mm
Smith & Wesson	910S	9mm
Smith & Wesson	929	9mm
Smith & Wesson	952-1	9mm
Smith & Wesson	952-2	9mm
Smith & Wesson	986	9mm
Smith & Wesson	CS9	9mm
Smith & Wesson	CSX	9mm
Smith & Wesson	Equalizer	9mm
Smith & Wesson	M&P 9 Shield M2.0, NTS	9mm
Smith & Wesson	M&P 9 Shield M2.0, TS	9mm
Smith & Wesson	M&P9	9mm
Smith & Wesson	M&P9 (Mag Safety)	9mm
Smith & Wesson	M&P9 (Mag Safety, Internal Lock)	9mm
Smith & Wesson	M&P9 M2.0	9mm
Smith & Wesson	M&P9 M2.0 Compact 4" NTS	9mm
Smith & Wesson	M&P9 M2.0 Compact 4" TS	9mm
Smith & Wesson	M&P9 M2.0 Compact 3.625"	9mm
Smith & Wesson	M&P9 M2.0 Sub-Compact 3.625"	9mm
Smith & Wesson	M&P9 Shield	9mm
Smith & Wesson	M&P9 Shield (without manual thumb safety)	9mm
Smith & Wesson	M&P9 Shield EZ	9mm
Smith & Wesson	M&P9 SHIELD PLUS	9mm

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Smith & Wesson	M&P9 Shield Performance Center	9mm
Smith & Wesson	M&P9c	9mm
Smith & Wesson	M&P9c (Mag Safety)	9mm
Smith & Wesson	SD9 VE	9mm
Smith & Wesson	SW99	9mm
Smith & Wesson	SW9E	9mm
Smith & Wesson	SW9G	9mm
Smith & Wesson	SW9GVE	9mm
Smith & Wesson	SW9P	9mm
Smith & Wesson	SW9VE	9mm
Smith & Wesson	SW1911 Sub Compact	9mm
Smith & Wesson	Bodyguard 38	.38 Spl
Smith & Wesson	10-14	.38 Spl
Smith & Wesson	14-8	.38 Spl
Smith & Wesson	15-10 mg/ 251 1792 A	.38 Spl
Smith & Wesson	315	.38 Spl
Smith & Wesson	337-2	.38 Spl
Smith & Wesson	337-2PD	.38 Spl
Smith & Wesson	342	.38 Spl
Smith & Wesson	342 PD	.38 Spl
Smith & Wesson	342-1 PD	.38 Spl
Smith & Wesson	360	.38 Spl
Smith & Wesson	36-10	.38 Spl
Smith & Wesson	36-10LS	.38 Spl
Smith & Wesson	40-1	.38 Spl
Smith & Wesson	42-2	.38 Spl
Smith & Wesson	437 FDE Grip	.38 Spl
Smith & Wesson	438	.38 Spl
Smith & Wesson	442-1	.38 Spl
Smith & Wesson	442-2	.38 Spl
Smith & Wesson	637-2	.38 Spl
Smith & Wesson	638-3	.38 Spl
Smith & Wesson	642-1	.38 Spl
Smith & Wesson	642-2	.38 Spl
Smith & Wesson	642-2 LS	.38 Spl
Smith & Wesson	64-7	.38 Spl
Smith & Wesson	64-8	.38 Spl
Smith & Wesson	67-5	.38 Spl
Smith & Wesson	67-6	.38 Spl
Smith & Wesson	67-7	.38 Spl
Smith & Wesson	337-3	.38 Spl +P

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Smith & Wesson	BG38-1	.38 Spl +P	et e
Smith & Wesson	627-4	.38 Super	
Smith & Wesson	686-7	.38 Super	
Smith & Wesson	1911-2	.38 Super	
Smith & Wesson	19-9 PC K-Comp	.357 Mag.	
Smith & Wesson	19-9 Classic	.357 Mag.	e e
Smith & Wesson	27-9	.357 Mag.	
Smith & Wesson	327	.357 Mag.	
Smith & Wesson	327-1	.357 Mag.	
Smith & Wesson	327PD	.357 Mag.	
Smith & Wesson	340 PD	.357 Mag.	
Smith & Wesson	340 SC	.357 Mag.	
Smith & Wesson	360 J	.357 Mag.	
Smith & Wesson	360 PD	.357 Mag.	
Smith & Wesson	360 SC	.357 Mag.	
Smith & Wesson	386	.357 Mag.	(
Smith & Wesson	386 XL Hunter	.357 Mag.	
Smith & Wesson	386NG	.357 Mag.	
Smith & Wesson	386PD	.357 Mag.	
Smith & Wesson	386SC	.357 Mag.	
Smith & Wesson	386Sc/S	.357 Mag.	(
Smith & Wesson	520	.357 Mag.	***
Smith & Wesson	586-8	.357 Mag.	
Smith & Wesson	60-14	.357 Mag.	
Smith & Wesson	60-14LS	.357 Mag.	
Smith & Wesson	60-15	.357 Mag.	
Smith & Wesson	60-18	.357 Mag.	
Smith & Wesson	619	.357 Mag.	
Smith & Wesson	620	.357 Mag.	
Smith & Wesson	627-5	.357 Mag.	
Smith & Wesson	640-1	.357 Mag.	
Smith & Wesson	640-3	.357 Mag.	
Smith & Wesson	649-5	.357 Mag.	
Smith & Wesson	65-7	.357 Mag.	
Smith & Wesson	65-7LS	.357 Mag.	
Smith & Wesson	65-8	.357 Mag.	
Smith & Wesson	65-8 LS	.357 Mag.	
Smith & Wesson	66-6	.357 Mag.	
Smith & Wesson	66-7	.357 Mag.	
Smith & Wesson	66-8	.357 Mag.	
Smith & Wesson	686-6	.357 Mag.	

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Smith & Wesson	686-6 Plus	.357 Mag.	
Smith & Wesson	686-6 Power Port	.357 Mag.	*
Smith & Wesson	686-6 SSR	.357 Mag.	
Smith & Wesson	M&P340	.357 Mag.	
Smith & Wesson	M&P340 (no internal lock)	.357 Mag.	
Smith & Wesson	M&P360	.357 Mag.	
Smith & Wesson	M&P357	.357 Sig	
Smith & Wesson	4003TSW	.40 S&W	
Smith & Wesson	4006TSW	.40 S&W	
Smith & Wesson	4013TSW	.40 S&W	
Smith & Wesson	4040 PD	.40 S&W	
Smith & Wesson	410	.40 S&W	
Smith & Wesson	410S	.40 S&W	
Smith & Wesson	945-40	.40 S&W	
Smith & Wesson	CS40	.40 S&W	
Smith & Wesson	M&P 40 Shield M2.0, NTS	.40 S&W	
Smith & Wesson	M&P 40 Shield M2.0, TS	.40 S&W	
Smith & Wesson	M&P40	.40 S&W	**
Smith & Wesson	M&P40 (Mag Safety)	.40 S&W	
Smith & Wesson	M&P40 (Mag Safety, Internal Lock)	.40 S&W	
Smith & Wesson	M&P40 M2.0	.40 S&W	
Smith & Wesson	M&P40 Shield	.40 S&W	
Smith & Wesson	M&P40 Shield (without manual thumb safety)	.40 S&W	
Smith & Wesson	M&P40c (Mag Safety)	.40 S&W	
Smith & Wesson	SD40 VE	.40 S&W	
Smith & Wesson	SW40E	.40 S&W	
Smith & Wesson	SW40G	.40 S&W	
Smith & Wesson	SW40GVE	.40 S&W	
Smith & Wesson	SW40P	.40 S&W	
Smith & Wesson	SW40VE	.40 S&W	
Smith & Wesson	SW99	.40 S&W	
Smith & Wesson	SW990	.40 S&W	
Smith & Wesson	SW990L Compact	.40 S&W	
Smith & Wesson	SW99QA	.40 S&W	
Smith & Wesson	610-3	10mm	
Smith & Wesson	357 NG	.41 Mag.	
Smith & Wesson	357 PD	.41 Mag.	
Smith & Wesson	57-5	.41 Mag.	
Smith & Wesson	57-6	.41 Mag.	]
Smith & Wesson	58-1	.41 Mag.	
Smith & Wesson	657-5	.41 Mag.	

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Smith & Wesson	21-4	.44 Spl
Smith & Wesson	24-6	.44 Spl
Smith & Wesson	396-1	.44 Spl
Smith & Wesson	396NG	.44 Spl
Smith & Wesson	696	.44 Spl
Smith & Wesson	29-8	.44 Mag.
Smith & Wesson	29-10	.44 Mag.
Smith & Wesson	329-1	.44 Mag.
Smith & Wesson	329PD	.44 Mag.
Smith & Wesson	629-6	.44 Mag.
Smith & Wesson	629-6 Classic	.44 Mag.
Smith & Wesson	629-6 Classic DX	.44 Mag.
Smith & Wesson	629-6 Power Port	.44 Mag.
Smith & Wesson	629-7	.44 Mag.
Smith & Wesson	629-8	.44 Mag.
Smith & Wesson	69	.44 Mag.
Smith & Wesson	M&P45	.45 ACP
Smith & Wesson	M&P45c	.45 ACP
Smith & Wesson	M&P45 Shield NTS	.45 ACP
Smith & Wesson	M&P45 Shield TS	.45 ACP
Smith & Wesson	M&P45 M2.0	.45 ACP
Smith & Wesson	PC1911	.45 ACP
Smith & Wesson	CS45	.45 ACP
Smith & Wesson	SW99	.45 ACP
Smith & Wesson	SW1911	.45 ACP
Smith & Wesson	SW1911TA	.45 ACP
Smith & Wesson	SW1911CT	.45 ACP
Smith & Wesson	SW1911 Sub Compact	.45 ACP
Smith & Wesson	SW1911SC	.45 ACP
Smith & Wesson	22-4	.45 ACP
Smith & Wesson	325	.45 ACP
Smith & Wesson	325PD	.45 ACP
Smith & Wesson	457	.45 ACP
Smith & Wesson	457S	.45 ACP
Smith & Wesson	625-10	.45 ACP
Smith & Wesson	625-8	.45 ACP
Smith & Wesson	625-8 JM	.45 ACP
Smith & Wesson	945-1	.45 ACP
Smith & Wesson	1911	.45 ACP
Smith & Wesson	1911 (Steel)	.45 ACP
Smith & Wesson	1911 DK	.45 ACP

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Smith & Wesson	1911 PD	.45 ACP
Smith & Wesson	1911 Sc (Black)	.45 ACP
Smith & Wesson	1911 SC	.45 ACP
Smith & Wesson	1911 Pro Series	.45 ACP
Smith & Wesson	1911 Compact ES	.45 ACP
Smith & Wesson	1911 TFP	.45 ACP
Smith & Wesson	4513TSW	.45 ACP
Smith & Wesson	4563TSW	.45 ACP
Smith & Wesson	4566TSW	.45 ACP
Smith & Wesson	M3 Schofield	.45 S&W Schofield
Smith & Wesson	Governor	.45 Long Colt
Smith & Wesson	25-13	.45 Long Colt
Smith & Wesson	25-15	.45 Long Colt
Smith & Wesson	625-9	.45 Long Colt
Smith & Wesson	460 ES 3	460 S&W Mag.
Smith & Wesson	460V A ALŠIEDZĒT LA TITALIS LET	460 S&W Mag.
Smith & Wesson	460XVR	460 S&W Mag.
Smith & Wesson	500	500 S&W
Smith & Wesson	500 ES	500 S&W
Springfield Armory	911, Stainless (PG9109S)	.380ACP
Springfield Armory	911, 2.7", Black (PG9109)	.380ACP
Springfield Armory	1911-A1 LW Compact RO Elite, Black (Pl9125E)	9mm
Springfield Armory	1911-A1 RO Elite Operator, Black (Pl9130E)	9mm
Springfield Armory	1911-A1, RO Elite, 5" Black (Pl9129E)	9mm
Springfield Armory	1911-A1 LW Champion RO Elite, 4", Black, (PI9137E)	9mm
Springfield Armory	9mm Range Officer (PI9129L)	9mm
Springfield Armory	EMP 9mm Compact LW (PI9208L)	9mm
Springfield Armory	EMP LW Champion, Concealed Carry Contour, 4" Stainless (P19229L)	9mm
Springfield Armory	XD Mod. 2 Subcompact 3" (XDG9801)	9mm
Springfield Armory	XD Mod.2 (XDG9101)	9mm
Springfield Armory	XD Service 4", Black (XD9101)	9mm
Springfield Armory	XD Sub Compact 3", Black (XD9801)	9mm
Springfield Armory	XD(M) 4.5", Black (XDM9201)	9mm
Springfield Armory	XD(M) 4.5", Black Threaded, OSP (XDMT9459BOSP)	9mm
Springfield Armory	XD(M) 4.5" Black, Threaded OSP w/Venom (XDMT9459BOSPV)	9mm
Springfield Armory	XD-E 3.3", Black (XDE9339BE)	9mm
Springfield Armory	XDS 3.3" (XDS9339BE)	9mm
Springfield Armory	XD-S 3.3" Gray (XDS9339YE)	9mm
Springfield Armory	XD(M) 4.5"S 3.3" Gray (XDS9339YE)	9mm

Springfield Armory	XD(S) MOD. 2-3.3" Black (XDSG9339B)	9mm
Springfield Armory	HC9319B0SPLC	9mm
Springfield Armory	HC9319BLC	9mm
Springfield Armory	XDSG9339BCT	9mm
Springfield Armory	1911-A1 LW Champion RO Elite, Black (Pl9136E)	.45 ACP
Springfield Armory	1911-A1 LW Compact RO Elite, Black (P19126E)	.45 ACP
Springfield Armory	1911-A1 RO Elite Operator, Black (PI913E)	.45 ACP
Springfield Armory	1911-A1 RO Elite, Black (PI9128E)	.45 ACP
Springfield Armory	1911-A1 TRP Operator 5", Black (PC9105L18)	.45 ACP
Springfield Armory	1911-A1, Loaded Operator 5" MC, OD Green (PX9110ML18)	.45 ACP
Springfield Armory	1911-A1 Loaded Operator 5", MC, OD Green (PX9105ML18)	.45 ACP
Springfield Armory	1911-A1, TRP Service Model, Stainless Steel with Night Sights (PC9107L18)	.45 ACP
Springfield Armory	1911-A1, TRP Service Model, Black with Night Sights (PC9108L18)	.45 ACP
Springfield Armory	45 Mil-Spec (PB9108L)	.45 ACP
Springfield Armory	45 Ranger Officer (PI9128L)	.45 ACP
Springfield Armory	XD Mod. 2 3.3" (XDG9845B)	.45 ACP
Springfield Armory	XD Mod. 2 4" (XDG9445B)	.45 ACP
Springfield Armory	XD Service 4", Black (XD9611)	.45 ACP
Springfield Armory	XD(M) 4.5", Black (XDM94545BE)	.45 ACP
Springfield Armory	XD-E 3.3", Black (XDE93345BE)	.45 ACP
Springfield Armory	XDS 3.3 (XDS93345BE)	.45 ACP
Springfield Armory	XD-S Mod. 2, 3.3 (XDSG93345B)	.45 ACP
Springfield Armory	PBD9108L	.45 ACP
Springfield Armory	PBD9151L	.45 ACP
Springfield Armory	1911-A1 TRP, Black (PC9510L18)	10mm
Springfield Armory	1911-A1 TRP, Long Slide, Black (PC9610L18)	10mm
Steyr Arms	M9A1	9mm
Steyr Arms	M357-A1	.357 Sig.
Steyr Arms	M40-A1	.40 S&W
Steyr Arms	S-A1	.40 S&W
Stoeger Industries	STR.9	9mm
Strayer Voigt	Infinity Traditional	.45 ACP
Strayer Voigt	Infinity Competition	.45 ACP
Sturm, Ruger & Co.	New Model Single-Six (0661)	17 HMR
Sturm, Ruger & Co.	New Model Single-Six (0663)	17 HMR
Sturm, Ruger & Co.	New Model Single-Six (0665)	17 Mach 2
Sturm, Ruger & Co.	22/45 (0189)	.22 LR
Sturm, Ruger & Co.	22/45 (0190)	.22 LR
Sturm, Ruger & Co.	22/45 (0192)	.22 LR

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Sturm, Ruger & Co.	22/45 (0193)	.22 LR
Sturm, Ruger & Co.	22/45 MKIII (0197)	.22 LR
Sturm, Ruger & Co.	22/45 MKIII (10107)	.22 LR
Sturm, Ruger & Co.	22/45 MKIII (10109)	.22 LR
Sturm, Ruger & Co.	22/45 MKIII (10110)	.22 LR
Sturm, Ruger & Co.	22/45 MKIII (10119)	.22 LR
Sturm, Ruger & Co.	22/45 MKIII (10120)	.22 LR
Sturm, Ruger & Co.	22/45 MKIII (10121)	.22 LR
Sturm, Ruger & Co.	22/45 MKIII (0196)	.22 LR
Sturm, Ruger & Co.	GP100 (01757)	.22 LR
Sturm, Ruger & Co.	LCP II (13714)	.22 LR
Sturm, Ruger & Co.	LCR (5410)	.22 LR
Sturm, Ruger & Co.	LCR (5413)	.22 LR
Sturm, Ruger & Co.	LCR (5416)	.22 LR
Sturm, Ruger & Co.	LCR (5417)	.22 LR
Sturm, Ruger & Co.	LCRx (5435)	.22 LR - 25 - 24
Sturm, Ruger & Co.	Mark IV Hunter (40160)	.22 LR
Sturm, Ruger & Co.	Mark IV Target (40159)	.22 LR
Sturm, Ruger & Co.	MKII (0136)	.22 LR
Sturm, Ruger & Co.	MKII (0144)	.22 LR
Sturm, Ruger & Co.	MKII (0154)	.22 LR
Sturm, Ruger & Co.	MKII (0168)	.22 LR
Sturm, Ruger & Co.	MKII (0170)	.22 LR
Sturm, Ruger & Co.	MKII (0172)	.22 LR
Sturm, Ruger & Co.	MKII (0173)	.22 LR
Sturm, Ruger & Co.	MKII (0174)	.22 LR
Sturm, Ruger & Co.	MKII (0175)	.22 LR
Sturm, Ruger & Co.	MKII (0180)	.22 LR
Sturm, Ruger & Co.	MKII (0182)	.22 LR
Sturm, Ruger & Co.	MKII (0183)	.22 LR
Sturm, Ruger & Co.	MKII (0184)	.22 LR
Sturm, Ruger & Co.	MKII (0185)	.22 LR
Sturm, Ruger & Co.	MKII (0186)	.22 LR
Sturm, Ruger & Co.	MKIII (10101)	.22 LR
Sturm, Ruger & Co.	MKIII (10103)	.22 LR
Sturm, Ruger & Co.	MKIII (10104)	.22 LR
Sturm, Ruger & Co.	MKIII (10105)	.22 LR
Sturm, Ruger & Co.	MKIII (10106)	.22 LR
Sturm, Ruger & Co.	MKIII (10112)	.22 LR
Sturm, Ruger & Co.	MKIII (10118)	.22 LR
Sturm, Ruger & Co.	MKIII (10122)	.22 LR

Sturm, Ruger & Co.	MKIII (10123)	.22 LR
Sturm, Ruger & Co.	MKIV Lite (43921)	.22 LR
Sturm, Ruger & Co.	New Bearcat (0912)	.22 LR
Sturm, Ruger & Co.	New Bearcat (0913)	.22 LR
Sturm, Ruger & Co.	New Model Single-Six (0623)	.22 LR
Sturm, Ruger & Co.	New Model Single-Six (0637)	.22 LR
Sturm, Ruger & Co.	Single-Ten (8100)	.22 LR
Sturm, Ruger & Co.	SP101 (5745)	.22 LR
Sturm, Ruger & Co.	SP101 (5765)	.22 LR
Sturm, Ruger & Co.	SR22 (3600)	.22 LR
Sturm, Ruger & Co.	SR22 (3606)	.22 LR
Sturm, Ruger & Co.	SR22 (3607)	.22 LR
Sturm, Ruger & Co.	SR22 (3608)	.22 LR
Sturm, Ruger & Co.	SR22 (3611)	.22 LR
Sturm, Ruger & Co.	SR22 (3613)	.22 LR
Sturm, Ruger & Co.	SR22 (3620)	.22 LR
Sturm, Ruger & Co.	SR22 (3622)	.22 LR
Sturm, Ruger & Co.	SR22P-BT (03621)	.22 LR
Sturm, Ruger & Co.	Wrangler (02002)	.22 LR
Sturm, Ruger & Co.	Wrangler (02003)	.22 LR
Sturm, Ruger & Co.	Wrangler (02004)	.22 LR
Sturm, Ruger & Co.	Wrangler (02015)	.22 LR
Sturm, Ruger & Co.	Wrangler (02016)	.22 LR
Sturm, Ruger & Co.	Wrangler (02017)	.22 LR
Sturm, Ruger & Co.	New Model Single-Six (10646)	.22 Mag.
Sturm, Ruger & Co.	LCR (5414)	.22 Mag.
Sturm, Ruger & Co.	LCR (05437)	.22 Mag.
Sturm, Ruger & Co.	LCR (05439)	.22 Mag.
Sturm, Ruger & Co.	New Model Single-Nine (8150)	.22 Mag.
Sturm, Ruger & Co.	New Model Single-Six (0621)	.22 LR / 22 Mag.
Sturm, Ruger & Co.	New Model Single-Six (0622)	.22 LR / 22 Mag.
Sturm, Ruger & Co.	New Model Single-Six (0624)	.22 LR / 22 Mag.
Sturm, Ruger & Co.	New Model Single-Six (0625)	.22 LR / 22 Mag.
Sturm, Ruger & Co.	New Model Single-Six (0626)	.22 LR / 22 Mag.
Sturm, Ruger & Co.	New Model Single-Six (0629)	.22 LR / 22 Mag.
Sturm, Ruger & Co.	New Model Single-Six (0646)	.22 LR / 22 Mag.
Sturm, Ruger & Co.	New Model Single-Six (0660)	.22 LR / 22 Mag.
Sturm, Ruger & Co.	New Model Single-Six (0662)	.22 LR / 22 Mag.
Sturm, Ruger & Co.	New Model Single-Six (10621)	.22 LR / 22 Mag.
Sturm, Ruger & Co.	New Model Single-Six (10622)	.22 LR / 22 Mag.
Sturm, Ruger & Co.	New Model Single-Six (10623)	.22 LR / 22 Mag.

	Sturm, Ruger & Co.	New Model Single-Six (10624)	.22 LR / 22 Mag
D .	Sturm, Ruger & Co.	New Model Single-Six (10629)	.22 LR / 22 Mag.
,	Sturm, Ruger & Co.	New Model Single-Six (8845)	.22 LR / 22 Mag.
	Sturm, Ruger & Co.	New Model Single-Six (6511)	.32 H&R
	Sturm, Ruger & Co.	New Model Single-Six (6512)	.32 H&R
	Sturm, Ruger & Co.	SP101 (5746)	.32 Mag.
)	Sturm, Ruger & Co.	SP101 (5748)	.32 Mag.
	Sturm, Ruger & Co.	Security-380	.380 ACP
	Sturm, Ruger & Co.	9E (3341)	9mm
	Sturm, Ruger & Co.	BSR9c-BT (03344)	9mm
	Sturm, Ruger & Co.	LC9 (3200)	9mm
M(C)	Sturm, Ruger & Co.	LC9c-BT (03265)	9mm
	Sturm, Ruger & Co.	LC9s (3235)	9mm
	Sturm, Ruger & Co.	LC9s (3242)	9mm
	Sturm, Ruger & Co.	LC9s (3243)	9mm
2.7.1	Sturm, Ruger & Co.	LC9s (3246)	9mm
See Section 2015	Sturm, Ruger & Co.	LC9s (3255)	9mm
and the second second second second	Sturm, Ruger & Co.	LC9s (3256)	9mm
	Sturm, Ruger & Co.	LC9s (3258)	9mm
	Sturm, Ruger & Co.	LC9s (3259)	9mm
-	Sturm, Ruger & Co.	LC9s (3260)	9mm
<i>¥</i>	Sturm, Ruger & Co.	LC9s (3261)	9mm
	Sturm, Ruger & Co.	LC9s (3262)	9mm
	Sturm, Ruger & Co.	LC9s (3263)	9mm
	Sturm, Ruger & Co.	LC9s (3270)	9mm
	Sturm, Ruger & Co.	LCR (5456)	9mm
	Sturm, Ruger & Co.	P89 (3042)	9mm
	Sturm, Ruger & Co.	P89 (3044)	9mm
	Sturm, Ruger & Co.	P89 (3064)	9mm
	Sturm, Ruger & Co.	P89 (3072)	9mm
	Sturm, Ruger & Co.	P94 (3010)	9mm
Annual Control of Special Control of Control	Sturm, Ruger & Co.	P94 (3085)	9mm
	Sturm, Ruger & Co.	P95 (3075)	9mm
	Sturm, Ruger & Co.	P95 (3095)	9mm
	Sturm, Ruger & Co.	Ruger American Pistol (8661)	9mm
5-100 TESTS	Sturm, Ruger & Co.	Ruger American Pistol (8663)	9mm
	Sturm, Ruger & Co.	SR1911 (06722)	9mm = 2 - 2 - 2 - 2
	Sturm, Ruger & Co.	SR1911 Lightweight Officer-Style (06758)	9mm
	Sturm, Ruger & Co.	SR9 (3309)	9mm
	Sturm, Ruger & Co.	SR9 (3310)	9mm
200,	Sturm, Ruger & Co.	SR9 (3311)	9mm

Sturm, Ruger & Co.	SR9 (3312)	9mm
Sturm, Ruger & Co.	SR9C (3316)	9mm
Sturm, Ruger & Co.	SR9C (3317)	9mm
Sturm, Ruger & Co.	SR9C (3333)	9mm
Sturm, Ruger & Co.	SR9C (3339)	9mm
Sturm, Ruger & Co.	LCRx (05464)	9mm
Sturm, Ruger & Co.	SP101 (05783)	9mm
Sturm, Ruger & Co.	Security-9 (03819)	9mm
Sturm, Ruger & Co.	Security-9C (03829)	9mm
Sturm, Ruger & Co.	EC9s (13211)	9mm
Sturm, Ruger & Co.	MAX-9 (03502)	9mm
Sturm, Ruger & Co.	LCR (5440)	.38 Spl
Sturm, Ruger & Co.	LCR (5418)	.38 Spl
Sturm, Ruger & Co.	LCRx (5441)	.38 Spl
Sturm, Ruger & Co.	GP100 (1727)	.38 Spl +P
Sturm, Ruger & Co.	LCR (5419)	.38 Spl +P
Sturm, Ruger & Co.	LCR (5430)	.38 Spl +P
Sturm, Ruger & Co.	LCR (5431)	.38 Spl +P
Sturm, Ruger & Co.	LCR (5401)	.38 Spl +P
Sturm, Ruger & Co.	LCR (5402)	.38 Spl +P
Sturm, Ruger & Co.	LCR (5403)	.38 Spl +P
Sturm, Ruger & Co.	LCR (5404)	.38 Spl +P
Sturm, Ruger & Co.	LCR (5405)	.38 Spl +P
Sturm, Ruger & Co.	LCR (5409)	.38 Spl +P
Sturm, Ruger & Co.	LCR (5415)	.38 Spl +P
Sturm, Ruger & Co.	LCR (5407)	.38 Spl +P
Sturm, Ruger & Co.	SP101 (5737)	.38 Spl +P
Sturm, Ruger & Co.	SP101 (5739)	.38 Spl +P
Sturm, Ruger & Co.	GP100 (1748)	.327 Federal Mag.
Sturm, Ruger & Co.	New Model Blackhawk (0353)	.327 Federal Mag.
Sturm, Ruger & Co.	SP101 (05759)	.327 Federal Mag.
Sturm, Ruger & Co.	SP101 (05773)	.327 Federal Mag.
Sturm, Ruger & Co.	LCR (05452)	.327 Federal Mag.
Sturm, Ruger & Co.	LCR (5452)	.327 Federal Mag.
Sturm, Ruger & Co.	LCRx (05462)	.327 Federal Mag.
Sturm, Ruger & Co.	GP100 (1702)	.357 Mag.
Sturm, Ruger & Co.	GP100 (1703)	.357 Mag.
Sturm, Ruger & Co.	GP100 (1704)	.357 Mag.
Sturm, Ruger & Co.	GP100 (1705)	.357 Mag.
Sturm, Ruger & Co.	GP100 (1706)	.357 Mag.
Sturm, Ruger & Co.	GP100 (1707)	.357 Mag.

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Sturm, Ruger & Co.	GP100 (1711)	257 Mag	· [
		.357 Mag.	
Sturm, Ruger & Co.	GP100 (1712)	.357 Mag.	
Sturm, Ruger & Co.	GP100 (1715)	.357 Mag.	
Sturm, Ruger & Co.	GP100 (1718)	.357 Mag.	
Sturm, Ruger & Co.	GP100 (1719)	.357 Mag.	
Sturm, Ruger & Co.	GP100 (1720)	.357 Mag.	
Sturm, Ruger & Co.	GP100 (1754)	.357 Mag.	
Sturm, Ruger & Co.	GP100 (01758)	.357 Mag.	
Sturm, Ruger & Co.	GP100 (1716)	.357 Mag.	s.
Sturm, Ruger & Co.	GP100 Match Champion (01755)	.357 Mag.	
Sturm, Ruger & Co.	GP101 (01771)	.357 Mag.	
Sturm, Ruger & Co.	LCR (5450)	.357 Mag.	
Sturm, Ruger & Co.	LCR (5451)	.357 Mag.	or an or commentation to the comment
Sturm, Ruger & Co.	LCRx (5460)	.357 Mag.	e felicina
Sturm, Ruger & Co.	LCRx (05444) Bazza August	357 Mag.	a fel Systa
Sturm, Ruger & Co.	New Model Blackhawk (0306)	.357 Mag.	
Sturm, Ruger & Co.	New Model Blackhawk (0308)	.357 Mag.	Company of the Compan
Sturm, Ruger & Co.	New Model Blackhawk (0309)	.357 Mag.	
Sturm, Ruger & Co.	New Model Blackhawk (0316)	.357 Mag.	:
Sturm, Ruger & Co.	New Model Blackhawk (0318)	.357 Mag.	
Sturm, Ruger & Co.	New Model Blackhawk (0319)	.357 Mag.	
Sturm, Ruger & Co.	New Model Blackhawk (0331)	.357 Mag.	
Sturm, Ruger & Co.	New Model Blackhawk (10306)	.357 Mag.	
Sturm, Ruger & Co.	New Model Blackhawk (10308)	.357 Mag.	
Sturm, Ruger & Co.	New Model Blackhawk (10316)	.357 Mag.	
Sturm, Ruger & Co.	New Model Blackhawk (5201)	.357 Mag.	4
Sturm, Ruger & Co.	New Vaquero (0521)	.357 Mag.	
Sturm, Ruger & Co.	New Vaquero (0523)	.357 Mag.	
Sturm, Ruger & Co.	New Vaquero (0575)	.357 Mag.	
Sturm, Ruger & Co.	New Vaquero (0576)	.357 Mag.	
Sturm, Ruger & Co.	New Vaquero (0577)	357 Mag.	. was a second of
Sturm, Ruger & Co.	New Vaquero (0579)	.357 Mag.	what has been a fine a
Sturm, Ruger & Co.	New Vaquero (10514)	.357 Mag.	When the self-reason is smaller in the control of t
Sturm, Ruger & Co.	New Vaquero (5106)	.357 Mag.	
Sturm, Ruger & Co.	New Vaquero (5107)	.357 Mag.	
Sturm, Ruger & Co.	New Vaquero (5108)	.357 Mag.	
Sturm, Ruger & Co.	New Vaquero (5109)	.357 Mag.	
Sturm, Ruger & Co.	New Vaquero (5130)	.357 Mag.	
Sturm, Ruger & Co.	New Vaquero (5133)	.357 Mag.	
Sturm, Ruger & Co.	Redhawk (05033)	.357 Mag.	
Sturm, Ruger & Co.	Redhawk (05059)	.357 Mag.	

Sturm, Ruger & Co.	Redhawk (05060)	.357 Mag.
Sturm, Ruger & Co.	Redhawk (05051)	.357 Mag.
Sturm, Ruger & Co.	SP101 (5718)	.357 Mag.
Sturm, Ruger & Co.	SP101 (5719)	.357 Mag.
Sturm, Ruger & Co.	SP101 (5720)	.357 Mag.
Sturm, Ruger & Co.	SP101 (5766)	.357 Mag.
Sturm, Ruger & Co.	SP101 (5771)	.357 Mag.
Sturm, Ruger & Co.	SP101 (5773)	.357 Mag.
Sturm, Ruger & Co.	SP101 Match Champion (05782)	.357 Mag.
Sturm, Ruger & Co.	Super GP100 (05056)	.357 Mag.
Sturm, Ruger & Co.	New Model Blackhawk (0505)	.30 Carbine
Sturm, Ruger & Co.	New Model Blackhawk (10595)	.30 Carbine
Sturm, Ruger & Co.	P944 (3425)	.40 S&W
Sturm, Ruger & Co.	P944 (3426)	.40 S&W
Sturm, Ruger & Co.	P944 (3435)	.40 S&W
Sturm, Ruger & Co.	SR40 (3472)	.40 S&W
Sturm, Ruger & Co.	SR40 (3473)	.40 S&W
Sturm, Ruger & Co.	SR40C (3478)	.40 S&W
Sturm, Ruger & Co.	SR40C (3479)	.40 S&W
Sturm, Ruger & Co.	New Model Blackhawk (0405)	.41 Mag.
Sturm, Ruger & Co.	New Model Blackhawk (0406)	.41 Mag.
Sturm, Ruger & Co.	Blackhawk (05233)	.44 Special
Sturm, Ruger & Co.	GP100 (01761)	.44 Special
Sturm, Ruger & Co.	New Model Blackhawk (5232)	.44 Special
Sturm, Ruger & Co.	New Model Blackhawk (5233)	.44 Special
Sturm, Ruger & Co.	New Model Blackhawk (0540)	44/40
Sturm, Ruger & Co.	New Model Blackhawk (0541)	44/40
Sturm, Ruger & Co.	New Model Blackhawk (0542)	44/40
Sturm, Ruger & Co.	New Model Blackhawk (0543)	44/40
Sturm, Ruger & Co.	New Model Blackhawk (0544)	44/40
Sturm, Ruger & Co.	New Model Blackhawk (0545)	44/40
Sturm, Ruger & Co.	New Model Super Blackhawk (0802)	.44 Mag.
Sturm, Ruger & Co.	New Model Super Blackhawk (0804)	.44 Mag.
Sturm, Ruger & Co.	New Model Super Blackhawk (0806)	.44 Mag.
Sturm, Ruger & Co.	New Model Super Blackhawk (0807)	.44 Mag.
Sturm, Ruger & Co.	New Model Super Blackhawk (0810)	.44 Mag.
Sturm, Ruger & Co.	New Model Super Blackhawk (0811)	.44 Mag.
Sturm, Ruger & Co.	New Model Super Blackhawk (0813)	.44 Mag.
Sturm, Ruger & Co.	New Model Super Blackhawk (0814)	.44 Mag.
Sturm, Ruger & Co.	New Model Super Blackhawk (0831)	.44 Mag.
Sturm, Ruger & Co.	New Model Super Blackhawk (0860)	.44 Mag.

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Sturm, Ruger & Co.	New Vaquero (0536)	.44 Mag.
Sturm, Ruger & Co.	New Vaquero (0537)	.44 Mag.
Sturm, Ruger & Co.	New Vaquero (0546)	.44 Mag.
Sturm, Ruger & Co.	New Vaquero (0547)	.44 Mag.
Sturm, Ruger & Co.	New Vaquero (0548)	.44 Mag.
Sturm, Ruger & Co.	New Vaquero (0549)	.44 Mag.
Sturm, Ruger & Co.	New Vaquero (0556)	.44 Mag.
Sturm, Ruger & Co.	New Vaquero (0557)	.44 Mag.
Sturm, Ruger & Co.	New Vaquero (0589)	.44 Mag.
Sturm, Ruger & Co.	New Vaquero (0591)	.44 Mag.
Sturm, Ruger & Co.	Redhawk (5001)	.44 Mag.
Sturm, Ruger & Co.	Redhawk (5003)	.44 Mag.
Sturm, Ruger & Co.	Redhawk (5004)	.44 Mag.
Sturm, Ruger & Co.	Redhawk (5011)	.44 Mag.
Sturm, Ruger & Co.	Redhawk (5013)	.44 Mag.
Sturm, Ruger & Co.	Redhawk (5014)	.44 Mag.
Sturm, Ruger & Co.	Redhawk (5026)	.44 Mag.
Sturm, Ruger & Co.	Redhawk (5028)	.44 Mag.
Sturm, Ruger & Co.	Redhawk (05041)	.44 Mag.
Sturm, Ruger & Co.	Redhawk (05043)	.44 Mag.
Sturm, Ruger & Co.	Redhawk (05044)	.44 Mag.
Sturm, Ruger & Co.	Super Redhawk (5501)	.44 Mag.
Sturm, Ruger & Co.	Super Redhawk (5502)	.44 Mag.
Sturm, Ruger & Co.	Super Redhawk Alaskan (5303)	.44 Mag.
Sturm, Ruger & Co.	Super Redhawk (05524)	10mm
Sturm, Ruger & Co.	SR1911 (6739)	10mm
Sturm, Ruger & Co.	P345 (6644)	.45 ACP
Sturm, Ruger & Co.	P345 (6645)	.45 ACP
Sturm, Ruger & Co.	P345 (6647)	.45 ACP
Sturm, Ruger & Co.	P345 (6648)	.45 ACP
Sturm, Ruger & Co.	P90 (6602)	.45 ACP
Sturm, Ruger & Co.	P90 (6622)	.45 ACP
Sturm, Ruger & Co.	P90 (6624)	.45 ACP
Sturm, Ruger & Co.	P97 (6605)	.45 ACP
Sturm, Ruger & Co.	P97 (6640)	.45 ACP
Sturm, Ruger & Co.	Ruger American Pistol (8680)	.45 ACP
Sturm, Ruger & Co.	SR1911 (06700)	.45 ACP
Sturm, Ruger & Co.	SR1911 (6702)	.45 ACP
Sturm, Ruger & Co.	SR1911 (6708)	.45 ACP
Sturm, Ruger & Co.	SR1911 (6709)	.45 ACP
Sturm, Ruger & Co.	SR1911 (6720)	.45 ACP

Sturm, Ruger & Co.	SR1911 (6736)	.45 ACP	
Sturm, Ruger & Co.	SR1911CMD-A (6711)	.45 ACP	
Sturm, Ruger & Co.	SR45 (3800)	.45 ACP	
Sturm, Ruger & Co.	SR45 (3801)	.45 ACP	
Sturm, Ruger & Co.	GP100 (01775)	10mm	
Sturm, Ruger & Co.	New Model Blackhawk (5242)	.45 Long Colt & .45 ACP	
Sturm, Ruger & Co.	Redhawk (05032)	.45 Long Colt & .45 ACP	
Sturm, Ruger & Co.	New Model Blackhawk (10455)	.45 Long Colt	
Sturm, Ruger & Co.	New Model Blackhawk (0445)	.45 Long Colt	
Sturm, Ruger & Co.	New Model Blackhawk (0446)	.45 Long Colt	
Sturm, Ruger & Co.	New Model Blackhawk (0447)	.45 Long Colt	
Sturm, Ruger & Co.	New Model Blackhawk (0455)	.45 Long Colt	
Sturm, Ruger & Co.	New Model Blackhawk (0459)	.45 Long Colt	
Sturm, Ruger & Co.	New Model Blackhawk (0460)	.45 Long Colt	
Sturm, Ruger & Co.	New Model Blackhawk (0463)	.45 Long Colt	
Sturm, Ruger & Co.	New Model Blackhawk (0465)	.45 Long Colt	
Sturm, Ruger & Co.	New Model Blackhawk (0467)	.45 Long Colt	
Sturm, Ruger & Co.	New Model Blackhawk (0510)	.45 Long Colt	
Sturm, Ruger & Co.	New Model Blackhawk (0511)	.45 Long Colt	
Sturm, Ruger & Co.	New Model Blackhawk (0551)	.45 Long Colt	
Sturm, Ruger & Co.	New Model Blackhawk (0552)	.45 Long Colt	
Sturm, Ruger & Co.	New Model Blackhawk (0553)	.45 Long Colt	
Sturm, Ruger & Co.	New Model Blackhawk (0554)	.45 Long Colt	
Sturm, Ruger & Co.	New Model Blackhawk (0555)	.45 Long Colt	
Sturm, Ruger & Co.	New Vaquero (5101)	.45 Long Colt	
Sturm, Ruger & Co.	New Vaquero (5102)	.45 Long Colt	
Sturm, Ruger & Co.	New Vaquero (5103)	.45 Long Colt	
Sturm, Ruger & Co.	New Vaquero (5104)	.45 Long Colt	
Sturm, Ruger & Co.	New Vaquero (5105)	.45 Long Colt	
Sturm, Ruger & Co.	New Vaquero (5112)	.45 Long Colt	
Sturm, Ruger & Co.	New Vaquero (5113)	.45 Long Colt	
Sturm, Ruger & Co.	New Vaquero (5122)	.45 Long Colt	
Sturm, Ruger & Co.	New Vaquero (5123)	.45 Long Colt	
Sturm, Ruger & Co.	New Vaquero (5129)	.45 Long Colt	
Sturm, Ruger & Co.	New Vaquero (5134)	.45 Long Colt	
Sturm, Ruger & Co.	New Vaquero (8863)	.45 Long Colt	
Sturm, Ruger & Co.	Redhawk (5023)	.45 Long Colt	
Sturm, Ruger & Co.	Redhawk (5024)	.45 Long Colt	
Sturm, Ruger & Co.	Redhawk (5025)	.45 Long Colt	
Sturm, Ruger & Co.	Redhawk (5027)	.45 Long Colt	

· 	Sturm, Ruger & Co.	Redhawk (05050)	.45 Long Colt
	Sturm, Ruger & Co.	Vaguero (0538)	
9			.45 Long Colt
	Sturm, Ruger & Co.	Vaquero (0539)	.45 Long Colt
	Sturm, Ruger & Co.	Vaquero (0590)	.45 Long Colt
	Sturm, Ruger & Co.	Vaquero (0592)	.45 Long Colt
	Sturm, Ruger & Co.	Super Redhawk (5505)	454 Casull & 45 Long Colt
	Sturm, Ruger & Co.	Super Redhawk (5508)	454 Casull & 45 Long Colt
	Sturm, Ruger & Co.	Super Redhawk Alaskan (5301)	454 Casull
	Sturm, Ruger & Co.	Super Redhawk (5507)	480 Ruger
	Sturm, Ruger & Co.	Super Redhawk (5510)	480 Ruger
600	Sturm, Ruger & Co.	Super Redhawk Alaskan (5302)	480 Ruger
	Sturm, Ruger & Co.	Super Redhawk Alaskan (8851)	480 Ruger
And the second s	Sturm, Ruger & Co.	Super Redhawk Alaskan (05302)	480 Ruger
	Sturm, Ruger & Co.	Ruger-57 (16402)	5.7x28mm
	Taurus	1-G3C931-MA	9mm
	Taurus	1-G3B941-MA	9mm
	Taurus	1-G3CP931-MA	9mm
	Taurus	1-G3C931-TL1MA	9mm
	Taurus	1-G3C93ET-MA	9mm
`	Taurus	1-G3XL9041-10	9mm
)	Taurus	2-85621-MA	.38 Spl
	Taurus	2-85629-MA	.38 Spl
	Thompson Center	PRO HTR SST/COMP	.308 Win
	Walther	P22	.22 LR
à	Walther	P22 (no internal lock / Q style grip)	.22 LR
,	Walther	P22 (no internal lock)	.22 LR
	Walther	SP22	.22 LR
	Walther	PPK/S-1	.32 ACP
	Walther	PK380	.380 ACP
<b>&gt;</b>	Walther	PK380 (no internal lock)	.380 ACP
of the engine of the control of the	Walther	PPK	.380 ACP
	Walther	PPK (Blue)	.380 ACP
	Walther	PPK/S (Blue)	.380 ACP
	Walther	PPK/S-1	.380 ACP
odina.	Walther	PPK/S-1 Two Tone	.380 ACP
	Walther	P99	9mm
	Walther	P99 AS	9mm
	Walther	P99 c AS	9mm
	Walther	P99 QA	9mm
	Walther	P990	9mm
		L	1

Walther	P99C AS	9mm
Walther	P99C QA	9mm
Walther	PPS	. 9mm
Walther	P99	.40 S&W
Walther	P99 AS	.40 S&W
Walther	P99 QA	.40 S&W
Walther	P99C QA	.40 S&W
Walther	PPS	.40 S&W

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## CERTIFICATE OF SERVICE

Case Name: Lance Boland, et al v. Rob Bonta, et al Case No.: 23-55276

I hereby certify that on March 27, 2023, I electronically filed the following documents with the Clerk of the Court by using the CM/ECF system:

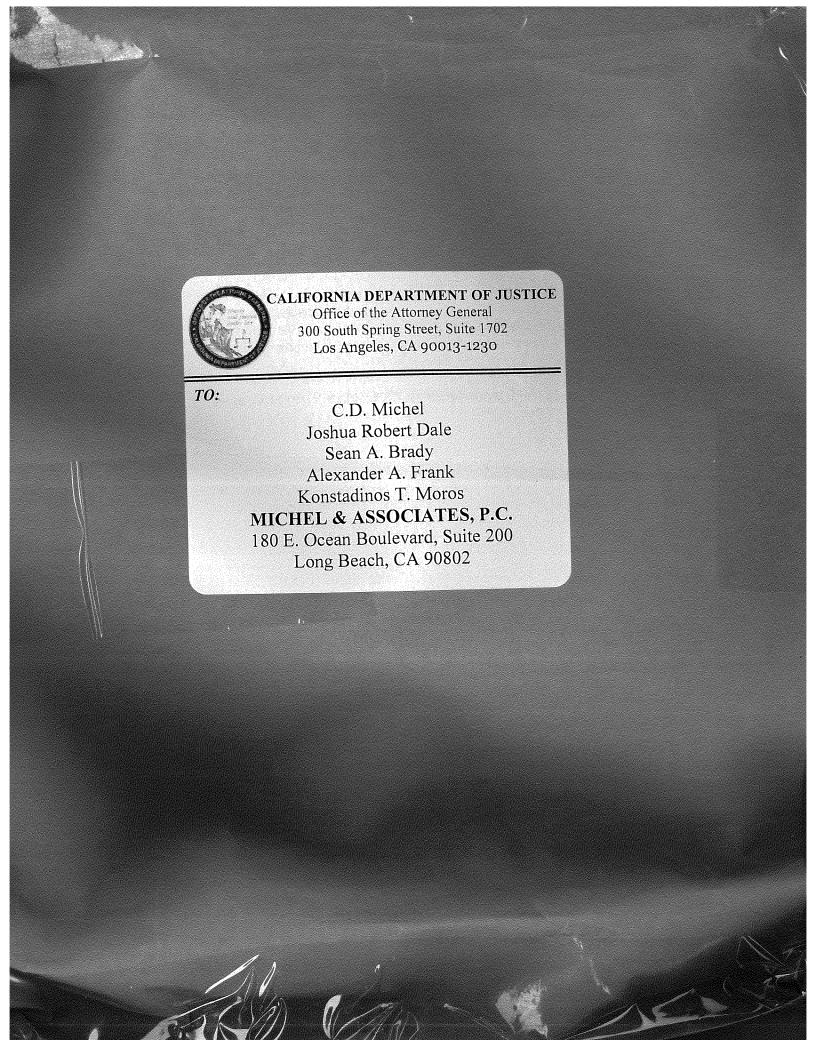
## DECLARATION OF CHARLES J. SAROSY IN SUPPORT OF EMERGENCY MOTION UNDER CIRCUIT RULE 27-3 FOR A PARTIAL STAY OF THE PRELIMINARY INJUNCTION PENDING APPEAL AND FOR AN INTERIM ADMINISTRATIVE STAY ENTERED BEFORE APRIL 3, 2023

I certify that all participants in the case are registered CM/ECF users and that service will be electronically accomplished by the CM/ECF system.

I declare under penalty of perjury under the laws of the State of California and the United States of America the foregoing is true and correct.

Executed on March 27, 2023, at San Francisco, California.

Vanessa Jordan	s/ Vanessa Jordan
Declarant	Signature



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