

No. 23-55805

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

VIRGINIA DUNCAN, ET AL.,
Plaintiffs and Appellees,

V.

ROB BONTA, IN HIS OFFICIAL CAPACITY AS
ATTORNEY GENERAL OF THE STATE OF CALIFORNIA,
Defendant and Appellant.

**On Appeal from the United States District Court
for the Southern District of California**
No. 3:17-cv-01017-BEN-JLB
The Honorable Roger T. Benitez, Judge

**APPELLANT’S EXCERPTS OF RECORD
VOLUME 10 of 17**

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9 IN THE UNITED STATES DISTRICT COURT
10 FOR THE SOUTHERN DISTRICT OF CALIFORNIA
11 CIVIL DIVISION
12

13 **VIRGINIA DUNCAN, RICHARD**
14 **LEWIS, PATRICK LOVETTE,**
15 **DAVID MARGUGLIO,**
16 **CHRISTOPHER WADDELL, and**
17 **CALIFORNIA RIFLE & PISTOL**
ASSOCIATION, INC., a California
corporation,

18 Plaintiffs,

19 v.

20 **ROB BONTA, in his official capacity as**
21 **Attorney General of the State of**
California; and DOES 1-10,

22 Defendants.
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27
28

17-cv-1017-BEN-JLB

DECLARATION OF MICHAEL
VORENBERG

Courtroom: 5A
Judge: Hon. Roger T. Benitez
Action Filed: May 17, 2017

1 **DECLARATION OF MICHAEL VORENBERG**

2 I, Michael Vorenberg, declare under penalty of perjury that the following is
3 true and correct:

4 1. I am an associate professor of history at Brown University. I make
5 this declaration in support of Defendants' Supplemental Brief in Response to the
6 Court's Order of September 26, 2022.

7 2. This declaration is based on my own personal knowledge and
8 experience, and if I am called to testify as a witness, I could and would testify
9 competently to the truth of the matters discussed in this declaration.

10 **BACKGROUND AND QUALIFICATIONS**

11 3. I received my A.B. from Harvard University in 1986, and my Ph.D. in
12 history from Harvard in 1995. After receiving my Ph.D., I began a postdoctoral
13 fellowship at the W.E.B. Du Bois Institute at Harvard, and then served as an
14 assistant professor of History at the State University of New York at Buffalo. I
15 joined the faculty at Brown University in 1999, and have taught history there ever
16 since.

17 4. I have concentrated my research on the history of the U.S. Civil War
18 and Reconstruction. My first book, *Final Freedom: The Civil War, the Abolition of*
19 *Slavery, and the Thirteenth Amendment*, was published by Cambridge University
20 Press in 2001. The book was a Finalist for the Gilder Lehrman Lincoln Prize. I am
21 also the author of *The Emancipation Proclamation: A Brief History with*
22 *Documents*, published by Bedford/St. Martin's in 2010. I am the author of a
23 number of articles and essays on Reconstruction and the law. These include: "The
24 1866 Civil Rights Act and the Beginning of Military Reconstruction," in Christian
25 Samito, ed., *The Greatest and the Grandest Act: The Civil Rights Act of 1866 from*
26 *Reconstruction to Today* (Southern Illinois University Press, 2018); "Citizenship and
27 the Thirteenth Amendment: Understanding the Deafening Silence," in Alexander
28 Tsesis, ed., *The Promises of Liberty: The History and Contemporary Relevance of*

1 *the Thirteenth Amendment* (Columbia University Press, 2010); “Reconstruction as a
2 Constitutional Crisis,” in Thomas J. Brown, ed., *Reconstructions: New Directions*
3 *in the History of Postbellum America* (Oxford University Press, 2006); and
4 “Imagining a Different Reconstruction Constitution,” *Civil War History*, 51 (Dec.
5 2005), 416-26. I have provided expert witness testimony in *Miller v. Bonta*, No.
6 3:19-cv-01537-BEN-JLB (S.D. Cal.).

7 5. My curriculum vitae is attached as Exhibit A.

8 6. I have been retained by the California Department of Justice to serve
9 as an expert witness in this case. I am being compensated at a rate of \$250 per
10 hour.

11 **OPINIONS**

12 **I. SUMMARY**

13 7. This declaration provides results of an investigation into the existence,
14 usage, and regulation of high-capacity firearms (guns capable of firing more than
15 10 rounds without re-loading) during the Reconstruction period of U.S. History
16 (1863-1877), with special focus on the period during Reconstruction when the
17 Fourteenth Amendment to the U.S. Constitution was created, ratified, and enforced
18 (1866-1876). The result of the investigation can be summarized as follows: There
19 were high-capacity firearms during Reconstruction, and all of them, including those
20 that could easily be carried by a single individual, were regarded in all the states at
21 the time as weapons suitable only for law enforcement officers, not for ordinary
22 citizens. With very few exceptions, almost all of which were in the Western
23 Territories, high-capacity firearms during the era were understood to be weapons of
24 war or anti-insurrection, not weapons of individual self-defense.

25 8. Evidence for these assertions does not necessarily take the form of
26 statutes or court decisions, and that is entirely unsurprising: explicit legal text
27 prohibiting civilian possession of the most dangerous weapons of war was not
28 commonly the means by which such weapons were regulated in the United States

1 during the Civil War and Reconstruction.¹ Rather, prohibitions existed in the
2 policies and practices of the U.S. army and its auxiliary or allied units, such as the
3 state-wide militias that operated as law enforcement bodies during Reconstruction.
4 No statutes or court opinions can be found during the period that banned civilian
5 possession of artillery pieces, hundreds of which existed unused after the Civil War,
6 but of course the absence of such express prohibitions cannot be read as evidence
7 that civilians were allowed to possess such pieces. Rather, policy and practice
8 dictated that only the U.S. army and its allied military units could possess such
9 weapons. High-capacity firearms, which like artillery pieces were created as
10 weapons of war, were regulated in the same way, through policy and practice
11 limiting possession of such firearms to the U.S. army and its allied military units.
12 Unlike artillery pieces, however, high-capacity firearms during Reconstruction did
13 come to be regarded by their manufacturers as having a potential market among
14 U.S. civilians.

15 9. However, efforts to create a market for high-capacity firearms in the
16 United States during Reconstruction failed miserably. Americans who were not
17 part of legal law enforcement bodies rarely bought high-capacity firearms. One
18 reason why these firearms failed to sell was the regulatory climate surrounding
19 them. U.S. and pro-Union state authorities sometimes seized shipments of such
20 weapons on the assumption that they were intended for use by insurrectionary
21 groups. Because of the negligible demand for such weapons, owners of gun shops
22 rarely stocked them. The primary, almost exclusive buyers of high-capacity
23 weapons during Reconstruction were a small number of U.S. army units and state
24 law enforcement bodies. Manufacturers of high-capacity firearms during
25 Reconstruction thus looked outside the United States for buyers. The Winchester
26 Repeating Rifle Company, the only company to produce such weapons during post-

27 ¹ In contrast, state and local laws did regulate other types of weapons, such as
28 concealable weapons associated with criminal use, during this period.

1 Civil War Reconstruction, stayed afloat during Reconstruction only by selling high-
2 capacity firearms to foreign armies.

3 10. During Reconstruction, high-capacity firearms did not circulate widely
4 among the civilian population; thus there was no need for legislative efforts to
5 regulate them among civilians. Instead, during Reconstruction, high-capacity
6 firearms were possessed almost exclusively by the U.S. army and related military
7 units, and they were regulated by the policies and practices of the army and these
8 related military units.

9 **II. SCOPE**

10 **A. Time Period Covered**

11 11. The time period covered by this declaration is Reconstruction,
12 typically defined as 1863-1877. This is the time period assigned to Reconstruction
13 in the most commonly used study of the period, Eric Foner's *Reconstruction*.² The
14 start point of 1863 correlates to the Emancipation Proclamation, the final version of
15 which was signed by President Abraham Lincoln on January 1, 1863. The endpoint
16 correlates to March 1877, when a new president, the Republican Rutherford B.
17 Hayes, was inaugurated after a months-long contested election; and Hayes, once in
18 office, oversaw the removal of all remaining U.S. troops in southern states that had
19 been part of the Confederate States of America, the rebellious entity that had fought
20 the United States during the Civil War of 1861-1865. Within the general period of
21 Reconstruction, the more narrow time period examined in this declaration is 1866-
22 1876. This is the period covering events relevant to the relationship between the
23 Fourteenth Amendment and firearms during the greater period of Reconstruction.
24 Such events include (in chronological order): the passage by the U.S. Congress of
25 the Civil Rights Act of 1866 and the new Freedman's Bureau Act (the initial
26 Freedman's Bureau Act, passed in March 1865, was for one year only); the passage

27 ² Eric Foner, *Reconstruction: America's Unfinished Revolution, 1863-1877*
28 (New York: Harper and Row, 1988), xxvii.

1 of the Fourteenth Amendment by Congress in 1866; the passage by Congress of the
2 Reconstruction Act of 1867 (sometimes referred to as the “Military Reconstruction
3 Act”); the adoption of the Fourteenth Amendment by state ratification in 1868; the
4 enforcement of the Fourteenth Amendment by U.S. Statutes adopted in 1870-71;
5 and the first interpretation of the Fourteenth Amendment’s relation to the Second
6 Amendment by the U.S. Supreme Court, in *U.S. v. Cruikshank* of 1876 (92 U.S.
7 542). This declaration also mentions the opinion in *Presser v. Illinois* (116 U.S.
8 252 (1886)), even though it came well after Reconstruction, because the events that
9 led to the case occurred in early 1879, very soon after the end of Reconstruction.

10 **B. Geographical Focus**

11 12. This declaration covers the geographic area of the entire United States,
12 both its states and territories, during Reconstruction. However, its particular
13 regional focus is on the southern states that had declared themselves seceded in
14 1860-61 and had joined together into the Confederacy by April 1861. These states
15 collectively represented the region during 1866-1876 where there was the most
16 frequent use of firearms, mainly because of armed conflict either between
17 contending factions within these states or between the U.S. army and insurgents in
18 these states. Even more specifically, this was the only region outside of the
19 Western Territories where Henry Rifles and Winchester Repeating Rifles were
20 used. As will be explained later, these are the weapons examined most closely in
21 this declaration (see IV. Historical Background and Terminology). In the Western
22 Territories during Reconstruction, these weapons were used primarily by the U.S.
23 army against Native Americans in the so-called “Indian Wars” that extended from
24 the 1860s to the 1890s. Some civilian U.S. citizens in the Western Territories
25 during this period also possessed these weapons. However, as with all firearms in
26 the region at the time, it is difficult to determine how common possession of Henry
27 Rifles and Winchester Repeating Rifles was in the Western Territories in the
28 Reconstruction period. Also, laws in these territories in this period were in flux, so

1 it is difficult to know whether possession by civilian U.S. citizens there was lawful.
2 Whatever the laws were at any given moment in this region during Reconstruction,
3 the number of non-army U.S. citizens in the Western Territories was always
4 negligible.

5 **III. RESEARCH MATERIALS AND METHODOLOGY**

6 13. Research materials included standard scholarly works on firearms and
7 U.S. history for the period of Reconstruction—roughly twenty scholarly books and
8 thirty scholarly articles. Materials also included newspaper and magazine articles
9 contemporary to the period studied. Hundreds of these are accessible and were
10 accessed via commonly used databases by scholars, such as Chronicling America,
11 Pro-Quest Historical Newspapers, and the Hathi Trust. U.S. government documents
12 and documents from U.S. states and territories were accessed via the Hein Online
13 database or the Nexis Uni database (a version of the better-known Lexis Nexis legal
14 database).

15 14. All of these documents, whether contemporary to the period studied or
16 produced by scholars after that period, were searched for information regarding
17 firearms—especially Henry Rifles and Winchester Repeating Rifles—with special
18 attention to the presence, use, and regulation of these firearms during the
19 Reconstruction era (1863-1877).

20 15. In all my research, I gave more weight to evidence that attested to
21 firearms being owned and/or used than to evidence that manufacturers of the
22 firearms or other sellers were trying to get people to buy and use them.
23 Advertisements for the firearms are not evidence of possession. However, if
24 advertising material provided testimony of the firearms being owned or used, I
25 treated that testimony as legitimate evidence, albeit evidence that might have been
26 embellished, even invented, for the sake of sales.

1 **IV. HISTORICAL BACKGROUND AND TERMINOLOGY**

2 **A. Firearm Capacity at or near the Founding**

3 16. Weapons capable of holding more than ten rounds did exist by the time
4 that the Second Amendment was adopted in 1791, but only in very small numbers,
5 and almost exclusively in Europe. Those that might have existed in the U.S. at the
6 time were made to order by individual gunsmiths for individual customers. These
7 bespoke weapons were extraordinarily rare in the United States surrounding the
8 period of the adoption of the Second Amendment.

9 17. One of these rare guns was the “Cookson” or “Hill” model, based on the
10 “Lorenzoni system” established in Europe in the 1600s. Only one gun of this type
11 definitively existed in early America; it was an 11-shot rifle mentioned in an
12 account of 1722 from Boston. Even if others of this type existed in British North
13 America, they would not have been well known. According to one expert, the
14 slightest defect in these weapons would lead to an explosion, so they required
15 perfect construction by “fine craftsmen.” Thus, only “wealthy sportsmen” could
16 afford them.³

17 18. Another rare high-capacity gun of the era was the Girardoni (or
18 Girandoni) air rifle, which could hold at least 20 rounds. The Girardoni was
19 manufactured exclusively in Europe. Most of the guns manufactured were custom-
20 ordered in the late 1700s by the Austrian army, which used the weapons with some
21 success. To maintain a military advantage, the Austrians demanded that the guns
22 be manufactured in secret.⁴ No Girardoni is known to have appeared in America
23 prior to 1800. There were about 30-40 guns on the Lewis and Clark expedition of
24 1804-1806, including a single Girardoni. Expedition leaders used it not for self-
25 defense or hunting but for one purpose only: to impress Native Americans with

26 ³ Harold L. Peterson, *Arms and Armor in Colonial America* (New York:
27 *Bramhall House*, 1956), 215-17.

28 ⁴ W. H. B. Smith, *Gas, Air and Spring Guns of the World* (Harrisburg, Penn.:
Military Service Publishing Company, 1957). 30.

(continued...)

1 white Americans' advanced technology.⁵ Its presence on the expedition is not
 2 evidence that the gun was well-known to Americans of the period, much less to
 3 Americans at the time of the Second Amendment's adoption more than ten years
 4 earlier.

5 19. The final example of a high-capacity gun of the era was the "Belton,"
 6 though this gun held fewer than ten rounds. Joseph Belton, who traveled between
 7 Philadelphia and England, owned a nine-shot repeating gun. It had almost certainly
 8 been produced in England in 1758. In 1777, during the American Revolution,
 9 Belton demonstrated the gun to seven Americans known for their military or
 10 technical expertise. They supported his petition to the Continental Congress of an
 11 order of 100 similar weapons to be delivered by Belton. Congress soon canceled
 12 the order because of the extraordinary expense Belton demanded. An expert on the
 13 "Belton" gun has come to the conclusion that of the 100 guns initially ordered,
 14 "none was ever made."⁶

15 **B. The Henry Rifle and the Winchester Repeating Rifle**

16 20. For the purposes of this declaration, a high-capacity firearm is defined
 17 as a firearm that can hold more than 10 rounds. The magazine holding the rounds
 18 can either be integral to the gun or external to it. The gun itself can be carried by a
 19 single person. Finally, the gun must have the potential for common usage: it has to
 20 be mass-manufactured or have the potential to be mass-manufactured, thus
 21 excluding experimental weapons that were never widely adopted.

23 ⁵ Jim Garry, *Weapons of the Lewis and Clark Expedition* (Norman, Okla.:
 24 Arthur H. Clark, 2012), 94; S. K. Wier, "The Firearms of the Lewis and Clark
 Expedition" (2010),
 25 http://www.westernexplorers.us/Firearms_of_Lewis_and_Clark.pdf (accessed Nov.
 7, 2022).

26 ⁶ Robert Held, *The Belton Systems, 1758 and 1784-86: America's First*
Repeating Firearms (Lincoln, R.I.: Andrew Mowbray, 1986), 33-39 (quote at 39).
 27 The prototype gun from 1758 that is believed to have been Belton's is preserved at
 the National Museum of American History; see
 28 https://americanhistory.si.edu/collections/search/object/nmah_440031 (accessed
 Nov. 7, 2022).

21. Within these specifications, there were only two high-capacity firearms in the entire world that were produced during Reconstruction: the Henry Rifle and the Winchester Repeating Rifle. I note the exclusion here of the Gatling Gun. That weapon was indeed a high-capacity firearm produced during Reconstruction, but it could not be carried by a single person, as it was massive in size and nearly 200 pounds in weight.

22. The Henry Rifle and the Winchester Repeating Rifle were nearly the same weapon. Manufacturing of the Henry began soon after the weapon was patented, in 1860. In 1866, the Winchester Repeating Rifle was established in New Haven, Connecticut. Its owner, Oliver Winchester, hired the inventor of the Henry, who designed a slightly modified version of the Henry Rifle. The new model was dubbed a Winchester Repeating Model. Because it was released in 1866, it was sometimes called the “Winchester 66.” In 1873, a new model of Winchester was released, the “Winchester 73.” The rifle was nearly the same as the “Winchester 66” but used a slightly different type of ammunition. All of these rifles, the Henry and the two models of the Winchester, had the following features: they held fifteen rounds in a chamber fixed within a stock just below the rifle barrel; they used a lever below the trigger to eject spent shells and load new rounds; and they were easily reloaded. The Winchester was easier to reload than the Henry—it had a “gate” on the side near the trigger that allowed the user to feed rounds into the gun during lulls in firing or after all the rounds in the chamber were spent).

Advertisements for Henrys and Winchesters claimed that the weapons could fire two rounds per second (this rate might have been exaggerated—some of the same ads made the false claim that the guns held eighteen rounds, not fifteen—but all agreed that the rifle could fire at a rate at least as fast as any existing rifle).

23. There were other individual-use weapons during the Reconstruction era that could fire multiple shots in rapid sequence, but none had a higher capacity than ten rounds. Some sidearms, most notably six-shot revolvers, could fire rounds

1 in rapid sequence. But no sidearm held more than ten rounds. Certain rifles beside
2 the Henry and Winchester could fire multiple rounds rapidly, but none held more
3 than ten rounds. These included the Spencer Rifle (4-round capacity) and the
4 Sharps Rifle (7-round capacity). The U.S. army and the Confederate army
5 approved the adoption of the Spencer and Sharps rifles. These weapons were
6 known either by their company name or by the generic term “repeaters” or
7 “repeating rifles.” Henrys and Winchesters were also repeating rifles, but because
8 they were in a class of their own, due to their high capacity, they were generally
9 known only as Henrys or as Winchesters. In the language of the day, they did not
10 fall into the generic category of “repeaters” or “repeating rifles” (thus a very well-
11 armed individual of the period might be described as having “a revolver, a repeater,
12 and a Winchester”—three distinct categories).

13 24. This declaration occasionally uses the term “Henry-Winchester.”
14 Although the Winchester Repeating Rifle effectively replaced the Henry Rifle,
15 Henry Rifles continued to be used long after Winchesters began to be produced. At
16 certain times and places during Reconstruction, both types of weapons might be
17 found in possession of a single, armed group. For such situations, the phrase
18 “Henry Rifles and/or Winchester Repeating Rifles” would be appropriate, but
19 seeing how cumbersome that phrase is, it has been shortened in this declaration to
20 “Henry-Winchester” or “Henry-Winchesters.”

21 **C. The Henry Rifle and the American Civil War**

22 25. Production and sales numbers reveal that Henry Rifles and their
23 successors, Winchester Repeating Rifles, were uncommon during the Civil War and
24 Reconstruction compared to other rifles.⁷ Until 1866, manufacturers of Henrys and

25 ⁷ Unless otherwise noted, this declaration relies on two sources for numbers
26 of Henry Rifles and Winchester Repeating Rifles manufactured and sold: Pamela
27 Haag, *The Gunning of America: Business and the Making of American Gun Culture*
28 (New York: Basic Books, 2016); and John E. Parsons, *The First Winchester: The
Story of the 1866 Repeating Rifle* (New York: Morrow, 1955).

(continued...)

Winchesters concentrated their marketing efforts within the United States on trying to persuade the U.S. army and pro-Union state militias to adopt the high-capacity rifles as standard weapons for soldiers.⁸ The U.S. War Department never adopted Henry-Winchesters. The army's chief of ordnance, General James Ripley, reported early in the war that these rifles, along with lower-capacity rifles were "too complicated, too heavy, and too costly . . . and apt to waste ammunition."⁹ The ordinance department never changed its position on Henry-Winchesters. During the Civil War, the U.S. army opted instead for single-shot rifles and, in some instances, low-capacity "repeaters" (rifles that held magazines of two to seven rounds). The U.S. army did allow individual commanders of army units or allied units to buy Henry-Winchesters for their soldiers. For example, of the 900 Henry rifles sold during 1862, 300 went to Kentucky's pro-Union state militia.¹⁰ Although some military units that purchased Henry Rifles were able to do so using funds allotted to them by state governments, most of the soldiers and officers who purchased the weapons used their own money. By the end of the Civil War in 1865, U.S. soldiers had purchased about 8,500 Henry Rifles; most of those had been bought with the soldiers' own money. By contrast, the U.S. government had purchased nearly 107,000 Spencer single-shot rifles for use by the army.¹¹

26. Meanwhile during the Civil War, the Confederate War Department also never adopted Henry Rifles. Whether that was by choice is unclear. Oliver Winchester, who had the greatest control of the company that made Henrys, declared that he did not want the weapons sold to Confederates. His policy may have been due to pure loyalty to the Union cause or to fear that he would be

⁸ Haag, *The Gunning of America*, 65-81. During the Civil War, the pro-Union border states of Kentucky and Missouri had state-wide militias that were authorized by state governments to fight for the Union.

⁹ Haag, *The Gunning of America*, 70.

¹⁰ Haag, *The Gunning of America*, 76.

¹¹ Haag, *The Gunning of America*, 81.

(continued...)

1 charged with treason by the U.S. government if he facilitated gun sales to the
2 rebels. Some Confederate soldiers were able to acquire Henrys by theft or by using
3 agents who purchased them in the North and smuggled them to the South.¹² Most
4 Confederates knew about the weapon. A widely-circulated story told of a
5 Confederate soldier who called the gun “that damned Yankee rifle that can be
6 loaded on Sunday and fired all week.” One of the soldiers in Robert E. Lee’s Army
7 of Northern Virginia regretted that “we never did secure the Winchester.”¹³ Some
8 Confederate soldiers did manage to obtain Henry-Winchesters, either by smuggling
9 or, more commonly, by confiscating them from captured Union soldiers. In late
10 1862, for example, a number of pro-Union Kentucky soldiers who had just acquired
11 Henry Rifles were overrun by pro-Confederate Kentuckians and Tennesseans. As
12 many as 300 Henry rifles ended up in Confederate hands as a result.¹⁴ These
13 weapons probably did not stay with the southerners for very long. By June 1865,
14 all of the major Confederate armies had surrendered. Typically, surrender required
15 all Confederate soldiers to “stack arms.” If they had sidearms, they could keep
16 them, but any rifles had to be relinquished. Confederate veterans would thus have
17 been prohibited from having Henry-Winchesters. At least some ex-Confederate
18 soldiers ended up with Henry-Winchesters, however, though not legally. If they
19 failed to turn in their rifles, they were in violation of the “parole” agreement that
20 protected them from imprisonment after surrender. Some ex-Confederates
21 managed to get Henry-Winchesters by stealing them from U.S. army depots.
22 Others bought them from smugglers who had gotten the weapons in Mexico and
23 then carried them across the border to Texas. Henry-Winchesters were easier to

24 ¹² Haag, *The Gunning of America*, 65. For evidence that U.S. authorities
25 would have regarded the sale of Henrys to Confederates as treasonous, and thus that
26 Winchester had good reason to avoid such sales, see Haag, *The Gunning of*

27 ¹³ Harold F. Williamson, *Winchester: The Gun That Won the West*
(Washington, D.C.: Combat Forces Press, 1952), 38.

28 ¹⁴ Haag, *The Gunning of America*, 76.

1 find in Mexico than in the U.S. in 1864-1867. They had been sold by the thousands
2 to the Juaristas, the rebel force that would ultimately wrest Mexico from
3 Maximilian, the self-proclaimed “Emperor” installed in Mexico City by Napoleon
4 III of France.

5 27. Not only the Juaristas but other non-U.S., non-Confederate armies
6 possessed Henry-Winchesters. Indeed, foreign armies were the main market for
7 Henry-Winchester manufacturers during Reconstruction. Had it not been for the
8 war in Mexico, along with the Franco-Prussian War and the various armed conflicts
9 between the Russian and Ottoman empires—all wars involving thousands of
10 Henry-Winchesters—the manufacturers of these weapons would likely have gone
11 bankrupt.¹⁵

12 28. In the United States by 1866, Henry-Winchesters did exist, to be sure,
13 but in much smaller numbers than in foreign countries. U.S. veterans of the Civil
14 War could possess Henry rifles. Beginning in May 1865, U.S. army volunteers
15 began mustering out in significant numbers. The non-regular U.S. army (that is, the
16 volunteer force), nearly a million strong by April 1865, would fall well below
17 100,000 by the end of the year. Unlike ex-Confederate soldiers, ex-U.S. soldiers
18 could keep their rifles upon discharge. This meant that U.S. soldiers at the time
19 who had Henry rifles might continue to possess them once they re-entered civilian
20 life. However, the number of such U.S. veterans who kept their Henrys was small,
21 perhaps 7,500,¹⁶ and those that opted to keep them paid dearly. The U.S. army did
22 not simply give weapons away for free to discharging soldiers who had acquired

23 ¹⁵ Haag, *The Gunning of America*, 109-42.

24 ¹⁶ The figure of 7,500 Henrys kept by pro-Union soldiers after the war is
25 reached in the following way. 8,500 had been purchased by or for U.S. soldiers. See
26 Haag, *The Gunning of America*, 81. Of these, roughly 2,000 were purchased for
27 soldiers (based on a count of regiments known to have bought the rifles with public
28 funds). Thus 6,500 Henrys were privately owned by soldiers. Of the roughly 2,000
Henrys purchased for soldiers, 808 were known to have been bought by the soldiers
at the end of the war. See 42nd Cong., 2nd sess., S. Doc. 183, “Sale of Ordnance
Stores,” *U.S. Congressional Serial Set* (1871), pp. 167-172. Thus, a generous
estimate of how many U.S. veterans had Henrys after the war is 7,500.

1 them at no cost from their military units. Rather, soldiers wanting to keep their
 2 weapons had to buy them at market value. A Spencer carbine (a short-barreled,
 3 repeating rifle, and one of the most popular weapons among U.S. soldiers), would
 4 cost a discharging soldier about \$10 (roughly \$175 in 2022 dollars). A Henry
 5 would cost at least \$30 (roughly \$525 in 2022 dollars). A private in the U.S. army
 6 typically made \$13 per month. If he had a Spencer that he wanted to buy, he would
 7 have to pay less than one month's wages—not a bad deal for a perfectly sound and
 8 popular rifle. If he wanted to buy a Henry, though, that would cost him more than
 9 two months' wages, and there would be little to persuade him that the difference in
 10 price corresponded to the difference in value. The result was that very few Henrys
 11 were purchased by discharged U.S. soldiers. According to a U.S. army report, 808
 12 Henrys were purchased by discharging Civil War soldiers, compared to 8,289
 13 Spencer Carbines.¹⁷ Henrys that were not purchased went to the U.S. War
 14 Department's ordnance department, which did not sell them.

15 29. By the end of the Civil War in 1865, very few combatants had used
 16 Henry Rifles, and fewer still had kept them once they were discharged. The result
 17 was that only a small number of Henrys were in circulation in the United States
 18 immediately after the war—perhaps 10,000, and this in a country of roughly 35
 19 million people.¹⁸ Those veterans who possessed the guns understood that they were
 20 weapons of war—they had used them as such—rather than weapons of individual
 21 self-defense. Maybe veterans kept them as souvenirs, maybe as commodities to be

22 ¹⁷ General Orders, No. 101, May 30, 1865, *The War of the Rebellion*
 23 (Washington, D.C.: Government Printing Office, 1880-1901), ser. 3, vol. 5, p. 43;
 24 42nd Cong., 2nd sess., S. Doc. 183, "Sale of Ordnance Stores," *U.S. Congressional*
Serial Set (1871), pp. 167-172.

25 ¹⁸ 11,000 Henry Rifles were produced between 1861 and 1865; see Parsons,
 26 *The First Winchester*, 48. Assuming that all were sold—a generous assumption—
 27 then 2,500 were sold to civilians and 8,500 to U.S. soldiers (the 8,500 figure comes
 28 from note 12 above). Of the 8,500 U.S. soldiers who had Henrys, 7,500 kept them
 after the war; see note 12 above. Thus 10,000 Henrys were in circulation after the
 war (again, a generous estimate). The U.S. census of 1860 reported just over 31
 million Americans; the census of 1870 reported just over 38 million. Thus 35
 million is given as an estimate of the population of the United States in 1865.

1 sold at a later date, maybe as novelties to be displayed at local shooting contests or
2 social gatherings (rifle clubs and shooting galleries were common in the North).
3 Maybe they planned to travel to or through the Western Territories, where Henrys
4 were gaining a reputation as good weapons against hostile Native Americans or
5 roaming bands of criminals, known as “highwaymen” or “road agents.” Regardless
6 of why a U.S. veteran might have kept a Henry, he would have understood that it
7 was an uncommon weapon, and one not intended for individual self-defense. It was
8 strictly a weapon of war.

9 **D. State Secession, State Readmission, State Redemption**

10 30. Reconstruction was a time period (1863-1877) but also a process. The
11 process was described by President Abraham Lincoln in his last public speech
12 (April 11, 1865) as getting “the seceded States, so called,” which were “out of their
13 proper practical relation with the Union,” back into their “proper practical relation”
14 with the Union.¹⁹ To better understand this process, one must understand the
15 meaning of key terms used during the Reconstruction period: state secession, state
16 readmission, and state redemption.

17 **1. State Secession**

18 31. Lincoln used the phrase “seceded States, so called” because he did not
19 accept the constitutionality of state secession. All eleven states of the Confederacy
20 had declared themselves “seceded” from the Union by May 20, 1861. The
21 governments of all of these states regarded state secession, by which they meant a
22 breaking-off from the Union, as constitutional. The Lincoln administration rejected
23 this interpretation and declared instead that the “so-called” seceded states had
24 remained in the Union but had had their governments overtaken by disloyal,
25 insurrectionary groups. Reconstruction, therefore, would be complete when all of
26 the “so-called” seceded states had governments that were loyal to the Union. The

27 ¹⁹ Roy P. Basler, ed., *Collected Works of Abraham Lincoln* (New Brunswick,
28 N.J.: Rutgers University Press, 1953), 8:403-4.

1 presidential administrations of the Reconstruction era that followed Lincoln's
2 (Andrew Johnson's and Ulysses S. Grant's) adopted this understanding of
3 secession. So, too, did all the Reconstruction-era Congresses, though a minority of
4 Congressmen took a somewhat different view, claiming that secession was indeed
5 unconstitutional but that the states in question had indeed broken off from the
6 Union and therefore could be treated as territories. This declaration does not delve
7 into the question of the constitutionality of secession. It simply notes that U.S.
8 lawmakers of the Reconstruction era generally regarded secession as
9 unconstitutional and a form of insurrection.

10 **2. State Readmission**

11 32. There were competing views among U.S. lawmakers during
12 Reconstruction as to when a "so-called" seceded state could be deemed
13 "readmitted" to the Union. The dominant view among U.S. lawmakers was that a
14 state was deemed readmitted when Congress agreed to seat Representatives and
15 Senators from that state. This meaning of state readmission is used in this
16 declaration. In justifying federal intervention into "so-called" seceded states and the
17 imposition of qualifications on states for readmission, national law makers relied on
18 two constitutional principles: 1) "war powers"; and 2) the "guarantee clause"—the
19 clause of the U.S. Constitution declaring that "The United States shall guarantee to
20 every State in this Union a Republican Form of Government" (U.S.C., Art. IV, Sec.
21 4). This declaration does not delve into the question of the legitimacy and scope of
22 these constitutional principles. It simply notes that these were the principles of the
23 time used to justify federal policy towards the "so-called" seceded states during
24 Reconstruction.

25 **3. State Redemption**

26 33. Between 1866 and 1871, all of the "so-called" seceded states were
27 readmitted to the Union. At the point of readmission, each state had a government
28 that was loyal to the Union and controlled by a political party affiliated with the

1 national Republican Party, which for all the years of Reconstruction was the Party
2 in control of the U.S. government. In 1866-68, the last years of the administration
3 of Andrew Johnson, he renounced the Republican Party and declared himself a
4 Democrat, which he had been prior to the Civil War, but the U.S. government as a
5 whole was still Republican. The Republicans in Congress beginning in December
6 1866 had a two-thirds majority that allowed them to override Johnson's vetoes; and
7 beginning in March 1867, with the Reconstruction Act, they effectively took
8 control of the "Commander-in-Chief" powers typically vested in the Executive
9 branch. In each state after readmission there was internal conflict. Part of that
10 conflict involved efforts by Democrats, many of whom were former Confederates
11 or Confederate-sympathizers, to take control of the state government from
12 Republicans. By 1877, the Democrats had taken control of the governments of all
13 the states of the former Confederacy. At the point when Democrats took control of
14 a state, they declared the state "redeemed" and began rolling back reforms instituted
15 by prior Republican state authorities. In this declaration, state redemption means
16 the period when Democrats declared a state "redeemed" and began instituting
17 reactionary measures.

18 **E. Militias**

19 34. Militias have a long history in the United States, and they have been
20 studied extensively by scholars investigating the Second Amendment, especially for
21 the period of Colonial America and the Early Republic. Militias existed during
22 Reconstruction, but the militias of that period were fundamentally different from
23 the militias of the earlier periods.

24 35. By the time that the Civil War broke out in 1861, well-organized state
25 militias such as had existed in the Early Republic technically existed but were
26 practically defunct, except in frontier states like Missouri and Texas. Militias by
27 1861 essentially existed as volunteer local groups authorized by state governments
28 but were only lightly controlled by those governments. Such militias were used, to

1 be sure. Local militias in Virginia in 1859, for example, had worked together with
2 a unit of the U.S. army commanded by Robert E. Lee to put down the effort by
3 John Brown to seize the U.S. armory at Harpers Ferry and distribute arms to
4 enslaved Black Americans in the region.

5 36. The fact that state militias did technically exist by 1861 became very
6 important once the Civil War broke out. The power under the U.S. Constitution for
7 a President to call up state militias is what Abraham Lincoln invoked at the start of
8 the war when he authorized up to 75,000 men to come together to put down the
9 insurrection in the southern states. The Confederate States of America, which
10 adopted a constitution quite similar to the U.S. Constitution, invoked this same
11 authority when calling up its national army.

12 37. Although soldiers had been called to national armies in their role as
13 state militiamen, the armed units that formed the basis of national armies during the
14 Civil War were not state-based militia units but rather state-formed regiments
15 approved as national army units by the U.S. War Department (hence only in rare
16 instances would a regiment be a replica of a local militia unit). Nonetheless, the
17 national armies continued to be managed at times by laws designed in the pre-war
18 era to manage state militias. In July 1862, for example, the United States passed a
19 Militia Act that standardized the terms of membership in state-wide militias even
20 though state-wide militias had grown defunct in the North prior to the war; only in
21 this way—by legislating via the old state militia system—did the U.S. War
22 Department have the authority to manage the personnel of the national army. The
23 July 1862 Act significantly declared that Black Americans could not be denied
24 admission to state militias. That was a pivotal development, as most state militias
25 prior to the war (all of them in the South, most of those in the North), had denied
26 membership to Black Americans.

27 38. When the Civil War ended in mid-1865, state militias, which had been
28 given new life by the war, thrived, but not everywhere. In the North, they fell again

1 into disuse, though they would begin to appear again with strength in the late 1870s
2 and 1880s. In the border states of Missouri and Kentucky, which had remained
3 loyal to the Union despite being slave states, state militias continued to be
4 important, as guerrillas caused disturbances in the states long after the Civil War
5 was over. In the states of the former Confederacy after the war, the state militias
6 had the most visible—and notorious—presence. Invoking newly passed
7 discriminatory state laws (“Black Codes”), or simply acting on their own discretion,
8 southern state militias, which excluded all Black Americans, harassed, assaulted,
9 and even killed Black Americans and pro-Union whites. These militias were
10 composed mostly of former Confederate soldiers, many of whom wore their
11 Confederate uniforms while in action. These militias were regarded by U.S.
12 lawmakers as pernicious and unlawful. Leaving aside the obvious illegality of the
13 many acts committed by these militias, they were in violation of U.S. law simply by
14 wearing Confederate uniforms.²⁰

15 39. In March 1867, the U.S. Congress abolished all southern state militias,
16 with some exceptions. Exempted were the border states, the four slave states that
17 had never seceded, though Kentucky and Missouri were the only border states with
18 state militias, and both states would disband their militias by 1868. Also exempted
19 were two states that had joined the Confederacy: Arkansas and Tennessee.²¹
20 Arkansas was exempted because it had proven itself to President Johnson as a
21 genuinely loyal state. It had established a loyal state government, led by Governor
22 Powell Clayton, that conformed to the guidelines that Abraham Lincoln had laid

23
24 ²⁰ James Speed, “Surrender of the Rebel Army of Northern Virginia,” April
25 22, 1865, *Opinions of the Attorney General*, 11:208-9. For these immediate post-
26 war southern militias, see William A. Blair, *The Record of Murders and Outrages: Racial Violence and the Fight Over Truth at the Dawn of Reconstruction* (Chapel Hill: University of North Carolina Press, 2021), 66-67.

27 ²¹ 14 U.S. Statutes 487, Chap 170, Sec. 6 (Approved March 2, 1867); James
28 E. Sefton, *The United States Army and Reconstruction, 1865-1877* (Baton Rouge: Louisiana State University Press, 1967), 112.

(continued...)

1 out in December 1863 and that Johnson had affirmed soon after taking office.
2 Arkansas in 1868 created a state militia that U.S. authorities regarded as a
3 legitimate armed organization loyal to the United States.²² Tennessee was
4 exempted because it, too, had established a loyal state government, led by Governor
5 William (“Parson”) Brownlow. It had gone one step further. It had ratified the
6 Fourteenth Amendment, passed by Congress in mid-1866, thus becoming the first
7 southern state to do so and, as a result, becoming the first formerly seceded state to
8 be formally readmitted to the Union. With Brownlow’s urging, Tennessee in 1866
9 had created a state militia, the “Tennessee State Guard.” This organization was
10 composed of both white and black members; it was well-armed (with Enfield
11 single-shot rifles, not with Henrys or Winchesters); and it drilled regularly. Former
12 Confederates in the state despised the force.²³

13 40. After Congress in 1867 abolished all but the exempted southern state
14 militias, some of the newly created pro-Union governments in the non-exempted
15 southern states created new state militias that were expressly tasked with subduing
16 insurrection and anti-black activities. Such states included Louisiana, North
17 Carolina, South Carolina, and Texas. Loyal state governments in Alabama and
18 Florida proclaimed an intention to organize such new state militias, but they never
19 followed through. A loyal government in Mississippi in 1870 went so far as to
20 organize such a state militia, but the force was never used. The state militias of the
21 South that did exist and saw action, those in Arkansas, Louisiana, North Carolina,
22 Tennessee, South Carolina, and Texas, were wholly new innovations (though Texas
23 made the dubious claim that the pre-war Texas Rangers was a predecessor
24 organization). The new, post-1867 southern state militias were under the direct

25 _____
26 ²² Michael G. Lindsey, “Localism and the Creation of a State Police in
Arkansas,” *Arkansas Historical Quarterly*, 64 (Winter 2005), 356-58.

27 ²³ Ben H. Severance, *Tennessee's Radical Army: The State Guard and Its*
28 *Role in Reconstruction, 1867-1869* (Knoxville: University Press of Tennessee,
2005), 1-119.

1 control of the state (the Governor and/or state adjutant general), as opposed to
2 merely authorized by the governor. They drilled and paraded regularly. They were
3 paid and armed by the state, with the arms kept in state-maintained, state-guarded
4 armories or arsenals. Finally, all of the militias allowed if not encouraged Black
5 American men to join, though some, like North Carolina's, segregated white
6 companies from black companies. The high number of Black Americans in the
7 southern state militias led some people at the time as well as some early historians
8 to call these organizations "Negro Militias." This declaration does not use that
9 label. Pre-Civil War state militias in the South, in contrast to these wholly new
10 post-war organizations, were unpaid, self-armed, and all-white.²⁴

11 41. Two of the new southern state militias, those of Louisiana and South
12 Carolina, are particularly relevant to the subject of this declaration. As will be
13 discussed below, the state militias of Louisiana and South Carolina—and only those
14 state militias—were armed with Winchester Repeating Rifles.

15 42. The composition of and membership requirements of the new state
16 militias indicate much about attitudes toward firearms regulation among law
17 makers of the time. The inclusion of Black Americans in the militias was part of a
18 larger understanding among Republicans in the era of the Fourteenth Amendment
19 that regulations restricting blacks from possessing firearms were no longer to be
20 regarded as constitutional.²⁵ The new militias did more than include blacks. They
21 excluded some whites, specifically those who were regarded as still supporting the
22

23 ²⁴ Otis A. Singletary, *Negro Militia and Reconstruction* (Austin: University
24 of Texas Press, 1957), 3-33; Otis A. Singletary, "The Texas Militia During
25 Reconstruction," *Southwestern Historical Quarterly*, 60 (July 1956), 25-28; Allan
Robert Purcell, "The History of the Texas Militia, 1835-1903" (Ph.D. diss.,
University of Texas, Austin, 1981), 221-27.

26 ²⁵ Clayton E. Cramer, Nicholas J. Johnson, and George A. Mocsary, "This
27 Right is Not Allowed by Governments That Are Afraid of the People": The Public
Meaning of the Second Amendment when the Fourteenth Amendment was
Ratified," *George Mason Law Review*, 17 (2010), 823-863, esp. 852-863.

28 (continued...)

1 Confederate cause.²⁶ Thus, the new state militias that began forming in 1868, the
2 same year as the adoption of the Fourteenth Amendment, indicated that lawmakers
3 understood that Black Americans' security required not simply the absence of
4 regulations denying them arms but the presence of regulations denying arms to
5 those who were known to support insurrection against the United States and
6 violence against blacks.

7 **F. The U.S. Army During Reconstruction**

8 43. The U.S. army began occupying parts of the South as soon as the Civil
9 War broke out and would not end its occupation until 1877, the end of
10 Reconstruction, when it removed its last units from Florida, Louisiana, and South
11 Carolina. During the war, the U.S. army had exclusive police powers in the
12 occupied South until or unless local policing institutions—courts and
13 constabularies—were deemed loyal to the United States. At that point, the U.S.
14 army cooperated with local police institutions to “keep the peace.” Yet U.S.
15 commanders retained the power, which they had had since the start of the war, to
16 declare martial law in an area, thus suspending the civil institutions there. This
17 arrangement carried over from the Civil War into the early years of post-war
18 Reconstruction. Until April 1866, U.S. troops had unrestrained power to operate
19 within state boundaries to keep the peace. As part of that power, they could use
20 troops as police and hold their own courts that could try civilians.²⁷

21 44. The army also was willing to use this power in states that had never
22 declared themselves seceded. The army had overseen arrests and prosecutions of
23 alleged traitors in Indiana in 1864, actions that were ultimately deemed
24 unconstitutional in the U.S. Supreme Court's post-war *Milligan* opinion. In June
25 1866, the army had intervened in New York and Vermont to capture Irish
26 nationalists known as Fenians who had fought against British troops in Canada and

27 ²⁶ Singletary, *Negro Militia and Reconstruction*, 23-24.

28 ²⁷ Sefton, *The U.S. Army and Reconstruction*, 5-106.

1 then crossed over to the United States. (Neither Henrys nor Winchesters were used
2 in the conflicts between the Fenians and Canadian troops.) General-in-Chief
3 Ulysses S. Grant ordered General George Meade to inform the New York and
4 Vermont governors that they should call out volunteer militia units to capture the
5 Fenians.²⁸

6 45. The federal-state structure of armed enforcement that took place
7 during the 1866 Fenian crisis was the model that U.S. authorities had in mind for
8 the South once the southern states began creating pro-Union state militias. The
9 hope was that the southern states would end up like New York and Vermont during
10 the Fenian crisis: they would develop and sustain new, pro-Republican state
11 militias that would be the primary armed force in the states, with the U.S. army
12 playing only an ancillary role.

13 46. This plan for U.S. army-southern state militia cooperation nearly came
14 apart beginning in April 1866. In that month, President Andrew Johnson
15 proclaimed that a state of “cessation of hostilities” existed in all the southern states
16 but Texas (in August 1866 he would proclaim that in Texas, too, there was a
17 “cessation of hostilities”). Johnson thus effectively removed “war powers” as a
18 constitutional justification for the army’s presence in the South. His move was part
19 of his general turn against the Republican program of Reconstruction. Also in
20 April 1866, he vetoed the Civil Rights Act of 1866, a veto that Congress overrode.
21 Two months earlier, he had vetoed the act renewing the Freedman’s Bureau.
22 Eventually, Congress passed a new act for the Bureau, which Johnson again vetoed
23 but Congress overrode. Both the Civil Rights Act and the Freedman’s Bureau Act
24 established, among other things, that the army would continue to have policing
25 powers in the southern states. Those powers were to be used specifically to put
26 down insurrectionaries who threatened to undermine the civil rights of Black

27 ²⁸ W. S. Neidhardt, *Fenianism in North America* (University Park: The
28 Pennsylvania State University Press, 1975), 71.

1 Americans or in any way jeopardize pro-Union citizens and institutions. The Civil
2 Rights Act contained a military provision that empowered the army to act reactively
3 or preemptively against any actual or anticipated insurrectionary threat.²⁹ Even
4 though Congress was able to sustain this military provision as well as the rest of the
5 Civil Rights Act of 1866 against Johnson's veto, the military provision was
6 jeopardized by Johnson's declaration of a "cessation of hostilities." The declaration
7 signaled that Johnson might not sustain the army in its duties specified by
8 Congressional measures like the Civil Rights Act. Also in April 1866, the U.S.
9 Supreme Court announced that it was ruling in favor of the plaintiff in the *Milligan*
10 case (the actual opinion was not issued until January 1867). That case was
11 narrowly about the power of the army to try civilians in areas where civil courts
12 were operative; more broadly it was about the power of the army to have any
13 authority at all to occupy an area ostensibly at peace.

14 47. U.S. Republican authorities moved quickly to protect their power to
15 occupy the formerly rebel South. Secretary of War Stanton prepared an order that
16 invoked the military provision of the Civil Rights Act of 1866 to justify continued
17 military occupation of the South. This was a novel move, as it allowed military
18 occupation in the absence of "war powers." The Civil Rights Act was justified not
19 by "war powers" but by the Thirteenth Amendment abolishing slavery. A small
20 number of Republicans, most notably Representative John Bingham, thought the
21 Civil Rights Act needed more justification than that. For this reason, among others,
22 Bingham pressed for a new constitutional amendment, which ultimately emerged as
23 the Fourteenth Amendment. The resolution for the amendment was passed by
24 Congress a few months after the Civil Rights Act and sent to the states for
25

26 _____
27 ²⁹ Michael Vorenberg, "The 1866 Civil Rights Act and the Beginning of
28 Military Reconstruction," in Christian Samito, ed., *The Greatest and the Grandest Act: The Civil Rights Act of 1866 from Reconstruction to Today* (Carbondale, Ill.: Southern Illinois University Press, 2018), 60-88.

1 ratification. Congress would ultimately declare that the Civil Rights Act of 1866
2 was authorized by the Fourteenth as well as the Thirteenth Amendments.

3 48. The military provision of the Civil Rights Act of 1866 was not enough
4 to put U.S. military occupation of the South on sure footing. The President still
5 controlled the army in his capacity as commander-in-chief. Congress thus began to
6 wrest control of the army from President Johnson. First, it passed the
7 Reconstruction Act of 1867, which formalized military occupation and required
8 southern states to ratify the Fourteenth Amendment in order to be readmitted to the
9 Union. Then Congress passed measures (most notably the Tenure of Office Act)
10 that shifted aspects of army control from the President to Congress. Then it
11 impeached Johnson, though Johnson was ultimately acquitted by the Senate. In the
12 meantime, the army and the U.S. Attorney General opted to take the narrowest
13 possible reading of the Milligan decision, such that the only power deemed out of
14 the army's hands in occupied areas was the power to try civilians if civilian courts
15 were operative. By 1868, then, the year of the Fourteenth Amendment's adoption,
16 the U.S. army had secured for itself a place in the southern states as a legitimate
17 occupying force in the South. It would affirm this status with the acts of 1870 and
18 1871 enforcing the Fourteenth Amendment as well as the Fifteenth Amendment,
19 which had been adopted in 1870. The last of these enforcement acts, the so-called
20 "KKK Act," was aimed directly at breaking up the Ku Klux Klan and similar
21 insurrectionary, paramilitary organizations that terrorized Black Americans and
22 pro-Union whites ("terror" was one of the most commonly used words of the time
23 to describe the Klan's intent toward Black Americans).

24 49. The reason to understand this sequence of events is to appreciate the
25 army's distinctive, unprecedented role in the era of the Fourteenth Amendment. It
26 did not operate under martial law. It had the power to declare martial law, but in
27 practice, it avoided using that power. Instead, it looked to pro-Republican state
28 governors to declare martial law if martial law was deemed necessary (and such

gubernatorial declarations were extraordinarily rare during Reconstruction). Furthermore, in the wake of *Milligan*, it yielded to the states the judicial power it had wielded prior to 1866. States' attorneys and state courts were to be the main sites of judicial action, though the U.S. Attorney General reserved the power to remove cases to federal courts if they involved matters relating to civil and political rights covered by national legislation (to help centralize federal judicial activity in the South, the Department of Justice was created in 1870). During the era of the Fourteenth Amendment, then, the main role of the U.S. army was to act as an ancillary police force to the state militias or other local and state policing operations. In this capacity, the army worked with states to detect and arrest insurrectionaries and civil-rights violators. Although sometimes those arrested would stand trial in a federal court—this happened most famously in the South Carolina Ku Klux Klan trials of 1871-72—the army and agents of the Department of Justice looked to the state courts to be the primary judicial institutions of locales. As an example: President Ulysses S. Grant in 1871, in his capacity as commander-in-chief of the U.S. army, ordered all insurrectionaries in South Carolina to turn in their firearms to legitimate authorities. If insurrectionaries were found who had not turned in their weapons, they could be arrested and denied habeas corpus rights under Grant's order.³⁰ However, prosecutions and trials of such insurrectionaries going forward would be conducted by state authorities, if those authorities were known to be loyal to the United States. In its capacity as an ancillary police force to state militias, with both armed organizations committed to subduing insurrectionaries and civil-rights violators, the U.S. army sought to prevent weapons from reaching unlawful insurgent groups. Army officers relied on their

³⁰ Proclamations of President Ulysses S. Grant, in James Richardson, ed., *A Compilation of the Messages and Papers of the Presidents* (New York: Bureau of National Literature, 1897), vol. 9, pp. 4086-87 (March 24, 1871), 4089-90 (Oct. 12, 1871), 4090-92 (Oct. 17, 1871), 4092-93 (Nov. 3, 1871; this proclamation revoked suspension of habeas corpus in Marion County, South Carolina), 4093-4095 (Nov. 10, 1871).

own intelligence operators as well as private intelligence agencies like the Pinkertons to learn of arms shipments. By the terms of the Civil Rights Act of 1866 and the Enforcement Acts of 1870, the U.S. army and related military units were authorized to act preemptively to prevent insurrectionaries from making armed assaults on loyal Unionists. The seizure of weapons intended for insurrectionaries thus represented a lawful use of military authority under the Fourteenth Amendment.³¹

50. As a result, any southern person or combination of persons considering having Henry or Winchester rifles shipped to them faced the prospect that the U.S. army or state militia might keep the shipment from reaching them and that, even if the shipment did reach them, the policing forces could arrest them and confiscate the weapons.

V. FINDINGS: HIGH-CAPACITY FIREARMS DURING RECONSTRUCTION

A. Overview: Henry Rifles and Winchester Repeating Rifles During Reconstruction

51. An oft-cited scholar in legal debates over firearms contends that “the Winchester Model 1866 . . . became a huge commercial success. So by the time the Fourteenth Amendment was ratified in 1868, rifles holding more than 10 rounds were common in America.” The first part of this statement is true: the “Winchester 66” did become a commercial success. The author neglects to mention, however, that prior to the end of Reconstruction, that commercial success was due almost entirely to sales to foreign armies. Thus it does not follow that the success of the company during Reconstruction is evidence of the presence of Winchesters in the United States. Indeed, the author’s second statement, that “rifles holding more than

³¹ No U.S. court ever denied the constitutionality of such seizures of weapons or the legislation that authorized the seizures. See Vorenberg, “The 1866 Civil Rights Act and the Beginning of Military Reconstruction.”

(continued...)

1 10 rounds were common in America” at the time of the Fourteenth Amendment, is
2 false.³²

3 52. Rifles holding more than 10 rounds made up a tiny fraction of all
4 firearms in the United States during Reconstruction. Furthermore, as will be
5 discussed in more detail below, possession of such rifles—legal possession, that
6 is—was limited almost exclusively to U.S. soldiers and civilian law enforcement
7 officers.

8 **B. Henrys and Winchesters in the Reconstruction-Era West**

9 53. One of the places that Henrys and Winchesters could be found during
10 Reconstruction was in the West, though the weapons did not proliferate there at the
11 time at anything like the scale invented by novelists and film-makers of the late
12 nineteenth and twentieth centuries.

13 54. With the passage of the Homestead Act (1862), the end of the Civil
14 War (1865), the completion of the first transcontinental railroad (1869), and the
15 discovery of gold in the Black Hills of Dakota Territory, the appeal of traveling to

16 ³² David Kopel, “The History of Magazines holding 11 or more rounds:
17 Amicus brief in 9th Circuit,” *Washington Post*, May 29, 2014,
18 [https://www.washingtonpost.com/news/volokh-conspiracy/wp/2014/05/29/the-](https://www.washingtonpost.com/news/volokh-conspiracy/wp/2014/05/29/the-history-of-magazines-holding-11-or-more-rounds-amicus-brief-in-9th-circuit/)
19 [history-of-magazines-holding-11-or-more-rounds-amicus-brief-in-9th-circuit/](https://www.washingtonpost.com/news/volokh-conspiracy/wp/2014/05/29/the-history-of-magazines-holding-11-or-more-rounds-amicus-brief-in-9th-circuit/)
20 (accessed September 22, 2022). Kopel’s contention also appears on page 4 of his
21 co-authored Amicus Brief in a federal case from California, *Fyock v. City of*
22 *Sunnyvale*, Case No. 14-15408 (9th Cir. 2015). See David B. Kopel and John
23 Parker Sweeney, “Amici Curiae Brief for the Center for Constitutional
24 Jurisprudence and Gun Owners of California in Support of Plaintiffs-Appellants
25 and Supporting Reversal,” 2014 WL 2445166 (9th Cir.). For the number of Henrys
26 and Winchesters manufactured 1861-1877, as well as the number of these rifles
27 shipped to foreign armies, see John E. Parsons, *The First Winchester: The Story of*
28 *the 1866 Repeating Rifle* (New York: Morrow, 1955), 48, 85, 88, 103, 116, 123.
To understand the scale of these numbers, one should contrast them to the
production and sales of other rifles of the era. For example, according to Parsons,
the total number of Henrys and Winchesters manufactured in 1861-1877 was
164,466 (this includes the 56,000 shipped to foreign armies), whereas in the same
period, 845,713 Springfield “trap-door” single-shot rifles were manufactured. See
“Serial Number Ranges for Springfield Armory-Manufactured Military Firearms,”
<http://nps.history.com/publications/spar/serial-nos.pdf>, pp. 1-3; some of the data in
this report is aggregated and printed at the Springfield Armory U.S. National Park
Website: [https://www.nps.gov/spar/learn/historyculture/u-s-springfield-trapdoor-](https://www.nps.gov/spar/learn/historyculture/u-s-springfield-trapdoor-production-serial-numbers.htm)
[production-serial-numbers.htm](https://www.nps.gov/spar/learn/historyculture/u-s-springfield-trapdoor-production-serial-numbers.htm).

(continued...)

1 or through the Western Territories increased. Because law enforcement was
2 minimal in the region, and also because the U.S. army could offer travelers and
3 settlers little protection—they were too consumed during the era with subduing
4 Native Americans—Americans came to regard self-defense as particularly
5 important in the region. The Winchester company tried to capitalize on the
6 situation by touting the benefits of its rifle. The “Winchester 73” model in
7 particular was aimed at Westerners or potential Westerners. The company
8 emphasized that the speed and high capacity of the rifle allowed a single person to
9 hold off a band of outlaws or hostile Native Americans.³³ The marketing campaign
10 was aimed especially at Americans hoping to travel to the Western Territories. The
11 campaign had minimal success.

12 55. Many travelers to the West carried firearms, to be sure, but a very
13 small number of those arms were Henrys or Winchesters. Most of the accounts of
14 privately held Winchesters during Reconstruction that I found in the research for
15 this declaration did come from the Western Territories, but there were fewer than
16 fifteen such accounts that were not expressly fictional. Two such accounts became
17 legendary, mainly because the manufacturers of the Henry-Winchesters used them
18 to advertise their rifles. One account was of two former U.S. soldiers who were
19 part of a mining operation in the Rocky Mountains and used their Henry Rifles to
20 defeat some raiding Blackfoot Indians. Another was of a private guard hired by
21 Wells Fargo to accompany a cash shipment to the West; he was attacked by robbers
22 near Nevada City and used his Henry Rifle to kill them all. It might be noted that
23

24 ³³ See, for example, the ad printed over three issues in the *Wyoming Leader*
25 (March 16, April 21, May 8, 1868, always p. 4). Ads for Winchesters that said
26 nothing of their possible purposes appeared occasionally in newspapers published
27 in the Western Territories; see for example, a gun dealer’s ad for “Sharps and
28 Winchester Rifles” as specialties: *Bismarck Tri-Weekly Tribune* (Dakota Territory),
June 29, 1877, p. 4. On the post-Reconstruction invention of the myth of
Winchesters proliferating in the Reconstruction-era West, see Haag, *The Gunning
of America*, 179-202, 353-68.

(continued...)

1 these stories, assuming they are true, did not involve individual self-defense by
2 ordinary civilians. They involved defense of economic enterprises by trained
3 gunmen.³⁴ Less oft-told incidents involving Henrys and Winchesters from the
4 Western Territories involved brutal violence between thuggish combatants. There
5 was no heroic road warrior or “Indian fighter” in these tales, and thus they were not
6 likely to build appeal for the rifles. Particularly gruesome were the murder-by-
7 Winchester accounts stemming from the Horrell-Higgins feud in New Mexico
8 Territory near the Texas border.³⁵

9 56. Because some Henrys and Winchesters found their way to the Western
10 Territories, and because some of the U.S. army operations against Native
11 Americans took place in Western *states* as well as the Western Territories, Henrys
12 and Winchesters may have ended up in the Western states during Reconstruction
13 (these included California, Colorado, Nevada, and Oregon). However, I found no
14 significant evidence of Henrys or Winchesters in the Western states.³⁶

15 57. The Winchester company hoped that West-bound Americans’ desire to
16 hunt, and not just their wish for protection, would fuel sales of their weapon. The
17 great bison hunts on the Plains were famous by the late 1860s, and the Winchester
18 company tried to capitalize on the craze. Its marketing effort failed. Bison-hunters
19 preferred other models. It did not help that the most famous Western hunter of the
20

21
22 ³⁴ Williamson, *Winchester*, 42-44.

23 ³⁵ C. L. Sonnichsen, *I’ll Die Before I’ll Run: The Story of the Great Feuds of Texas* (1951; 2nd ed., New York: Devin-Adair, 1962), 125-49.

24 ³⁶ Exceptions to this statement about the absence of Henry-Winchesters in
25 western states are the state armories in these states. Reports from these armories
26 sometimes mention the rifles. For example, the armory in the state penitentiary at
27 Salem, Oregon in 1868 had 13 Henry rifles and zero Winchesters, compared to
28 hundreds of other firearms. Because this was a penitentiary armory, the Henrys that
were there necessarily were for use by law enforcement officers, not individuals
seeking self-defense. “Penitentiary Report” to Legislative Assembly, September
1868 (Salem, Oregon: W. A. McPherson, 1868), pp. 94-95.

(continued...)

1 time, Buffalo Bill Cody, did not use a Winchester. His famous gun, which he
2 dubbed “Lucretia Borgia,” was a single-shot Springfield.

3 58. The Winchester company had only marginally more success trying to
4 sell its guns elsewhere to hunters and “sportsmen,” a term used to describe not only
5 hunters but competitive target-shooters. The only place where Winchesters caught
6 on for hunting was in Africa, where American and European “big game” hunters
7 wanted to shoot large animals with as many rounds as possible, in as fast a time as
8 possible, in order to avoid being killed by the prey.³⁷ Target-shooters demanded
9 accuracy of their guns, and potential buyers worried that a rifle built for capacity
10 and speed would lose something in accuracy. To assuage such concerns, a
11 Winchester model that began selling in early 1877 (the “Winchester 76”) came with
12 the option of a “set trigger,” such that the shooter could set the trigger by moving it
13 very slightly forward, at which point only a tiny bit of pull would set off the shot.
14 The “set trigger” type of Winchester was more popular at shooting contests than
15 earlier Winchesters, but it still was not as popular as other rifles, especially
16 Remingtons and Springfields. One reason why was its price. The “set trigger”
17 version of the Winchester was typically \$10 more than the “standard trigger”
18 models, which already were on the expensive side (“standard trigger” Winchesters
19 were typically 20-30% more expensive than Remingtons and Springfields).

20 59. Meanwhile, U.S. army units in the West rarely possessed Winchesters
21 during Reconstruction. The army had continued its Civil War-era policy of non-
22 adoption of Winchesters. Yet soldiers in the West did understand the weapons’
23 lethality, in part because they had seen it first-hand in their skirmishes and battles
24 with the Sioux and their allies on the Plains. U.S. soldiers in the West at first
25

26 ³⁷ My research uncovered fewer than ten accounts of African big-game
27 hunting that appeared in U.S. publications during Reconstruction. As an example,
28 see “Lovejoy,” “Letter from Africa,” *Fayette County Herald* (Washington, Ohio),
Dec. 21, 1871, p.2 (by “accounts” I mean supposedly true accounts; there were
even more accounts that were expressly fictional).

1 assumed that the Natives were getting the weapons legally from traders who were
2 operating with the approval of the U.S. Bureau of Indian Affairs. That assumption
3 fueled long-standing hostility of the U.S. army toward the Bureau. The main
4 newspaper of the armed services of the time, the *Army and Navy Journal*, published
5 a satirical piece in 1867 pretending to be a Native American expressing gratitude to
6 the Bureau for allowing tribes to acquire single-shot guns and suggesting that the
7 Bureau might now “give us Spencer or Henry rifles.”³⁸

8 60. In fact, the Sioux and their allies did not get their Henrys (or
9 Winchesters) from the Bureau. Many of the weapons had been seized from
10 American emigrants and settlers whom the Natives had attacked. Many also had
11 been robbed from shippers heading to or through the Western Territories.

12 61. Here it is important to understand that no matter who might want a
13 Henry-Winchester, they were dependent on a successful shipping operation. The
14 weapons were manufactured in New Haven, Connecticut and shipped around the
15 country to U.S. ordnance depots, state arsenals, private gun stores, and, in rare
16 cases, individuals (individual mail-order did not become common until the 1890s,
17 and the first mail-order guns were shipped by Sears in the early 1900s).³⁹ There
18 was no U.S. parcel post until 1913; all shipping was done by private companies like
19 Wells Fargo. These companies divided up regions of the country, a legal
20 monopolistic practice, in order to maximize profits. In practical terms, this meant
21 that shipping costs were high, so buyers would be reluctant to ship goods that could
22 be lost. Loss was a very real possibility when it came to shipping weapons to
23 hostile areas. Shipping companies might use armed guards—some, as we have
24 seen, armed with Henrys or Winchesters—but the guards stood little chance against
25 an enemy that outnumbered them and was armed with the same type of guns. The
26 cost of the risk was passed from the manufacturers and “jobbers” who arranged for

27 ³⁸ *Army and Navy Journal*, June 1, 1867, p. 350.

28 ³⁹ Williamson, *Winchester*, 178.

1 sales to the consumers. The risk-induced increase in cost was a disincentive to
2 prospective individual or gun-store buyers in the West. This was one more factor
3 providing a disincentive not only to potential private buyers but to the U.S. army to
4 adopt Henry-Winchesters.

5 62. Whatever the root causes of the minimal proliferation of Winchesters
6 among non-Natives of the West, the result was that Natives were more likely to use
7 Winchesters than anyone else in the region. The most heavily armed Americans of
8 the region, those of the U.S. cavalry units assigned to the Western Territories, used
9 for the most part their army-issued single-shot Springfield rifles. Meanwhile, as a
10 U.S. Colonel noted, Winchesters and lower-capacity repeating rifles in the late
11 1860s transformed “the Plains Indian from an insignificant, scarcely dangerous
12 adversary into as magnificent a soldier as the world can show.”⁴⁰

13 63. The truth of that observation was borne out at the Battle of Little Big
14 Horn in 1876. Famously, the U.S. army commanded by George Custer was wiped
15 out by the Plains Indians. Most of Custer’s troops carried single-shot Springfield
16 rifles. The Native Americans carried a variety of weapons, many of which were
17 Winchesters.⁴¹ One of Custer’s underlings, Marcus Reno, wrote after the battle that
18 “the Indians had Winchester rifles and the column [of U.S. cavalry] made a large
19 target for them and they were pumping bullets into it.”⁴² Weaponry was not the sole
20 reason for Custer’s defeat that day at the Little Big Horn. Still, it is worth noting
21 that “the gun that won the West” was in the hands of Native Americans, not U.S.
22 soldiers, at the most famous battle in the West of all time.

23
24 ⁴⁰ Pekka Hämäläinen, *Lakota America: A New History of Indigenous Power*
25 (New Haven, Conn.: Yale University Press, 2019), 299. In the northwest part of the
26 Western Territories, the Nez Perce also were fond of Winchesters. Chief Joseph
usually kept one close at hand. See Jerome A. Greene, *Nez Perce Summer, 1877:
The U.S. Army and the Nee-Me-Poo* (Helena: Montana Society Press, 2001), 34-42,
310-12.

27 ⁴¹ Hämäläinen, *Lakota America*, 340.

28 ⁴² Haag, *The Gunning of America*, 176-77.

1 64. Humiliated by Custer's defeat, the U.S. army in the West still did not
2 choose to adopt Winchesters after Little Big Horn. However, an increasing number
3 of regiments in the West did act on their own to use ordnance funds to buy
4 Winchesters. Although the army did not officially adopt the Winchester, it did all it
5 could to keep the weapon, along with lower-capacity repeating rifles, out of the
6 hands of the Plains Indians. Right away after Custer's defeat the army banned
7 traders from trading any types of guns to any types of Natives, friendly or hostile.
8 U.S. officers sought to arrest traders who had been selling Winchesters to Plains
9 Indians against government policy.⁴³ Meanwhile, American civilians in the
10 Western Territories demanded that Canadian authorities also intervene to keep
11 Winchesters from Native Americans, specifically the Blackfoot.⁴⁴

12 65. It is impossible to know all the reasons why the U.S. army did not
13 adopt Henrys or Winchesters before or even soon after Little Big Horn, but one
14 reason was the same one that had lingered on Americans' minds ever since the
15 Henry Rifle was introduced in the early 1860s: the fear that the weapon was as
16 dangerous to its user as it was to its intended target. The stories that manufacturers
17 had helped circulate early on from the West about the power of the rifle to allow
18 one person to defeat many failed to muster much enthusiasm for the weapon. It did
19 not help that some assessments from experts were negative. At a showcase of
20 firearms in Switzerland soon after the Civil War, a judge rendered the verdict that
21 the rifle seemed delicate and unnecessarily lethal—"more wonderful than
22 practical."⁴⁵ Back in the U.S., skeptics worried that the rifle would fail at a crucial
23 moment or explode. When it came to Henrys and Winchesters, argued a writer for
24 the *New York Herald*, the most widely circulating newspaper in the country, the
25 "dangers are too many."⁴⁶

26 ⁴³ *Chicago Daily Tribune*, July 23, 1876, p. 4.

27 ⁴⁴ *Chicago Daily Tribune*, April 15, 1878, p. 4.

28 ⁴⁵ Haag, *The Gunning of America*, 70.

⁴⁶ "Breech-Loading Arms," *New York Herald*, Oct. 12, 1866, p. 4.

C. Henrys and Winchesters in the Reconstruction-Era North

66. The North was the region in the United States where Henrys and Winchesters were hardest to find, either because they were deemed too dangerous or because northerners already felt themselves well-armed. Recall that hundreds of thousands of U.S. soldiers had returned home from the Civil War with rifles in hand, almost all of the weapons Spencers or Sharps or Enfield, rarely Henrys.

67. The near-absence of Henry-Winchester rifles in the North became clear during the “Great Strike” of 1877. The “Great Strike” began as a local labor action in West Virginia and turned into a massive strike stretching from Philadelphia to Chicago. Mob violence was prevalent. In this months-long episode, during which thousands of Americans were injured and hundreds were killed, there were only two incidents that I found involving Henrys or Winchesters. In Chicago during the rioting, a U.S. soldier fired a Henry rifle in response to civilians pelting his regiment with rocks. He may purposefully have avoided shooting anyone—no one was hit. But the sound of the shot went a long way toward quieting the crowd. The soldier in question was from a regiment that had been assigned to the Western Territories but transferred temporarily to Chicago to put down the unrest. That explained why he had a Henry. His regiment likely acquired Henrys to fight Plains Indians; now he used the weapon—albeit sparingly—to subdue strikers.⁴⁷ In Jackson County, Kansas, just north of Topeka, railroad managers armed forty employees with Winchester rifles, ordering them to scare off the local strikers. To give the gang the veneer of a legitimate posse, the managers arranged for the local sheriff to deputize the gunmen. Violence ensued when the “posse” confronted the strikers, and at least one of the strikers was killed, though not necessarily by a Winchester.⁴⁸

⁴⁷ Robert V. Bruce, *1877: Year of Violence* (1959; repr., Chicago: Quadrangle Books, 1970), 251-52.

⁴⁸ “A Tough Customer,” *St. Louis Globe-Democrat*, Oct. 1, 1877, p. 4.

1 68. In general, however, Henrys and Winchesters were rare to find among
2 northerners during Reconstruction. They were sometimes mentioned in ads
3 displayed in northern publications aimed at hunters and target-shooters. If the ads
4 were any indication of the target audience, the hoped-for buyers of the rifles were
5 elites—not the types who showed up during the mobbing of the Great Strike of
6 1877—and they were interested in peaceful shooting contests, not fending off
7 potential violent attackers.⁴⁹ Reports from state adjutant generals in the North
8 sometimes show Henrys and Winchesters in arsenal inventories, but these guns
9 were always far outnumbered by the more popular rifles of the era in the region—
10 Sharps, Spencers and Springfields.

11 69. Beginning in about the mid-1870s, northerners became more interested
12 in owning Winchesters and modern rifles in general, not for purposes of self-
13 defense but for purposes of collective defense of their communities and states. This
14 was the period when National Guard units came into being, beginning in the
15 northern states. They were in effect state militias. The engine that drove their
16 creation was not a fear of tyranny or of insurrection but a nationalistic fervor fueled
17 in particular by the nation's Centennial, which began to be celebrated in the early
18 1870s even before the major exhibitions and commemorations of 1876.⁵⁰ With the
19 rise of this movement came a perceived business opportunity for the Winchester
20 company, which began placing ads for their rifles in northern newspapers,

21
22 ⁴⁹ See, for example, an ad for many types of guns, including "Henry's
23 Sporting Rifle," in Wilkes' *Spirit of the Times: The American Gentleman's
Newspaper*, March 24, 1866, p. 59 (the ad was reprinted in the same weekly
publication irregularly through June 16, 1866).

24 ⁵⁰ Eleanor L. Hannah, "Manhood, Citizenship, and the Formation of the
25 National Guards, Illinois, 1870-1917" (Ph.D. diss, University of Chicago, 1997),
26 15-16. Hannah's dissertation is crucial for countering the assumption, now rejected
27 by historians, that the rise of the National Guard movement in the northern states
28 was a reaction to events in the South of the 1870s or to the Great Strike of 1877.
See also, Saul Cornell, *A Well-Regulated Militia: The Founding Fathers and the
Origins of Gun Control in America* (New York: Oxford University Press, 2006),
196-97.

(continued...)

1 magazines, and gun catalogs. The greatest number of ads appeared in western
2 Pennsylvania.⁵¹ The ads seem to have had some effect. A newspaper published in
3 northwestern Pennsylvania reported in October 1877 that “Winchester rifles are
4 becoming quite fashionable in this section, and are rapidly displacing the old
5 double-barreled rifles. . . . The Remington rifle is highly spoken of by those who
6 have used it, but it is not a repeater, or ‘stem-winder,’ and so the Winchester is
7 ahead.”⁵²

8 70. The rise of National Guard units in northern states in the late 1870s
9 inspired private armed companies to form, drill, and parade. One of these groups
10 was the Lehr und Wehr Verein of Chicago, Illinois, led by the Socialist activist
11 Henry Presser. Presser’s company paraded one day in the spring of 1879. They
12 carried rifles—not Winchesters but Springfields. Socialist sympathizers nearby
13 joined with the group, and Presser was arrested and tried for organizing a private
14 militia. His case ended up in the Supreme Court, which ruled in the *Presser* case in
15 1886 that the armed company’s actions were indeed unlawful.

16 **D. Henrys and Winchesters in the Reconstruction-Era South**

17 71. In the South during Reconstruction, high-capacity firearms proliferated
18 far more than in any other region of the country. The reason for this proliferation is
19 clear: Winchester Repeating Rifles were the preferred weapon of two large state
20 militias, those of Louisiana and South Carolina, that were organized to put down
21 insurrection against state and national authority as well as terrorism against Black
22 Americans.

23 72. The story of the South Carolina state militia getting armed with
24 Winchesters begins with the inauguration of Robert K. Scott as the state’s governor
25 in 1868. Scott, a white man, was a pro-Reconstruction Republican. He had been

26 _____
27 ⁵¹ See, for example, *James Bown and Son’s Illustrated Catalogue and Price*
List, 29th annual ed. (Pittsburgh, Penn., 1877), 33.

28 ⁵² *The Forest Republican* (Tionesta, Pennsylvania), Oct. 3, 1877, p. 4.

1 born in Pennsylvania, he grew up in Ohio, and he became a high-ranking officer in
2 the U.S. army during the Civil War. After the war, he was an officer in the
3 Freedman's Bureau. As Governor of South Carolina, he endorsed and helped
4 arrange the creation of a pro-Republican state militia open to Black Americans and
5 pro-Republican whites.

6 ^{73.} The state act creating the state militia was adopted in 1868. The
7 militia was always a work-in-progress, so it is impossible to know exactly how
8 many men served in it at any given time. A reasonable estimate is that 1000 men
9 were in the militia by 1869. Scott hoped that the force would grow eventually to
10 6000. Although the militia was open to pro-Republican whites, most of the
11 members were Black Americans. The state did not have enough arms to supply the
12 men. In the summer of 1869, the state's adjutant general traveled to Washington,
13 D.C. to arrange with the U.S. War Department for an allotment of funds to pay for
14 arms for the state militia. This arrangement was a restoration of a policy that had
15 long been in place but had often fallen into disuse: the U.S. War Department would
16 pay each state an annual allotment to sustain its state militia. With the funds that the
17 South Carolina adjutant general received in mid-1869, he helped arrange the
18 purchase of hundreds of guns, both Winchesters and Springfields.⁵³

19 ^{74.} By August 1869, Winchesters had begun to arrive in South Carolina,
20 earmarked for members of the state militia. In the middle of that month, a company
21 of Black American state militiamen armed with Winchesters appeared at a wharf in
22 Charleston. The occasion was the arrival of a white baseball team from Savannah,
23 which was scheduled to play a white team in Charleston. A few days earlier, the
24 team had made the same trip. But when it arrived, Black American civilians had
25 decided to disrupt the match as a form of protest. They showed up on the streets,
26

27 ⁵³ Richard Zuczek, *State of Rebellion: Reconstruction in South Carolina*
28 (Columbia: University of South Carolina Press, 1996), 75; Singletary, *Negro Militia and Reconstruction*, 20-21.

1 got in the way of the white players as they made their way to the field, and hurled
2 insults. The team turned around and headed back to Savannah. This time, on
3 August 15, the Mayor of Charleston was prepared to make sure that things went
4 smoothly—though not in a way that whites in the city would approve of. He had
5 given the order for the company of black state militiamen to arrive at the wharf and
6 escort the Savannah baseball team to the playing fields. The game took place. But
7 white Democrats in the city as well as the rest of the state (and throughout the
8 whole of the former Confederacy) were furious.⁵⁴ Meanwhile, Black Americans
9 throughout the state celebrated the role that members of their race would play in the
10 keeping of the peace.

11 75. From late 1869 to early 1871, companies of black state militiamen
12 armed with Winchesters appeared regularly across South Carolina. At first,
13 Governor Scott was thrilled with the organization. On March 29, 1870, he
14 delivered a speech that extolled the Black-American dominated militia as the best
15 way to ensure that peace would return to the state and that future elections would be
16 fairly held. He particularly recommended that state militias be armed with
17 Winchesters. He had seen first-hand how these weapons intimidated potentially
18 violent protesters even without being fired. His neighboring state of Georgia
19 should have such a militia staffed with blacks and armed with Winchesters, Scott
20 advised. “I tell you the Winchester rifle is the best law that you can have there,” he
21 declared. Georgia, one of the states that had had its pro-Democrat, anti-black
22 militia dissolved by Congress in 1867, never did create a new militia. Scott knew
23 that it wouldn’t. His speech was meant to announce not only to South Carolina but
24 to neighboring states that the old ways of the Confederacy were gone for good.
25 Members of the opposition to Scott and the Republicans in South Carolina became
26

27 ⁵⁴ *Washington Evening Star*, Aug. 16, 1869, p. 1.
28

(continued...)

1 furious. Many called him “Winchester Scott” and bewailed “Scott’s Winchester
2 Rifle tactics.”⁵⁵

3 76. During the election season of 1870, Scott decided that he had erred.
4 Opposition papers regularly reprinted his “Winchester” speech and attacked Scott
5 as a tyrant trying to stir up a race war. Much more troubling was the fact that state
6 chapters of the Ku Klux Klan began plotting a response to Scott’s speech and the
7 existence of the militia.

8 77. The Klan had decided to meet Winchesters with Winchesters. They
9 sent agents to the North to buy crates of Winchesters and ship them to South
10 Carolina in crates with false labels (“Agricultural Implements” said one; “Dry
11 Goods” said another). The state militia and the U.S. army were able to intercept
12 some of the crates, but others arrived at their destination. The Klan and auxiliary
13 white supremacist groups distributed the weapons to Scott’s opponents in towns
14 across the state.⁵⁶ Violence broke out across the state. That was a regular
15 occurrence during election season, but this time the lethality was more severe than
16 usual. Both sides had Winchesters.

17 78. With the help of the intervention of the U.S. army and his own state
18 militia, Scott was able to win re-election in 1870. Almost immediately he tried to
19 draw down the violence in the state by attempting to remove Winchesters from the
20 population. Aided by U.S. army units, his administration attempted to confiscate as
21 many Winchesters as they could from insurrectionary groups like the Klan. Then
22 he asked those state militiamen who were holding onto their Winchesters instead of
23 storing them in state arsenals to turn the weapons in. Some Winchesters did end up
24 coming back into state arsenals, either by way of confiscation from Klansmen or
25 voluntary submissions by militiamen. But most of the Winchesters stayed in
26 circulation. Scott suspended the state militia.

27 ⁵⁵ See, for example, *Charleston News*, Oct. 17, 1870, p. 2.

28 ⁵⁶ Zuczek, *State of Rebellion*, 79-80.

1 79. In early 1874, South Carolina was again the site of violent uprisings
2 from insurrectionists, and the pro-Republican government responded by re-forming
3 the state militia. The adjutant general of the state reported that he barely had any
4 guns for the men. In fact, a report he had issued the year before declared that there
5 were 627 Winchesters in state arsenals. Probably the official was worried that
6 widespread arming of Black Americans and white Republicans with Winchesters
7 would create a mini-civil war like the one in 1870.⁵⁷ The re-activated state militia
8 was poorly organized and poorly armed. For armed support between 1874 and
9 1876, the Republican administration of the state relied mostly on the U.S. army.

10 80. Then, in 1876, came the final battles between pro-Republican, U.S.-
11 authorized armed men (the U.S. army units and state militia) and the
12 insurrectionary opposition forces, the “Red Shirts.” Of the many reasons that the
13 opposition forces could be categorized as insurrectionary, perhaps the most obvious
14 was that they regularly stole weapons, including Winchesters, from state arsenals.⁵⁸
15 When the voting in 1876 was over, the two sides in the struggle each declared
16 victory. Two governors then existed, and since no one was going to accept a
17 resolution of the crisis by law, the state was in political chaos, with armed groups
18 on each side ready to go to battle. When companies of armed men marched for
19 their respective candidates, plenty of them carried Winchesters. Only some of
20 those Winchesters had been obtained legally. Those carried by the “Red Shirts”
21 had almost certainly been stolen from state depots.

22 81. The Louisiana state militia was created in 1870. The story of how
23 Louisiana state militiamen ended up armed with Winchesters starts before the
24 organization was created. In 1868, the New Orleans metropolitan police force was
25 re-organized under Republican leadership. It now used “Metropolitans” as its
26 nickname. Its members included Black Americans as well as whites of varying

27 ⁵⁷ Zuczek, *State of Rebellion*, 140-41.

28 ⁵⁸ Zuczek, *State of Rebellion*, 171.

1 ethnicities, the city being one of the most ethnically diverse in the country. The
2 number of Metropolitans in 1868 was small—perhaps just over 100—but by 1870
3 that number was close to 700. During its earliest years, from 1868 to 1870, the
4 Metropolitans’ superintendent, A. S. Badger, armed many of the men with
5 Winchesters. In 1870, Governor Henry Warmoth engineered the creation of the
6 state militia. Warmoth envisioned a state militia that would be composed of 2,500
7 Black Americans and 2,500 white former Confederates. The Confederates, in
8 theory, would be loyal to the United States and thus supportive of Reconstruction
9 programs created by Republicans. Anyone could see that the two sides of this force
10 would not fit together easily. To help foster something approaching unity across
11 the state militia, Warmoth appointed James Longstreet, a former Confederate
12 General, as head of the state militia. As part of the act creating the state militia, the
13 New Orleans Metropolitans were incorporated into the state militia. The
14 Metropolitans after 1870 were thus both an urban police force and a company of
15 state militiamen. In this latter role, they were authorized to operate outside of city
16 limits. The Metropolitans were the best-trained unit in the state militia. Because
17 many of their number carried Winchesters, they were also the best armed.⁵⁹

18 82. Between 1870 and 1874, politics in Louisiana was multifaceted and
19 ever-shifting. Warmoth regularly changed his political stances, outside blocs
20 suddenly gained inside influence, and through it all, pro-Democratic factions,
21 supported by armed “White Leagues,” tried to resurrect the Old South on the soil of
22 Louisiana. In 1872, William Kellogg won the governorship. Kellogg was a
23 Republican, one more radical than Warmoth and more in line with the Republicans
24 in the U.S. Congress. Warmoth in 1872 had sided with John McEnery, a former
25

26
27 ⁵⁹ Dennis C. Rousey, *Policing the Southern City: New Orleans, 1805-1889*
28 (Baton Rouge: Louisiana State University Press, 1996), 130-31; Singletary, *Negro Militia and Reconstruction*, 69-70.

1 Confederate, an anti-Reconstruction Democrat, and a leading voice for state
2 redemption.

3 83. The state militia, composed of a group loyal to the Warmoth-McEnery
4 faction and a group loyal to Kellogg, was rendered ineffective after 1872 by its lack
5 of cohesion. Individual units within the state militia were nonetheless important, as
6 they were the only legitimate state-level armed forces. Of these units, the
7 Metropolitans remained the most effective and best armed, as they still carried
8 Winchesters, whereas most of the other units did not. In politics, whoever
9 controlled the Winchester-armed Metropolitans would always have an advantage
10 because, as Governor Scott of South Carolina had said in 1870, “the Winchester
11 rifle is the best law that you can have.” By late April 1873, William Kellogg, the
12 newly elected Governor, had established control of the Metropolitans.

13 Unfortunately, he had established that control too late to use the Metropolitans to
14 help avert the worst racial massacre that the state had ever seen, probably the worst
15 racial massacre of Reconstruction: the Colfax Massacre of April 13, 1873.

16 84. The tragedy of the Colfax Massacre has been the subject of much
17 historical study, but never from the perspective of a Winchester Repeating Rifle.
18 The combatants at Colfax, in Grant Parish, about 200 miles northwest of New
19 Orleans, consisted of one legitimate armed force and one illegitimate one. The
20 legitimate armed force was a unit of the state militia led by William Ward, a Black
21 American who had fought for the U.S. during the Civil War. More than 100 of
22 Ward’s men, perhaps more than 150, would be murdered at Colfax. The
23 illegitimate armed force was a “posse” deputized by two local men, one who
24 claimed to be a judge and one who claimed to be a sheriff. In fact, as all in the
25 “posse” knew, the so-called judge and so-called sheriff had held those positions
26 under the former governor, not under the current governor, who had denied them
27 commissions that would have kept them in office. The claim of the “judge” and
28 “sheriff” was that the former governor had in fact won the 1872 election and thus

1 that they held their positions legitimately. (Election-result denial is not a new
2 phenomenon; it was rampant in the South during Reconstruction.) Years later,
3 when the Colfax episode came before the U.S. Supreme Court in the form of the
4 *Cruikshank* case, Justice Bradley, author of the controlling opinion, declared that
5 leaders of the so-called posse were private citizens, not state officers. Bradley was
6 technically right. But at the time of the Colfax Massacre, the lead murderers had
7 donned masks of state-legitimated authority. Neither the legitimate nor the
8 illegitimate side at Colfax carried Winchesters. But if William Ward had had his
9 way, his side would have had them.

10 85. Two days before the massacre, Ward had left Colfax for New Orleans.
11 He knew that violence might erupt in Colfax, and he wanted to persuade Governor
12 Kellogg to send military support. Almost certainly, Ward was going to ask Kellogg
13 to send the Winchester-armed Metropolitans. Ward never made it to New Orleans.
14 Even if he had, the Metropolitans could not have made it to Colfax in time to stop
15 the massacre. They might not have been willing to go—it would be another ten
16 days beyond the massacre before their loyalty to Kellogg was cemented. The
17 important point amid all these hypotheticals is this: William Ward believed that a
18 cadre carrying Winchesters was the best chance his men had.

19 86. By October 1873, the Metropolitans had pledged their loyalty to
20 Kellogg, and Kellogg had helped secure for them and other state militia units
21 hundreds of new Winchesters. Kellogg dispatched the Metropolitans to Grant
22 Parish, the site of the Colfax Massacre, to reestablish control of the area for the
23 Republicans. They and their Winchesters arrived at the end of the month—more
24 than 25 weeks after William Ward had hoped they would come.⁶⁰

25 87. The power of the Metropolitans, along with their Winchesters, would
26 soon stripped away. Opponents of Kellogg gained control of the Metropolitans’

27 ⁶⁰ *New Orleans Republican*, June 13, 1873, p. 1; *Ouachita Telegraph*,
28 October 24, 1873, p 1.

1 Board by early 1864. They reduced the numbers of the force and limited their
2 geographical range to New Orleans and its outskirts. If violence broke out in a
3 rural area like Grant Parish, there would be nothing that the Metropolitans could do
4 about it. Then, on September 14, 1874, came the final blow: the Battle of Liberty
5 Place, fought in the heart of New Orleans. Thousands of White Leaguers launched
6 a coordinated attack on the city. Some of them may have been carrying
7 Winchesters, but none of the reports from that day mentioned Winchesters in their
8 hands. The Metropolitans had Winchesters, of course, but they were outnumbered
9 more than 10 to 1 and easily overwhelmed. After the White Leaguers had
10 demonstrated their superior force, Governor Kellogg knew that he might soon be
11 removed, so he engineered a compromise that kept him in office. Part of the deal
12 was the disbandment of the state militia. Thus ended the prospect of a reign-by-
13 Winchester Republican regime in Louisiana.⁶¹

14 88. In the brief time that Winchesters were in the hands of southern state
15 militias, the rifles showed that they could do much to intimidate the forces of white
16 supremacy and insurrection. But there was a dark flip side to the positive quality of
17 this particular high-capacity firearm.

18 89. Those opposed to the state militias and to Reconstruction in general
19 used the presence of Winchesters in state militias as fodder to attack all
20 Republicans and especially Black Americans. At a rally in April 1870, a Georgia
21 Black-American leader, Simeon Beard, pleaded for more guns so blacks could have
22 their own militia rather than relying on the U.S. army. “We don’t want soldiers; we
23 want the power to raise a militia; we want guns put in our hands, and we will see
24 whether we cannot protect ourselves. Give us this, and we will give you the State
25 of Georgia evermore.” In response, a redeemer newspaper editor mocked Black
26 Americans like Beard who clamored “lustily for arms,” including “Winchester
27

28 ⁶¹ Rousey, *Policing the Southern City*, 155-56.

1 rifles.” The redeemer editor then brought up the South Carolina experiment with
2 Winchester-armed state militias as evidence that the lives of ordinary white people
3 were in grave danger: “There are thousands of white people in this State who have
4 no arms at all, not even a pistol, while there is not one negro in three who does not
5 own some sort of firearm. They are armed now-fully armed. It is the white people
6 who need arms, not the negroes.”⁶²

7 90. The Winchester was as much a symbolic weapon as a real one in the
8 battles between Republicans and Redeemers in the Reconstruction-era southern
9 states. Republicans saw the gun as the emblem of power—the sign that the cause
10 of Reconstruction had a strong, locally controlled force behind it. The Redeemers
11 saw the gun as evidence of the Republicans’ tyranny and barbarity. In Texas,
12 Democrats opposed to Reconstruction howled that there must be “no money, no
13 Winchester rifles and ammunition” for Republicans—this despite the fact that
14 Republicans in the state had never suggested arming themselves with
15 Winchesters.⁶³

16 91. In terms of real as opposed to imagined Winchesters, even though the
17 weapons in Louisiana and South Carolina were housed under guarded armories,
18 they could still end up in the hands of insurrectionaries or criminals. In Louisiana,
19 as in all the states of Reconstruction, there were internal, often violent conflicts
20 over the control of the state government. By various means, from outright theft to
21 the legitimate winning of a state election, the opposition to a Republican
22 government in a state like Louisiana could gain access to Winchesters. Once these
23 weapons were in the hands of insurrectionary groups, they could end up with
24 anyone, including an outlaw with no particular political persuasion. That is
25 probably how a Winchester ended up among a large cache of arms held by the

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27 ⁶² *Georgia Weekly Telegraph and Georgia Journal & Messenger*, April 5,
1870, pp. 4, 8.

28 ⁶³ *The Weekly Democratic Statesman* (Austin, Texas), August 24, 1871, p. 2.

1 husband-wife team known as the Guillorys, a pair of marauding thieves who went
2 on a rampage near Opelousas, Louisiana in the late summer of 1873. When a posse
3 caught up with them, it easily dispatched the couple, killing the husband and
4 seriously wounding the wife.⁶⁴

5 92. By 1874, all of the state militias had been disbanded. Redeemers—
6 those in each state wanting state redemption from Reconstruction—had been
7 against the state militias from the start and were glad to see them go. By the end of
8 Reconstruction, all of the southern states had reverted to their pre-1867 militia
9 system, 1867 being the year that the U.S. Congress abolished all southern militias
10 except those in Arkansas and Tennessee.⁶⁵ Under the renewed militia system,
11 volunteer militias could form on their own with the explicit or implicit approval of
12 state governors. Because most of the southern state governments after 1874 were
13 ruled by pro-redemption Democrats, most of the militias that formed after 1874
14 were of the sort that would have been considered insurrectionary by pro-
15 Reconstruction Republicans in the states as well as by the Congressional
16 Republicans who had abolished such militias in 1867.

17 93. The three states that were not controlled by Redeemers after 1874 were
18 Florida, Louisiana, and South Carolina. In Louisiana and South Carolina, the 1876
19 state elections were disputed (so, too, quite famously, was the national election of

20 ⁶⁴ “Another Battle,” *The Opelousas Journal*, Aug. 29, 1873, p. 3. A side note
21 to the episode: No one in the posse had a Winchester, and the Guillorys in the
22 exchange of gunfire opted not to use their Winchester, only their low-capacity rifles
and shotguns.

23 ⁶⁵ The Texas Rangers claimed to be a state militia loyal to the U.S. right up
24 until it was disbanded in 1877, but by 1874, if not earlier, the group was clearly on
25 the side of the Democrats in the state. A number of Democrats in 1877 pleaded
26 with the state government not to disband the Rangers. One wealthy Democrat in
27 1877 even offered the state government a voluntary donation of Winchesters for the
28 state militia (the militia had not used Winchesters prior to that point). The state
government rejected the offer and disbanded the militia. See Robert M. Utley, *Lone
Star Justice: The First Century of the Texas Rangers* (New York: Oxford
University Press, 2002), 169-70; Walter Prescott Webb, *The Texas Rangers: A
Century of Frontier Defense* (1935; 2nd ed., Austin: University of Texas Press,
1965), 292-93.

(continued...)

1 1876). In both states, as a result, the two contending sides, pro-redemption
2 Democrats and pro-Reconstruction Republicans, claimed victory and claimed that
3 their gubernatorial candidate was the legitimate governor of the state. In each of
4 these states, therefore, there were two governors. Meanwhile, in Florida, there was
5 no dispute over the governor's office, but there was conflict nonetheless because
6 the electoral board of the state was controlled by pro-Reconstruction Republicans
7 while the rest of the state government was controlled by pro-redemption
8 Democrats.⁶⁶ As a result of the internal conflicts within Florida, Louisiana, and
9 South Carolina, the U.S. army dispatched troops to the capitals of each state. The
10 troops were intended to "keep the peace" in all the states, to ensure that the pro-
11 Reconstruction Republican governors of Louisiana and South Carolina were
12 accepted as the only legitimate governors of the states, and to protect the Florida
13 electoral board from being disbanded by pro-redemption Democrats.

14 94. The circumstances described above had important consequences for
15 who came to possess Henrys and Winchesters by the end of Reconstruction. In
16 Louisiana and South Carolina prior to 1874, these high-capacity firearms were
17 possessed and regulated by pro-Reconstruction Republicans, who possessed them
18 specifically for the purpose of state defense against armed insurrectionaries allied
19 with pro-redemption Democrats. Once pro-redemption Democrats in these states
20 after 1874 claimed that their "governor" was the only legitimate governor of the
21 state—a position supported by most whites in each state—the "governor" in
22 question used his alleged authority to distribute Winchesters held in state armories
23 to pro-redemption volunteer militia groups. In Louisiana, the pro-redemption
24 groups known as White Leaguers in 1876-77 marched through the streets of New
25 Orleans demanding that their "governor," Francis T. Nicholls, be recognized as the

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27 ⁶⁶ Jerrell H. Shofner, "Florida Courts and the Disputed Election of 1876,"
28 *Florida Historical Quarterly*, 48 (July 1969), 26-46.

(continued...)

1 sole governor of the state. At least 500 of the White Leaguers, but probably
2 hundreds more, carried Winchester rifles.⁶⁷ According to a Black American who
3 later testified about events in New Orleans at the time, some of the White Leaguers
4 not only paraded with their Winchesters but also wore their old Confederate
5 uniforms.⁶⁸ The U.S. army regarded these marchers as insurrectionaries.

6 95. A similar situation played out in South Carolina, though there, the pro-
7 redemption Democrats were known as Red Shirts. Beginning in 1874 and
8 continuing through 1876, South Carolina Red Shirts created volunteer militias that
9 obtained Winchesters from pro-redemption authorities in the state government.
10 There were many Winchesters to be had in that state, as the pro-Reconstruction
11 Governor Robert “Winchester” Scott back in 1869-1870 had purportedly ordered
12 thousands of them. The exact number that Scott had acquired remains in dispute.⁶⁹
13 Whatever the number was, it seems that only a few hundred ended up in the hands
14 of Red Shirts in the 1874-76 period, though that was still a few hundred more than
15 Republicans of the era thought was legal.⁷⁰

16 96. Despite these developments, the total number of Henrys and
17 Winchesters in the southern states during Reconstruction remained small relative to
18 firearms in general in the country—no more than 8,000, I would estimate.⁷¹

19 ⁶⁷ *Chicago Daily Inter Ocean*, January 12, 1877, p. 1; *New Orleans*
20 *Republican*, March 13, 1877, p. 2.

21 ⁶⁸ Testimony of William Murrell, *Report and Testimony of the Select*
22 *Committee to Investigate the Causes of the Removal of the Negroes from the*
Southern States to the Northern States (Washington, D.C.: Government Printing
Office, 1880), pt. 2, p. 521.

23 ⁶⁹ During the U.S. Congressional investigations into Klan activities,
24 investigators tried to ascertain how many Winchesters had actually arrived in South
25 Carolina for Scott’s militia; they failed to learn what the number was, though one
26 witness did confirm that the Winchesters that did arrive there were intended for the
27 state militia, including the Black Americans among them. See 42nd Cong., 2nd sess.,
“Affairs in Insurrectionary States,” vol. 3 (South Carolina), *U.S. Congressional*
Serial Set (1871), p. 467; and *ibid.*, vol. 4 (South Carolina), p. 767.

28 ⁷⁰ Zuczek, *State of Rebellion*, 140-41, 170-71 (some of the Winchesters were
referred to as “militia guns”; see *ibid.*, 171).

⁷¹ This estimate is based on the assumption that all 6,000 Winchesters that
(continued...)

1 Equally important, almost all of these high-capacity firearms were in the hands of
2 law enforcement officers, either U.S. soldiers, pro-Reconstruction militias, or pro-
3 Redemption militias. These last set of armed bodies were illegitimate, to be sure—
4 chapters of the KKK were among them—but, importantly, even they regarded it
5 essential to claim that it was their status as militiamen, and only that status, that
6 legitimated their possession of high-capacity firearms.

7 97. With only a few exceptions (fewer than five), all reliable reports in
8 which Henrys or Winchesters were mentioned in accessible records from the
9 Reconstruction South indicate that they were regarded solely as firearms for
10 legitimate law enforcement officers.⁷² An example of an exception comes from
11 Marianna, Florida in September 1869. There, a group of about twenty-five Black
12 Americans, including women and children, were having a barbecue. From the
13 woods nearby an unseen assailant fired “thirteen or fourteen shots in rapid
14 succession,” killing and wounding many of the party. The U.S. officer who later
15 reported on the episode assumed that the assailant had used a Henry rifle because of
16 the speed and volume of the shots fired. He wrote to his superior asking for a
17 “first-class detective” to be sent to the town to investigate who the perpetrator or
18 perpetrators might be. “If detectives can’t be furnished,” he added, “a few Henry
19 rifles would have an excellent moral effect here.”⁷³

20 98. At least some state-level law enforcement officials outside of
21 Louisiana and South Carolina ended up with Henrys or Winchesters. A pro-
22 Governor Scott ordered for the South Carolina state militia were delivered (the
23 exact number delivered is unknown, and most likely it is lower). When this number
24 is combined with the roughly 1,000 Winchesters used to arm the Metropolitans in
Louisiana over a six-year period, along with perhaps another 1,000 stolen from U.S.
army depots, the sum is 8,000.
25 ⁷²This declaration does not accept as evidence second- or third-hand rumors
of Henrys or Winchesters being present, though even such rumors prior to 1870
were infrequent.

26 ⁷³J. Q. Dickinson to “Hamilton,” in 42nd Cong., 2nd sess., “Affairs in
27 Insurrectionary States,” vol. 13 (Florida), *U.S. Congressional Serial Set* (1871), pp.
28 289-90.

(continued...)

1 Republican jailer in a sheriff's office in Alabama was able to use a Winchester to
 2 fend off attacking Klansmen in January 1871.⁷⁴ In 1873, a dozen men in
 3 southwestern Texas deputized to fight Native Americans near the Mexican border
 4 were successful in subduing the Natives and, in reward, were presented by the state
 5 legislature with Winchester rifles (they had not used Winchesters to fight the
 6 Natives, though the Natives that they fought might well have used Winchesters).⁷⁵
 7 The most revealing example comes from 1875 Mississippi, in the testimony of
 8 Sheriff John Milton Brown of Coahoma. Brown was the first Black American
 9 sheriff anywhere in Mississippi. He reported that Black Americans in his region
 10 had no guns and implied that they had been ordered to turn in their arms to the
 11 white insurrectionaries who controlled most of the state. Brown, though, had not
 12 turned in any weapons because he believed that his position as sheriff allowed him
 13 to keep his weapons. As he told an investigator, he had "one Henry rifle" and he
 14 thought that he "was justified in having that, because I was sheriff."⁷⁶

15 99. Americans have long disputed and no doubt will continue to dispute
 16 the meaning, implications, and correctness of the U.S. Supreme Court's two earliest
 17 "Second Amendment" opinions, which were offered during or soon after
 18 Reconstruction: *U.S. v. Cruikshank* and *Presser v. Illinois*.⁷⁷ But one issue
 19 regarding those cases is beyond dispute: they did not involve high-capacity
 20 firearms. There were no Henrys or Winchesters at Colfax on the tragic day of the
 21 massacre there in 1873. There were none in the hands of the military companies

22
 23 ⁷⁴ 42nd Cong., 2nd sess., "Affairs in Insurrectionary States," vol. 8 (Alabama),
U.S. Congressional Serial Set (1871), pp. 414-15.

24 ⁷⁵ *Texas Session Laws*, 13th Legislature, Regular Session, General Laws,
 chap. 187 (March 28, 1873), pp. 225-26.

25 ⁷⁶ 46th Cong., 2nd sess., S. Rep. 693, pt. 2 "Investigation of Causes of
 26 Migration of Negroes from Southern to Northern States," *U.S. Congressional Serial*
Set (1879-88), 357.

27 ⁷⁷ *U.S. v. Cruikshank*, 92 U.S. 542 (1875); *Presser v. Illinois*, 116 U.S. 252
 28 (1886).

(continued...)

1 that marched on that spring day in Chicago in 1879—the episode that would lead to
2 the 1886 *Presser* decision (Presser’s men carried single-shot Remington rifles).⁷⁸
3 On the question of whether the law could treat high-capacity firearms differently
4 from other types of weapons, the Reconstruction-era Justices had nothing to say.
5 But the land they lived in, the land they ruled over, was one where high-capacity
6 firearms were held only by a select few, almost all of whom were U.S. soldiers or
7 civilian law enforcement officers sworn to uphold the U.S. government. These
8 gunmen held their distinctive weapons not to defend themselves as individuals from
9 imagined foes but to defend their state and country against all-too-real criminals
10 and insurrectionaries.

11 100. Many of these gunmen were Black Americans, specifically the Black
12 American men who made up the largest contingents of southern state militias.
13 Serving in these militias was one of many ways that Black Americans demonstrated
14 their gun-bearing rights. Other ways that this right was demonstrated are well
15 known to scholars: Black Americans helped make sure that the U.S. government
16 and state authorities overturned white supremacist efforts to ban blacks from
17 militias, deny them access to firearms, or seize their firearms (these efforts had been
18 embodied in the southern state Black Codes of 1865-67, which were overturned by
19 the Civil Rights Act of 1866 and the Fourteenth Amendment of 1868). It is worth
20 noting, though, that a Black American who carried a Winchester for a state militia
21 was different from the much larger population of Black Americans who did not
22 belong to state militias. The Winchester-toting black militiaman held his gun only
23 with the authorization of and regulation by the state government. He did not own
24 his gun. It belonged to the state. It was supposed to be in an armory, not at a
25 private home, when not in militia-use. Hypothetically, if Black Americans wanted
26 Henrys or Winchesters at their homes, they might lawfully have been allowed to

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28 ⁷⁸ “The Reds,” *Chicago Daily Tribune*, March 23, 1879, p. 7.

1 have them there. But this hypothetical scenario is irrelevant. Southern Black
2 Americans for the most part lacked the means to buy Winchesters. Mostly rural
3 workers, their wages were notoriously low—sometimes only in the form of shares
4 of crops—and they would not be inclined to spend \$30 to \$40 on a gun that would
5 represent perhaps 3 to 6 months wages. There was no necessity for them to do so:
6 perfectly adequate guns for individual self-defense, even some “repeaters,” would
7 have been in their price range.

8 101. The Fourteenth Amendment assured Black Americans that they could
9 possess firearms for self-defense but did not assure them that they could possess
10 any firearms they wanted, including high-capacity rifles. This same principle of the
11 Amendment held equally true for whites.

12 102. Americans in the Reconstruction-era South understood perhaps better
13 than anyone that Henrys and Winchesters were weapons for organized military use
14 that did not belong in the general population. Except for a small number of
15 insurrectionary militias, like the Ku Klux Klan, the enemies of the Republican state
16 administrations in Louisiana and South Carolina that armed their state militias with
17 high-capacity firearms did not respond by trying to obtain the same weapons for
18 themselves. Rather, they responded by demanding the removal of the weapons and
19 the organizations that carried them. When these opposition factions came into
20 power in 1877, they disbanded the state militias and warehoused the Winchesters.
21 To be sure, they maintained laws that allowed citizens to possess firearms for their
22 individual self-defense, but they did not view high-capacity firearms as appropriate
23 for such a purpose.

24 103. My examination of statutes and state-level court opinions from the
25 Reconstruction-era South revealed that firearms were sometimes mentioned as
26 weapons of individual self-defense, but in such instances, the types of firearms
27
28

1 mentioned were, with one exception, low-capacity firearms such as pistols,
2 revolvers, muskets, and rifles.⁷⁹

3 104. The one potential exception comes from a Tennessee state court
4 opinion of 1871, *Andrews v. State*. The court in *Andrews* ruled that among the
5 weapons a citizen might possess were rifles “of all descriptions,” including “the
6 shot gun, the musket, and repeater.”⁸⁰ This opinion has been cited by at least one
7 scholar as evidence that high-capacity firearms were understood to be possible
8 weapons of individual self-defense.⁸¹ Yet, a “repeater” at the time of the *Andrews*
9 opinion (1871), and during the whole of Reconstruction, would have been
10 understood to be a low-capacity repeating rifle, such as a Spencer or Sharps, neither
11 of which could hold more than ten rounds. The parlance of the day put Henrys and
12 Winchesters in a separate category from “repeaters.” Again and again during
13 Reconstruction, from the Western Territories to the northern and southern states,
14 when a cache of firearms was described, Henrys and Winchesters, though obviously
15 repeating rifles, were always listed separately from “repeaters.” Furthermore, the
16 firearms mentioned in Judge Thomas J. Freeman’s majority opinion in *Andrews*—
17 shotguns, muskets, repeaters—were mentioned exclusively in terms of what a
18 person might possess in his role as a member of the militia. The chief judge of the
19 court, Alfred O. P. Nicholson, joined in that opinion. There was one judge on the
20 court, though, who believed that the *Andrews* opinion should go further—that it
21 should allow individuals to possess any weapon, regardless of what the militias in
22 the state did or did not possess. That judge, Thomas A. R. Nelson, expressed his
23

24 ⁷⁹ The survey that I conducted was of all state statutes and state-level cases in
25 the period 1863-1877 from the South relating to regulation of weapons. A list of
26 state-level cases from all states appears at <https://guncite.com/court/state/> (accessed
27 September 25, 2022).

28 ⁸⁰ *Andrews v. State*, 50 Tenn. (3 Heisk.) 179 (1871).

⁸¹ See, for example, Kopel, “The Second Amendment in the 19th Century,”
B.Y.U. L. Rev. 1359, 1418-21 (1998).

(continued...)

1 view in a concurring opinion, which he alone signed. The opinion did not mention
2 Henrys or Winchesters as weapons that he thought that any individual might
3 possess.⁸²

4 105. Even more revealing evidence for Reconstruction-era officials
5 believing that high-capacity firearms should be regulated comes from Louisiana.
6 Of the states that had militias that carried Henrys or Winchesters, Louisiana was the
7 only one that left behind a readily accessible record of how these high-capacity
8 firearms were to be managed by state authorities. All arms for the state militia were
9 overseen by the state adjutant general, James Longstreet. A former Confederate
10 General who joined the Louisiana Republican Party after the Civil War—a move
11 that forever marked him as a turncoat by his former Confederate comrades—
12 Longstreet well understood the ongoing insurrectionary intentions of former
13 Confederates in his state and elsewhere. He thought it crucial to ensure that such
14 men did not end up with Winchesters, and that they be incited as little as possible
15 by the sight of Winchesters being carried in public by their organized enemies,
16 Black-American militiamen foremost among them. For these reasons, he took
17 extraordinary precautions concerning the Winchesters that were held in the New
18 Orleans armory. His orders for the armory began with typical provisions such as
19 putting guards around the building and making sure that all guns inside were racked
20 when not in authorized use. Then, in the last provision of his orders, he turned
21 specifically to Winchesters. They were not to “be taken to pieces, or any part of
22 [them] removed . . . unless authorized by the Division Commander.” The
23 Winchesters were also not to be used for “parade or drill upon the streets or public
24 highways” without the Division Commander’s authority. Such restrictions were
25 not put on the other weapons in the arsenal; they were only for the Winchesters.⁸³

26 ⁸² *Andrews v. State*, 50 Tenn. (3 Heisk.) 193-200 (1871).

27 ⁸³ Adjutant General James Longstreet, General Orders No. 16, New Orleans,
28 July 19, 1870, in *Annual Report of the Adjutant General of the State of Louisiana*,
for the Year Ending December 31, 1870 (New Orleans, A.L. Lee, 1871), p. 39.

1 **VI. CONCLUSION. RECONSTRUCTION AND TODAY: CONTINUITY AND**
 2 **CHANGE**

3 106. How does the situation surrounding high-capacity firearms today
 4 compare to the Reconstruction era? High-capacity firearms are still being sold
 5 under the name Winchester, by companies such as Browning, but the Winchester
 6 Repeating Rifle Company ceased to exist long ago. Of course, high-capacity
 7 firearms can be found under plenty of other names today. But whereas today the
 8 owners of such firearms might be civilians, in the Reconstruction era they would be
 9 almost exclusively soldiers or law enforcement officers. There were civilians
 10 during Reconstruction who owned high-capacity rifles, to be sure. Yet almost all
 11 such civilians were “frontiersmen” of the Western Territories, and the population of
 12 the Western Territories was tiny compared to the population of the United States as
 13 a whole. Furthermore, Henrys and Winchesters, the only high-capacity firearms of
 14 the era, were not the preferred firearms of the “frontiersmen” of the region.

15 107. By far the largest population possessing Henrys and Winchesters
 16 during Reconstruction were members of state-wide militias. These organizations
 17 no longer exist under their Reconstruction name of “state militias.” They evolved
 18 into the National Guard, a term first used in place of “state militias” in the North in
 19 the 1880s but ultimately applied to all state-level forces that were auxiliary to the
 20 U.S. army, including those in the South. National Guard units today are not
 21 analogues to the Reconstruction-era state militias; they are direct descendants.⁸⁴
 22 And they operate in exactly the same way. They are under the command of state
 23 governors but can be used as auxiliary forces of the U.S. army—that is, they can be
 24 “federalized.”⁸⁵ Membership in the National Guard, like membership in the

25 ⁸⁴ Saul Cornell, *A Well-Regulated Militia: The Founding Fathers and the*
 26 *Origins of Gun Control in America* (New York: Oxford University Press, 2006),
 196-97.

27 ⁸⁵ The statutory language that enabled Abraham Lincoln to call up state
 28 militias in 1861, which was then invoked occasionally during Reconstruction to

(continued...)

1 Reconstruction-era state militias, is regulated. National Guard units, like
2 Reconstruction-era state militias, are expected to have proficiency with the weapons
3 they use and to have unfailing allegiance to the recognized governments of their
4 state and nation. Their access to high-capacity firearms is regulated. Such weapons
5 are typically kept under guard in a central location, such as an armory, and
6 dispensed to their users only for purposes of drilling, training, or actual use on those
7 occasions when National Guard units are called out. Beside today's National
8 Guard, other users of high-capacity firearms at present include civilian law
9 enforcement officers. As this declaration has shown, the analogs of such officials
10 during the Reconstruction era—urban policemen, sheriffs, or U.S. marshals—also
11 were known on occasion to carry high-capacity firearms.

12 108. What is distinctly different today compared to Reconstruction is the
13 ownership of high-capacity firearms by Americans who have no connection to the
14 military or law enforcement. If such owners along with their weapons were
15 transported by a time machine back to the Reconstruction-era South, they would
16 find themselves suspected of being outlaws by law enforcement officers. If they
17 then gathered together into organized companies, they would be considered
18 insurrectionary militias, which is precisely how the Ku Klux Klan was regarded
19 during Reconstruction by the U.S. army, the state militias, and other legitimate,
20 pro-Union law enforcement officials.

21
22
23 federalize state militias, now resides in the statute that enables the President to
24 federalize the National Guard; see 10 U.S.C. 332 (Aug. 10, 1956, ch. 1041, 70A
25 Stat. 15; Pub. L. 109–163, div. A, title X, §1057(a)(2), Jan. 6, 2006, 119 Stat.
26 3440). One of the reasons for the rise in significance of the National Guard after
27 Reconstruction was the federal “Posse Comitatus Act” of 1878, which prohibited
28 the direct intervention of the U.S. army into states except in extraordinary
circumstances. After that legislation, the National Guard units were needed not so
much as auxiliaries to the U.S. army as substitutes for them. On the “Posse
Comitatus Act” see Gautham Rao, “The Federal “Posse Comitatus” Doctrine:
Slavery, Compulsion, and Statecraft in Mid-Nineteenth-Century America,” *Law
and History Review*, 26 (Spring, 2008), 1-56.

1 Pursuant to 28 U.S.C. §1746, I declare under penalty of perjury under the
2 laws of the United States of America that the foregoing is true and correct.

3 Executed on November 10, 2022, at Providence, Rhode Island.
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7 
8 Michael Vorenberg
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EXHIBIT A

CURRICULUM VITAE

Michael Vorenberg

Associate Professor of History
Brown University

Education Ph.D. in History, Harvard University, November 1995 (American History)
 A.M. in History, Harvard University, March 1990 (American History)
 A.B. in History, Harvard University, June 1986, *summa cum laude* (Ancient History)

Professional Appointments

Associate Professor of History (with tenure), Brown University, 2004-
Vartan Gregorian Assistant Professor, Brown University, 2002-2004
Assistant Professor, History Department, Brown University, 1999-
Assistant Professor, History Department, SUNY at Buffalo, 1996-99
Post-Doctoral Fellow, W.E.B. Du Bois Center, Harvard University, 1995-96
Lecturer, History and Literature Program, Harvard University, 1995-96

Scholarship

Books

Lincoln's Peace: The Elusive End of the American Civil War (forthcoming
with Alfred A. Knopf).
The Emancipation Proclamation: A Brief History with Documents (Bedford/St.
Martin's, 2010).
*Final Freedom: The Civil War, the Abolition of Slavery, and the Thirteenth
Amendment*. Cambridge: Cambridge University Press, 2001.
(Paperback edition, 2004.)

Chapters in Books

"The 1866 Civil Rights Act and the Beginning of Military Reconstruction," in Christian
Samito, ed., *The Greatest and the Grandest Act: The Civil Rights Act of 1866
from Reconstruction to Today* (Carbondale, Ill.: Southern Illinois University
Press, 2018), 60-88.
"The Thirteenth Amendment," in *1865: America Makes War and Peace in Lincoln's
Final Year* (Carbondale, Ill.: Southern Illinois University Press, 2015), 7-21.
"Liberté, Égalité, and Lincoln: French Readings of an American President," in Richard
Carwardine and Jay Sexton, eds., *The Global Lincoln* (New York: Oxford
University Press, 2011), 95-106.
"Citizenship and the Thirteenth Amendment: Understanding the Deafening Silence," in
Alexander Tsesis, ed., *The Promises of Liberty: The History and Contemporary
Relevance of the Thirteenth Amendment* (New York: Columbia University Press,
2010).

- “Did Emancipation Create American Citizens?: Abraham Lincoln’s View” (in Russian), in Victoria Zhuravleva, ed., *Abraham Lincoln: Lessons of History and the Contemporary World* (Moscow: Russian State University for the Humanities Press, 2010).
- “Abraham Lincoln’s ‘Fellow Citizens’—Before and After Emancipation,” in William A. Blair and Karen Fisher Younger, eds., *Lincoln’s Proclamation: Emancipation Reconsidered* (Chapel Hill: University of North Carolina Press, 2009), 151-169.
- “The Thirteenth Amendment Enacted,” in Harold Holzer and Sara Vaughn Gabbard, eds., *Lincoln and Freedom: Slavery, Emancipation, and The Thirteenth Amendment* (Carbondale, Ill.: Southern Illinois University Press, 2007).
- “After Emancipation: Abraham Lincoln’s Black Dream,” in John Y. Simon, Harold Holzer, and Dawn Vogel, eds., *Lincoln Revisited* (New York: Fordham University Press, 2007).
- “Slavery Reparations in Theory and Practice: Lincoln’s Approach,” in Brian Dirck, ed., *Lincoln Emancipated: The President and the Politics of Race* (DeKalb: Northern Illinois Univ. Press, 2007).
- “Reconstruction as a Constitutional Crisis,” in Thomas J. Brown, ed., *Reconstructions: New Directions in the History of Postbellum America* (New York: Oxford University Press, 2006).
- “The World Will Forever Applaud: Emancipation,” in Aaron Sheehan-Dean, ed., *The Struggle for a Vast Future: The American Civil War* (Oxford, UK: Osprey, 2006).
- “Emancipating the Constitution: Francis Lieber and the Theory of Amendment,” in Charles R. Mack and Henry H. Lesesne, eds., *Francis Lieber and the Culture of the Mind* (Columbia: Univ. of South Carolina Press, 2005).
- “The Chase Court (1864-1873): Cautious Reconstruction,” in Christopher Tomlins, ed., *The United States Supreme Court: The Pursuit of Justice* (Boston: Houghton Mifflin, 2005).
- “Bringing the Constitution Back In: Amendment, Innovation, and Popular Democracy during the Civil War Era,” in Meg Jacobs, William Novak, and Julian Zelizer, eds., *The Democratic Experiment: The Promise of American Political History* (Princeton: Princeton University Press, 2003).
- “The King’s Cure: Abraham Lincoln and the End of Slavery,” in Charles Hubbard, ed., *Lincoln Reshapes the Presidency* (Mercer, Penn.: Mercer Univ. Press, 2004).
- “Rutherford B. Hayes,” in Alan Brinkley and Davis Dyer, eds., *The Reader’s Companion to the American Presidency*. Boston: Houghton Mifflin, 2000.
- “Abraham Lincoln and the Politics of Black Colonization,” in Thomas F. Schwartz, ed., *“For a Vast Future Also”: Essays from the Journal of the Abraham Lincoln Association*. New York: Fordham University Press, 1999. (Reprint of article listed below.)

Refereed Journal Articles

- “Spielberg’s *Lincoln*: The Great Emancipator Returns,” *Journal of the Civil War Era*, 3 (December 2013), 549-72.
- “Imagining a Different Reconstruction Constitution,” *Civil War History*, 51 (December 2005), 416-26.
- “‘The Deformed Child’: Slavery and the Election of 1864.” *Civil War History*, 47 (September 2001), 240-257.
- “Abraham Lincoln and the Politics of Black Colonization.” *Journal of the Abraham Lincoln Association*, 14 (Summer 1993): 23-46.

Non-Refereed Journal Articles

- “Emancipation—Then What?,” *New York Times*, “Disunion” Blog, January 15, 2013, http://opinionator.blogs.nytimes.com/2013/01/15/emancipation-then-what/?_php=true&_type=blogs&_r=0
- “Hearts of Blackness: Reconsidering the Abolitionists—Again,” *Reviews in American History*, 32 (March 2004), 33-40.
- “The Battle Over Gettysburg: What Lincoln Would Have Said about September 11, 2001.” *Brown Alumni Magazine*, 103 (Jan./Feb. 2003), 27.
- “Recovered Memory of the Civil War,” *Reviews in American History*, 29 (Dec. 2001), 550-58.

Invited Lectures

- “A Righteous Peace: Abraham Lincoln, the Civil War, and the End of Slavery,” The Humanities Forum, Providence College, Oct. 18, 2019.
- “How Wars End--or Don’t: The Civil War as a Case Study,” Henry E. Huntington Society of Fellows Lecture, May 8, 2019.
- “Lincoln’s Peace: The Struggle to End the American Civil War,” Occidental College (Billington Lecture), Feb. 21, 2019.
- “The Fate of Slavery after Emancipation,” The Great Lectures Series (as OAH Distinguished Lecturer), New York City, October 14, 2017.
- “Abraham Lincoln, the Thirteenth Amendment, and the Struggle for American Peace and Freedom,” University of Saint Mary Annual Lincoln Lecture, Topeka, Kansas, February 20, 2017.
- “The 14th Amendment as an Act of War,” Boston College, Clough Center, Newton, Massachusetts, September 20, 2016.
- “Born in the USA—So What?” Worcester Polytechnic Institute, Constitution Day University Speaker, Worcester, Massachusetts, September 19, 2016.
- “The Slave Power on the Gallows: The Deeper Meaning of the Execution of Henry Wirz, Confederate Commandant,” University of California, Berkeley, Legal History Workshop, March 29, 2016.
- Salmon P. Chase Symposium on the Thirteenth Amendment (participant), Georgetown Law Center, Dec. 4-5, 2015, Washington, DC.
- “The Last Surrender: Looking for the End of the Civil War,” presented at The Lincoln Forum, Gettysburg, Pennsylvania, November 17, 2015.

- “Voting Rights and the Meaning of Freedom: The View from the Civil War Era,” Annual Lincoln Legacy Lecture, University of Illinois at Springfield, October 15, 2015.
- “Final Freedom: The Civil War, the Abolition of Slavery, and the Thirteenth Amendment,” Roger Williams University, October 6, 2015.
- “Lincoln and the Jews, Freedom and Discrimination,” Brown Hillel Alumni Association, New York City, May 17, 2015.
- “When Should History Say That Slavery Ended in the United States?,” Center for Slavery and Justice, Brown University, May 8th, 2015.
- “Lincoln, the Constitution, and the Civil War,” Community College of Rhode Island, April 29, 2015.
- “Judgment at Washington: Henry Wirz, Lew Wallace, and the End of the Civil War,” Annual Symposium of Capitol Historical Society, Washington, DC, May 2, 2014.
- “Emancipation, Lincoln, and the Thirteenth Amendment,” Dole Forum, Dole Institute of Politics, University of Kansas, Lawrence, Kansas, November 21, 2013.
- “Spielberg’s Lincoln and the Relation between Film and History,” Department of History, Loyola University, Chicago, Illinois, November 13, 2013.
- “The Appomattox Effect: Struggling to Find the End of the American Civil War,” Newberry Library Colloquium, Chicago, Illinois, November 6, 2013.
- “Reconstruction and the Origins of Civil Rights,” National Endowment for the Humanities Summer Institute on Civil Rights History, Harvard University, Cambridge, Massachusetts, July 1, 2013.
- “The Origins and Process of Emancipation,” Emancipation at 150 Symposium, Boston College Clough Center, Newton, Massachusetts, April 23, 2013.
- “Emancipation—Then What? Citizenship?” Emancipation Proclamation Symposium, University of Michigan, October 26, 2012.
- “Blood, Allegiance, Belief: The Meanings of Citizenship in the Civil War Era,” University of Michigan Law School, January 31, 2012.
- “American by War: The People and Their Nations during the Civil War,” Phillips Andover Academy, Andover, MA, Nov. 17, 2011.
- “Birthright and the Myth of Liberal Citizenship,” JANUS Forum, Brown University, Nov. 15, 2011.
- “American by War: The People and Their Nations during the Civil War,” Western Kentucky University, Bowling Green, KY, Oct. 12, 2011.
- “The Elections of 1860 and 2010 and the Politics of Citizenship,” Colby College Symposium on the American Civil War Sesquicentennial, Waterville, Maine, November 10, 2010.
- “Americans Debate Citizenship—Then and Now,” Brown Club of England, October 12, 2010, London.
- “War Powers, *Ex Parte Merryman*, and the Relevance of the American Civil War,” American Bar Association Workshop for High School Teachers, Washington, D.C., June 19, 2010.
- “Originalism and the Meanings of Freedom,” Georgetown Law School, Washington, D.C., March 30, 2010.
- “Abraham Lincoln, Politician,” Rotary Club of Rhode Island, Warwick, R.I., November 6, 2008.

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- “Lincoln the Citizen,” Abraham Lincoln Symposium, National Archives, Washington, D.C., September 20, 2008.
- “Emancipation and its Meaning in Current Scholarship,” National Endowment for the Humanities Summer Institute on “Slavery and Emancipation,” Philadelphia, Pennsylvania, July 28, 2008.
- “Lincoln the Citizen—Or Lincoln the Anti-Citizen?,” Abraham Lincoln Symposium, Springfield, Illinois, February 12, 2008.
- “The Tangled History of Civil Rights and Citizenship in the Civil War Era,” University of Virginia School of Law, November 2007.
- “Civil Liberties and Civil Rights: The Civil War Era,” American Bar Association, Chicago, May 2006.
- “Race, the Supreme Court, and the Retreat from Reconstruction,” Boston College School of Law, April 2007.
- “Forever Free: The Meanings of Emancipation in Lincoln’s Time and Ours,” St. Louis University, December 7, 2006.
- “Slavery Reparations in Historical Context,” Connecticut College, New London, Connecticut, March 2, 2006.
- “Abraham Lincoln, The Civil War and the Conflicting Legacies of Emancipation,” presented as part of the “Forever Free” series, Providence Public Library, Providence, R.I., January 26, 2006.
- “Abraham Lincoln, War Powers, and the Impact of the Civil War on the U.S. Constitution,” presented at symposium on “War Powers and the Constitution,” Dickinson College, Dickinson, Penn., October 3, 2005.
- “Reconsidering Law, the Constitution, and Citizenship,” presented at “New Directions in Reconstruction” symposium, Beaufort, S.C., April 15-18, 2004.
- “Abraham Lincoln, Slavery, and Modern Legacies,” Public History Series, University of Las Vegas, Nevada, February 12, 2004.
- “Oaths, African Americans, and Citizenship,” University of Nevada at Las Vegas Law School, February 12, 2004.
- “Reconsidering the Era of the Oath: African Americans Before Union Military Courts during the American Civil War,” presented to the Law and History symposium, Northwestern University Law School, Chicago, Ill., November 3, 2003.
- “Racial and Written Constitutions in Nineteenth-Century America,” presented to the workshop of the Department of History, Boston College, Newton, Massachusetts, March 2003.
- “Abraham Lincoln, Abolition, and the Impact of the Civil War on the Cult of the Constitution,” presented at the Social Law Library, Suffolk University, Boston, Massachusetts, February 2002.
- “Francis Lieber, Constitutional Amendments, and the Problem of Citizenship,” presented at The Francis Lieber Symposium, University of South Carolina, Columbia, S.C., November 2001.
- “How Black Freedom Changed the Constitution,” presented at the “Writing the Civil War” symposium, Atlanta History Center, Atlanta, Georgia, September 2001.

Michael Vorenberg c.v., page 5

- “From a Covenant with Death to a Covenant with Life: The Constitution’s Transformation during the American Civil War,” presented as the Annual Constitutional Anniversary Lecture, National Archives, Washington, D.C., September 2001.
- “New Perspectives on Abraham Lincoln, Emancipation, and the Civil War,” presented to the Civil War Round Table of Rhode Island, Cranston, Rhode Island, June 2001.
- “Historical Roots of the Modern Civil Rights Movement: The Constitution,” presented at the Civil Rights Summer Institute, Harvard University, Cambridge, Massachusetts, June 2001.
- “Race, Law, and the Invention of the State Action Doctrine in the Late Nineteenth Century,” presented at the Columbia University Law School, New York City, April 2001.
- “A King’s Cure, a King’s Style: Lincoln, Leadership, and the Thirteenth Amendment,” presented at the “Abraham Lincoln and the Legacy of the Presidency” conference, Lincoln Memorial University, Harrogate, Tennessee, April 2001.
- “The Tangled Tale of Civil War Emancipation,” presented at the University of Richmond, Richmond, Virginia, March 2001.
- “The King’s Cure: Abraham Lincoln, the Thirteenth Amendment, and the Fate of Slavery,” presented at the Abraham Lincoln Institute of the Mid-Atlantic, Washington, D.C., March 2001.
- “Race, the Supreme Court, and the Retreat from Reconstruction,” presented at the Boston College School of Law, Newton, Mass., April 2000.

Papers Read or Discussed

- “Prisoners of Freedom, Prisoners of War: An Untold Story of Black Incarceration--And How it Might be Told,” Brown Legal History Workshop, Oct. 28, 2019.
- “Bearer of a Cup of Mercy: Lew Wallace’s American Empire,” Henry E. Huntington Library, Research Fellows Meeting, Feb. 6, 2019.
- “Anti-Imperialism and the Elusive End of the American Civil War,” presented at the “Remaking North American Sovereignty” Conference, Banff, Alberta, Canada, July 31, 2015.
- “The Election of 1864: Emancipation Promised, Emancipation Deferred,” presented at The Annual Meeting of the Organization of American Historians, Atlanta, Georgia, April 11, 2014.
- “The Appomattox Effect: Struggling to Find the End of the American Civil War,” Department of History, Northwestern University, Evanston, Ill., Nov. 15, 2013.
- “Birth, Blood, and Belief: Allegiance and the American Civil War,” presented at the Elizabeth Clark Legal History Workshop Series, Boston University School of Law, Nov. 16, 2011.
- “French Readings of Lincoln’s Role in the Creation of American Citizenship,” presented at the conference on European Readings of Abraham Lincoln, His Times and Legacy, American University of Paris, Paris, France, October 18, 2009.

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- “Was Lincoln’s Constitution Color-Blind?,” presented at the Abraham Lincoln Bicentennial Symposium, Harvard University, Cambridge, Mass., April 24, 2009.
- “Citizenship and the Thirteenth Amendment: Understanding the Deafening Silence,” presented at conference on Slavery, Abolition, and Human Rights: Interdisciplinary Perspectives on the Thirteenth Amendment, April 17, 2009
- “Did Emancipation Create American Citizens?—Abraham Lincoln’s View,” presented at the conference on Abraham Lincoln: Issues of Democracy and Unity, Russian State University, Moscow, Feb. 8, 2009.
- “The Racial and Written Constitutions of Nineteenth-Century America,” Cogut Center for the Humanities, Brown University, Nov. 4, 2008.
- “Civil War Era State-Building: The Human Cost,” Boston University Political History Workshop, March 19, 2008.
- “Citizenship and the Thirteenth Amendment: Understanding the Deafening Silence,” annual meeting of the *Law and Society Association*, Montreal, May 30, 2008.
- “Claiming Citizenship: Black and White Southerners Make Their Cases During the Civil War,” presented at the annual meeting of the *Southern Historical Association*, Memphis, November 2004.
- “Imagining a Different Reconstruction Constitution,” presented at the annual meeting of the Social Science History Association, Baltimore, November 2003.
- “West of Reconstruction: Resolving Mexican-American Property and Citizenship in the Civil War Era,” presented at the annual meeting of the *American Historical Association*, San Francisco, California, January 2002.
- “The Limits of Free Soil: The Resolution of Mexican Land Claims during the American Civil War,” presented at the annual meeting of the *Organization of American Historians*, St. Louis, Missouri, April 2000.
- “Written Constitutions, Racial Constitutions, and Constitutional Permanence in Nineteenth-Century America,” presented at the annual meeting of the *American Society for Legal History*, Toronto, Ontario, October 1999.
- “Law, Politics, and the Making of California Free Soil during the American Civil War,” presented at the annual meeting of the *Western History Association*, Portland, Oregon, October 1999.
- “Land Law in the Era of Free Soil: The Case of New Almaden,” *American Society for Environmental History*, Tucson, Arizona, April 1999.
- “Written Constitutions, Racial Constitutions, and Constitutional Permanence in Antebellum America,” presented at the annual meeting of the *Society for Historians of the Early American Republic*, Harpers Ferry, W.V., July 1998.
- “The Constitution in African-American Culture: Freedom Celebrations and the Thirteenth Amendment,” presented to the *W.E.B. Du Bois Institute*, Harvard University, Cambridge, Massachusetts, April 1996.
- “Civil War Emancipation and the Sources of Constitutional Freedom,” presented at the annual meeting of the *Organization of American Historians*, Washington, D.C., April 1995.

Michael Vorenberg c.v., page 7

“The Origins and Original Meanings of the Thirteenth Amendment,” presented at the annual meeting of the *American Society for Legal History*, Washington, D.C., October 1994.

“Civil War Emancipation in Theory and Practice: Debates on Slavery and Race in the Border States, 1862-1865,” presented at the *Southern Labor Studies Conference*, Birmingham, Alabama, October 1993.

Service

University

Anna S. K. Brown Library advisory committee, member, 2016-present.

Co-Organizer (with Faiz Ahmed, Rebecca Nedostup, Emily Owens), Brown Legal History Workshop, 2015-present.

Political Theory Project, Advisory Board, 2010-2019

Organizer and Presenter, “Abraham Lincoln for the 21st Century: A Symposium honoring the Abraham Lincoln Bicentennial,” John Hay Library, Brown University, Feb. 27-28, 2009. Plenary lecture by Benjamin Jealous, president of NAACP, and six symposium participants. Funding secured from Rhode Island Foundation, Rhode Island Lincoln Bicentennial Commission, Brown Provost, Brown Dean of Faculty, History Department, Africana Studies Department

Profession

Program Committee, Society of Civil War Historians, 2022 annual conference, 2020-present.

Cromwell Prize Committee, American Society for Legal Historians, 2014-2017.

Board of Editors, *Law and History Review*, 2004-2013 (reappointed 2009).

Advisory Committee, United States Abraham Lincoln Bicentennial Commission, 2002-10.

Board of Advisors, Lincoln Prize, Gettysburg Institute (2000-present).

Co-Chair, Local Arrangements Committee, Annual Meeting of the Society for Historians of the Early American Republic, Providence, Rhode Island, Summer 2004.

Referee for National Endowment for the Humanities
Scholarly Editions, 2002; Summer Grants, 2001-2003.

Committee Member, Local Arrangements Committee, Annual Meeting of the American Society for Environmental History, to be held in Providence, Rhode Island, Spring 2003.

Referee for article manuscripts submitted to the *Journal of American History*, *Law and History Review*, *Law and Social Inquiry*, *Journal of the Civil War Era*, and *Civil War History*.

Referee for book manuscripts submitted to Houghton Mifflin, Harvard University Press, Oxford University Press, New York University Press, University of Chicago Press, University of Illinois Press, and University of North Carolina Press.

Advisory Editor for *Proteus* (special issue devoted to the American Civil War, Fall 2000).

Community

Lecture on American Citizenship and Exclusion, Center for Reconciliation, Providence, R.I., July 2018.

Instructor in co-taught course at the Rhode Island Adult Correctional Institute (ACI) through the Brown University BELLS program, 2013.

Lecture on Reconstruction-Era Constitutional Amendments, Barrington, RI, Open Classroom, April 4, 2013.

Lecture on 150th Anniversary of the Emancipation Proclamation, Wheeler School, Providence, Rhode Island, January 17, 2013.

Rhode Island Civil War Sesquicentennial Commission, 2011- .

Rhode Island Abraham Lincoln Bicentennial Commission (appointed by Governor), 2005-2009.

Lecturer on the Brown Steering Committee on Slavery and Justice, The Wheeler School, Providence, Rhode Island, November 2006.

Seminar leader for National Endowment for the Humanities “We the People” initiative at Deerfield Historical Society, Deerfield, Mass., April 2006.

Seminar leader for National Endowment for the Humanities “Teaching American History” initiative at Rhode Island Historical Society, Providence, R.I., September 2005.

Seminar leader for National Endowment for the Humanities “We the People” initiative at Deerfield Historical Society, Deerfield, Mass., March 2005.

Advisor to the Burrillville, Rhode Island, School Department, on securing and administering a “Teaching American History” grant from the United States Department of Education, 2001-2002.

Academic Honors and Fellowships

Ray Allen Billington Professor, Occidental College/Henry E. Huntington Library, 2018-19.

Pembroke Center for the Study of Women and Gender Fellowship, Brown University, 2016-17.

National Endowment for the Humanities Long-Term Fellowship, Massachusetts Historical Society, Boston, Massachusetts, 2014.

National Endowment for the Humanities Long-Term Fellowship, Newberry Library, Chicago, Illinois, 2013.

Finalist, CIES Fulbright Fellowship for University of Rome III (2010-11 competition)

Cogut Center for the Humanities Fellowship, Brown University, Fall 2008.

William McLoughlin Prize for Teaching in the Social Sciences, Brown University, 2007.

Karen Romer Prize for Undergraduate Advising, Brown University, 2007.

History News Network (HNN) “Top Young Historian,” 2005 (1 of 12 named in the U.S.).

Vartan Gregorian Assistant Professorship, Brown University, 2002-2004.

Finalist, Lincoln Prize, 2002 (for *Final Freedom*).

American Council of Learned Societies/Andrew W. Mellon Fellowship, 2002-03.

Kate B. and Hall J. Peterson Fellowship, American Antiquarian Society, 2002-03.

Salomon Research Award, Brown University, 2002-2003.

National Endowment for the Humanities Summer Stipend, 2001.

Julian Park Fund Fellowship, SUNY at Buffalo, 1998.

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Research Development Fund Fellowship, SUNY at Buffalo, 1997.
Harold K. Gross Prize for Best Dissertation at Harvard in History, 1996.
Delancey Jay Prize for Best Dissertation at Harvard on Human Liberties, 1996.
W.E.B. Du Bois Fellowship, Harvard University, 1995.
Whiting Fellowship in the Humanities, 1994.
Bowdoin Prize for Best Essay at Harvard in the Humanities, 1993.
Indiana Historical Society Graduate Fellowship, 1993.
W. M. Keck Fellowship, Henry E. Huntington Library, 1993.
Everett M. Dirksen Congressional Research Fellowship, 1993.
Mark DeWolfe Howe Fellowship, Harvard Law School, 1993.
Charles Warren Center Research Fellowship, Harvard History Dept., 1991-2.
Derek Bok Award for Distinction in Teaching at Harvard, 1991.
Philip Washburn Prize for Best Senior Thesis at Harvard in History, 1986.

XAVIER BECERRA
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*Attorneys for Defendant Attorney General
Xavier Becerra*

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

VIRGINIA DUNCAN, et al.,

Plaintiffs,

v.

**XAVIER BECERRA, in his official
capacity as Attorney General of the
State of California; and DOES 1-10,**

Defendants.

17-cv-1017-BEN-JLB

**DECLARATION OF BLAKE
GRAHAM IN OPPOSITION TO
PLAINTIFFS' MOTION FOR
SUMMARY JUDGMENT OR,
ALTERNATIVELY, PARTIAL
SUMMARY JUDGMENT**

Date: April 30, 2018
Time: 10:30 a.m.
Courtroom: 5A
Judge: Hon. Roger T. Benitez
Action Filed: May 17, 2017

Declaration of Blake Graham in Support of Defendant's Opposition to Plaintiffs' Motion for
Summary Judgment or, Alternatively, Partial Summary Judgment (17-cv-1017-BEN-JLB)

1
2
3 **DECLARATION OF BLAKE GRAHAM**

4 I, BLAKE GRAHAM, declare:

5 1. I am a Special Agent Supervisor for the California Department of Justice,
6 Bureau of Firearms. I make this declaration of my own personal knowledge and
7 experience and, if called as a witness, I could and would testify competently to
8 the truth of the matters set forth herein.

9 **BACKGROUND AND QUALIFICATIONS**

10 2. I received a Bachelor of Science degree in May 1992 in Criminal
11 Justice at the California State University Sacramento. My coursework included
12 forensics, corrections, and a number of classes in criminal justice-related topics.

13 3. Since 1994, I have worked as either an investigator for the California
14 Department of Alcoholic and Beverage Control (ABC), or as a Special Agent for
15 the California Department of Justice (DOJ). My job responsibilities in all of these
16 positions have increasingly required the recovery, investigation, and identification
17 of firearms, the ammunition used for those firearms, and the magazines used for
18 feeding ammunition for such firearms.

19 4. My work as an investigator for ABC between 1994 and 1999 included
20 the recovery of firearms, magazines and ammunition.

21 5. Between 1999 and 2002, I worked as a Special Agent for DOJ, and was
22 assigned to the Violence Suppression Program in the Bureau of Narcotics
23 Enforcement. In this job, I investigated violent crimes and various violations
24 occurring at California gun shows. As a gun show enforcement agent, I attended
25 gun shows in the San Francisco Bay Area to monitor, and if necessary, seize,
26 firearms, ammunition, and magazines sold illegally to felons, parolees, and
27 probationers.
28

1 6. From October 2002 to the present, I have been a Special Agent and
2 Special Agent Supervisor, for the DOJ's Bureau of Firearms (BOF). In this
3 capacity, I am assigned to recover firearms from prohibited individuals,
4 monitor gun shows for illegal activities, conduct surveillance on gun dealers
5 suspected of illegal activity, and investigate illegal trafficking of firearms,
6 manufacturing of assault weapons, machine guns, and illegal possession of
7 various magazines and ammunition.

8 7. Since 2008, I have been responsible for reviewing handguns that are
9 submitted by manufacturers for inclusion in California's roster of handguns
10 certified for sale. A copy of the roster can be found on the DOJ website:
11 <http://certguns.doj.ca.gov/>.

12 8. In my career I have attended at least 40 gun shows and have become
13 very knowledgeable on current laws pertaining to the sales of firearms,
14 ammunition, and ammunition containers—including large-capacity magazines
15 (LCMs)—in the State of California.

16 9. I have been trained and qualified to carry several different types of
17 firearms, including: Glock Model 17 (9 mm semi-automatic pistol), multiple
18 Glock .40 caliber semi automatic pistols, Heckler & Koch MPS (9 mm
19 submachine gun), Smith & Wesson, Model 60 (.38 Special revolver), multiple
20 .45 caliber semi-automatic pistols, and a Colt, Model M4 (5.56 mm machine
21 gun). I have access to other Department-owned handguns, shotguns,
22 submachine guns, machine guns, rifles, shotguns and 40 mm "less lethal"
23 launchers.

24 10. Throughout my career, I have conducted training programs in the
25 identification and handling of firearms. I have also trained other Special
26 Agents of BOF on assault weapons and firearms identification. I also have
27 given firearms identification classes to members of the Sacramento and San
28 Joaquin County District Attorney's offices.

2
Declaration of Blake Graham in Support of Defendant's Opposition to Plaintiffs' Motion for
Summary Judgment or, Alternatively, Partial Summary Judgment (17-cv-1017-BEN-JLB)

1 11. I have also completed at least 15 firearms training courses since 1994.
2 These courses included the assembly and use of specific firearms, cartridge
3 composition (bullet, the propellant, and the casing), common calibers used by
4 law enforcement, and training on rifle and handgun ammunition. I have been
5 certified as a California Peace Officer Standards and Training (POST) approved
6 Firearms Instructor/Rangemaster since 2002.

7 12. During the course of my career and training I have become proficient in
8 the use and disassembly of various revolvers, pistols, submachine guns, shotguns,
9 and rifles. I have made or assisted in the arrest of at least thirty persons for
10 violations involving illegal weapons possession. In the course of my employment I
11 have participated in excess of thirty search warrants which involved the illegal
12 possession of firearms.

13 13. I have been qualified as an expert witness regarding the use of firearms in
14 14 cases in both federal and state court since 2007.

15 FINDINGS

16 I. USE OF LARGE-CAPACITY MAGAZINES IN MASS SHOOTINGS.

17 14. Through the course of my work, I am familiar with the use of LCMs.

18 15. LCMs are ammunition feeding devices that can hold more than ten
19 rounds, and sometimes up to 100 rounds, of ammunition.

20 16. LCMs allow semi-automatic weapons to fire more than 10 rounds
21 without the need for a shooter to reload the weapon.

22 17. Because LCMs enable a shooter to fire repeatedly without needing to
23 reload, they significantly increase a shooter's ability to kill and injure large
24 numbers of people quickly.

25 18. Because magazines carrying more than 10 rounds at a time allow for
26 uninterrupted shooting, such LCMs have been the preferred ammunition feeding
27 devices in several mass shootings in California and elsewhere.

1 19. To the best of my knowledge, all of the shootings listed below
2 involved persons who shot and wounded and/or killed one or more persons,
3 including peace officers, while using LCMs.

4 a. On January 17, 1989, Patrick Purdy, shot and killed 5 and wounded
5 32 others at the Cleveland Elementary School in Stockton, California. He used an
6 AK-47 style rifle and LCMs in the shooting.

7 b. On February 28, 1997, Larry Phillips and Emil Matasareanu, armed
8 with multiple assault weapons and LCMs, wounded 20 people, including law
9 enforcement officers, while robbing the Bank of America in North Hollywood,
10 California.

11 c. On January 9, 2005, Andres Raya used a LCM and illegal assault
12 weapon to shoot and kill Police Sgt. Howard Stevenson in Ceres, California.

13 d. On June 15, 2008, Marco Topete used an assault rifle and LCM
14 to shoot and kill Yolo County Sheriff's Deputy Tony Diaz after a traffic stop
15 near Dunnigan, California.

16 e. On November 5, 2009, Nidal Hasan used a semi-automatic pistol
17 and LCMs to shoot and kill 13 and wounded over 30 others at the Fort Hood
18 Army base in Fort Hood, Texas.

19 f. On February 25, 2010, Ricky Liles, used multiple weapons and
20 LCMs to shoot and kill two law enforcement officers and wounded one other in
21 Minkler, California.

22 g. January 8, 2011, Jared Loughner used a handgun with a LCM to
23 shoot and kill 6 people and wounded 13 others in Tucson, Arizona. He was
24 subdued while trying to reload his weapon.

25 h. On July 20, 2012, James Holmes used an assault weapon and LCMs
26 to kill 12 people and wound 70 others in a movie theater in Aurora, Colorado.

1 i. On December 14, 2012, Adam Lanza used LCMs and multiple
2 firearms to kill 20 children and six adults at Sandy Hook Elementary School in
3 Newtown, Connecticut.

4 j. On June 7, 2013, John Zawahri—who was previously denied
5 purchase of a firearm by DOJ—used a home-built AR-15 rifle and LCMs to kill his
6 father and brother at their family home, and then kill and wound others at the Santa
7 Monica, California Community College.

8 k. On December 2, 2015, Syed Farook and his wife, Tashfeen Malik,
9 used assault weapons and LCMs in killing 14 people and wounding 22 others at the
10 Inland Regional Center in San Bernardino, California.

11 l. On June 12, 2016, Omar Mateen used an assault rifle and LCMs to
12 shoot and kill 49 people and wound 53 others inside a nightclub in Orlando,
13 Florida.

14 m. On July 7, 2016, Micah Johnson used an assault rifle and a LCM to
15 shoot and kill five police officers and wound nine others in Dallas, Texas.

16 n. On July 17, 2016, Gavin Long used an assault rifle and LCMs to
17 shoot and kill three police officers and wound three other officers in Baton Rouge,
18 Louisiana.

19 o. On October 1, 2017, Stephen Paddock used assault rifles and LCMs
20 to fire over 1,000 rounds on concertgoers at an outdoor music festival in Las Vegas,
21 Nevada, killing 58 people and wounding more than 500 others. To date, this is the
22 deadliest mass shooting in U.S. history.

23 **II. LEGISLATION LIMITING LARGE CAPACITY MAGAZINES.**

24 20. I am also aware of the state and federal laws banning the sale and
25 possession of LCMs, and the effect of these laws on the availability of such
26 magazines in California.

27 21. From 1994 to 2004, the federal assault weapons ban controlled the
28 manufacture and sales of LCMs in the United States. During this 10-year window,

1 new LCMs were only able to be sold to law enforcement and the military. Over
2 time, LCMs were removed from public access due to incidental seizure during
3 everyday law enforcement investigations in all 50 states.

4 22. In 1999, the California Legislature passed Senate Bill No. 23, which
5 restricted the sales, transfer and manufacture of LCMs on a state level. This bill,
6 which, at the time did not prohibit possession of LCMs, eventually became codified
7 as California Penal Code section 32310.

8 23. For nearly two decades, since 2000, when California's LCM restrictions
9 went into effect, magazine manufacturers have been producing compliant
10 magazines for sale in California that hold no more than 10 rounds of ammunition,
11 which are widely available in the state and compatible with most, if not all,
12 semiautomatic firearms.

13 **III. REASONS FOR CALIFORNIA'S PROHIBITION ON POSSESSION OF LARGE-**
14 **CAPACITY MAGAZINES.**

15 24. Once the Federal restrictions were lifted in late 2004, LCMs became
16 available in states outside California. This has created in increase in the amount of
17 illegal importation of LCMs in California.

18 25. Since at least 2002, Agents from the DOJ Bureau of Firearms have
19 conducted investigations in which California residents would travel outside
20 California and purchase or acquire LCMs and then return to California with
21 these illegally imported LCMs.

22 26. In such cases, these same subjects would also acquire ammunition
23 and firearms that would be smuggled back into California at the same time.

24 27. Many times these California residents were already prohibited from
25 acquiring, owning and possessing firearms, ammunition and ammunition
26 feeding devices. Sometimes the traffickers would not be firearms-prohibited
27

1 but they would ultimately still break the law and smuggle back firearms and
2 LCMs despite facing the potential of felony charges should they be caught.

3 28. The prohibition on sales, but not possession, of LCMs, has also
4 created a market for LCM repair kits. At numerous California gun shows, prior
5 to 2014, I saw subjects purchase disassembled LCMs being sold as large-
6 capacity magazine repair kits. Often the repair kits were for weapons that were
7 not even sold prior to the year 2000.

8 29. Because of the availability of the “repair kits,” Special Agents with
9 the Bureau of Firearms could see California residents were either illegally
10 importing LCM or purchasing these repair kits and assembling them into LCMs
11 in violation of Penal Code Section 32310.

12 30. On October 11, 2013 Governor Brown signed Assembly Bill No. 48,
13 which made it a misdemeanor to knowingly manufacture, import, keep for sale,
14 offer or expose for sale, or give, lend, buy, or receive any LCM conversion kit that
15 is capable of converting an ammunition feeding device into a large-capacity
16 magazine. The bill also made it a misdemeanor or a felony to buy or receive a
17 large-capacity magazine. This new law in essence outlawed “repair kits” and the
18 issues associated with them. Much of AB 48 was codified as Section 32310,
19 subdivisions (a) and (b).

20 31. Even with the passage of AB 48, BOF Agents do not have the ability
21 to identify whether the LCMs at issue were legally purchased, or are the
22 product of an illegal transfer. Also, the presence of large numbers of LCMs in
23 the state—even if lawfully owned by law-abiding citizens—increases the
24 potential for criminal theft or illegal trafficking of such magazines.

25 32. Because of these challenges in identifying legally possessed
26 magazines, as well as use of LCMs in mass shootings that have occurred both in
27 and outside of California for several years, the people of California enacted
28 Proposition 63 in November 2016 to amend Section 32310 to prohibit the

1 possession large-capacity magazines. The State's laws prohibiting possession of
2 large capacity magazines through Proposition 63 ensures the restriction on the use
3 of such magazines in the State.

4 Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the
5 foregoing is true and correct.

6
7 Executed on: April 5, 2018

8
9 
10 BLAKE GRAHAM

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10 Xavier Becerra

11
12 IN THE UNITED STATES DISTRICT COURT
13 FOR THE SOUTHERN DISTRICT OF CALIFORNIA
14
15

16 **VIRGINIA DUNCAN, et al.,**

17 Plaintiffs,

18 v.

19 **XAVIER BECERRA, in his official**
20 **capacity as Attorney General of the**
21 **State of California; and DOES 1-10,**

22 Defendants.

17-cv-1017-BEN-JLB

**DECLARATION OF KEN JAMES
IN OPPOSITION TO PLAINTIFFS'
MOTION FOR SUMMARY
JUDGMENT OR,
ALTERNATIVELY, PARTIAL
SUMMARY JUDGMENT**

Date: April 30, 2018
Time: 10:30 a.m.
Courtroom: 5A
Judge: Hon. Roger T. Benitez
Action Filed: May 17, 2017

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Decl. of Ken James in Opposition to Plaintiffs' Motion for Summary Judgment or, Alternatively,
Partial Summary Judgment (17-cv-1017-BEN-JLB)

DECLARATION OF KEN JAMES

I, KEN JAMES, declare:

1. I am a retired law enforcement officer retiring from the Emeryville, California Police Department on June 30, 2015 after forty years of service. I served the last seventeen years of my career as the Chief of Police of the department. During my career I held a wide variety of assignments, including patrol officer, K-9 officer, and general assignment investigator. I rose through the ranks in the Department and served as a patrol and investigations sergeant, Captain of both the Patrol and Professional Services Divisions prior to my appointment as Chief. During my career I investigated and supervised the investigations of various gun related crimes.

2. I served as the Chair of the California Police Chief's Association's Firearms Committee. The California Police Chiefs Association represents the municipal Chiefs, and their seconds in command, of 332 cities who provide public safety services for over twenty-six million Californians. The Association promotes and advances the science and art of police administration and crime prevention, to develop and disseminate professional administrative practices, and to encourage the adherence of all police officers to high professional standards of conduct in strict compliance with the Law Enforcement Officer's Code of Ethics.

3. The Association's Firearms Committee is responsible for the formulation and review of the Association's positions on gun violence prevention, including developing and advocating for legislation to reduce and/or prevent gun violence. The Association adopted its initial position paper in 1995 and has updated and revised its position three times since. The initial paper identified six areas, including limiting magazine capacity, that would significantly impact gun violence in California.

1 4. I also serve as a committee member of the International Association of
2 Chiefs of Police's (IACP) Firearm Committee. The IACP represents over 15,000
3 professional law enforcement administrators worldwide and promotes the best
4 professionals policing practices. The Firearms Committee advises the IACP's
5 Board of Directors and Executive Board on national firearms issues.

6 5. The information stated in this declaration is based on my knowledge,
7 training, education, and experience.

8 6. In my opinion, the existence of high capacity magazines only serves to
9 enhance the killing and injuring potential of a firearm. I have attended debriefings
10 of several high profile mass shootings, including Columbine, Sandy Hook, Aurora
11 Colorado, San Bernardino, Orlando Nightclub, and the Christopher Dorner
12 shootings in Southern California. In each of these shootings high capacity
13 magazines were utilized allowing the shooter or shooters to move quickly through
14 an area dispensing a large number of bullets without slowing to reload, resulting in
15 mass casualties. I have drawn from these reviews that casualties would have been
16 significantly reduced if a shooter needed to slow or stop to reload after ten shots.

17 7. It is my opinion that possession and use of high capacity magazines by
18 individuals committing criminal acts pose a significant threat to law enforcement
19 personnel and the general public. I have been involved with and/or supervised the
20 investigation of gun violence crimes in which high capacity magazines were used.
21 For example, in a drive-by shooting in the City of Emeryville, the investigation
22 revealed that in excess of forty casings from two different guns were found at the
23 scene. The shooting resulted in the death of one individual, but fortunately, no
24 other injuries to individuals at the scene. Witnesses told officers that the shooting
25 lasted only a matter of seconds. The number of shots fired resulted in adjacent
26 occupied buildings being struck by stray bullets posing a significant threat to the
27 occupants of those buildings.

1 8. Also, it is my opinion that the use of high capacity magazines is not
2 necessary for self-defense. In my professional capacity as a police chief, Chair of
3 the California Police Chiefs Association's Firearms Committee and member of the
4 IACP's Firearms Committee, I have read and viewed news accounts of incidents in
5 which individuals have defended themselves from a criminal attacks and perceived
6 criminal attacks by using a firearm. I have performed these reviews to determine
7 whether a large number of rounds was necessary in those incidents for the victims
8 to defend themselves. I am not aware that in any of the accounts the victims fired
9 in excess of ten shots in their defense.

10 9. California's restrictions on the sale of high capacity magazines have been
11 in effect since 2000. Therefore, high capacity magazines have not been available
12 for sale in California for nearly two decades. Magazines holding ten rounds or less
13 have been available in the state since 2000.

14 10. The California Police Chiefs Association, in their initial position paper
15 on gun violence written in 1995 and in subsequent updates, have identified limiting
16 magazine capacities as an appropriate and necessary measure to reduce gun
17 violence. The Association adopted its initial position paper in 1995 and has
18 updated and revised its position three times since. The initial paper identified six
19 areas, including limiting magazine capacity, that would significantly impact gun
20 violence in California. Attached hereto as Exhibit A is a true and correct copy of
21 the Association's position paper adopted in May of 2013. The Association
22 supported legislation that resulted in the current laws regulating magazine capacity.

1 Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the
2 foregoing is true and correct.

3
4 Executed on: April 6, 2018

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7 KEN JAMES
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EXHIBIT A

**CALIFORNIA POLICE CHIEFS ASSOCIATION
POSITION PAPER**

May 31, 2013

SUBJECT: GUN VIOLENCE AND THE REGULATION OF FIREARMS

INTRODUCTION

The California Police Chiefs Association has long recognized that gun violence is a threat to the safety and well-being of the communities we serve and the officers committed to the protection of those communities. The Association is dedicated to its leadership role in identifying and implementing strategies to reduce gun violence. The Association's position is that while the right to bear arms is clearly articulated under the Second Amendment, reasonable regulations of firearms protect those rights. It is entirely appropriate to take reasonable steps that ensure responsible ownership while removing firearms from those who are prohibited by law from possessing them or who are intent on threatening the safety of our communities.

California has some of the strictest firearms regulations in the nation. These regulations have served law-abiding Californians well and clearly have not interfered with firearms ownership by responsible Californians. However, regulations prove ineffective unless those who are intent on threatening the safety of our communities are arrested, prosecuted, and sentenced to the fullest extent possible. Additionally, California's regulations are undermined if the ability of our federal law enforcement partners to effectively perform their designed function is restricted.

We cannot escape the fact that many firearm-related deaths and injuries do not occur as a result of intentional criminal misconduct. Far too often, gun related deaths and injuries occur between family, friends, unintended victims, and children. Therefore, it is the Association's position that responsible ownership, which includes safe storage and handling of firearms, is imperative as a means of reducing these tragic incidents.

Gun violence is a complex issue with a multitude of causative factors that must be addressed if we are to be successful in reducing gun violence in our communities. These factors include:

- Examining mental health issues, including how to eliminate the ability of those who are mentally incompetent from purchasing or possessing a firearm.
- Straw Purchases: the purchase of a firearm by someone legally capable for an individual who is prohibited from purchasing or possessing a firearm.

- Armed and Prohibited Individuals: prosecuting and proactively removing firearms and ammunition from individuals who are prohibited from owning and possessing them.
- Universal background checks: It is estimated that over 40% of all firearm sales occur without background checks. Weapons acquired through such sales are finding their way into the hands of individuals who are prohibited from possessing them or who are intent on affecting the safety of our communities
- Ammunition –The Association recommends the addition of a registration component, similar to the Dealer Record of Sale (DROS), to track ammunition sales. This would assist in the investigation of crimes committed with a firearm, ammunition straw purchases, and purchases by those prohibited from owning or possessing firearms or ammunition.

**Possession of armor piercing ammunition, which threatens the safety of police officers, should be made illegal.
- Concealed Weapons: the Association advocates that the ability to issue concealed weapons permits should remain at the discretion of the local chief or sheriff.
- High Capacity Magazines: Recognizing that justifiable reasons exist for limiting magazine capacity, we propose that no firearm magazine be lawfully possessed if it has a capacity of more than ten rounds of ammunition.
- The ability of the Federal Bureau of Alcohol, Tobacco, and Firearms (ATF) to track purchases and provide information to local law enforcement agencies across the country should be strengthened.
- Direct the Center for Disease Control (CDC) to conduct research for the purpose of determining the scope of the deaths and injuries which occur as a consequence of firearms.

CONCLUSION

The California Police Chiefs Association's position recognizes and supports the Second Amendment and the right of gun ownership provided to law abiding citizens. The Association also recognizes that delving into the mental health aspects of individuals associated with gun violence may conflict with currently enacted health and privacy laws, but if we are to have any impact on reducing gun violence, we must be a strong voice in addressing these issues that threaten the safety of our communities.

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12 FOR THE SOUTHERN DISTRICT OF CALIFORNIA
13
14

15 VIRGINIA DUNCAN, RICHARD
16 LEWIS, PATRICK LOVETTE,
DAVID MARGUGLIO,
17 CHRISTOPHER WADDELL, and
CALIFORNIA RIFLE & PISTOL
18 ASSOCIATION, INC., a California
corporation,

19 Plaintiffs,
20

21 v.

22 XAVIER BECERRA, in his official
capacity as Attorney General of the
23 State of California; and DOES 1-10,

24 Defendant.
25
26
27
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17-cv-1017-BEN-JLB

DECLARATION OF JOHN D.
ECHEVERRIA IN SUPPORT OF
DEFENDANT'S OPPOSITION TO
PLAINTIFFS' MOTION FOR
SUMMARY JUDGMENT OR,
ALTERNATIVELY, PARTIAL
SUMMARY JUDGMENT;
EXHIBITS 1-3

Date: April 30, 2018
Time: 10:30 a.m.
Judge: Hon. Roger T. Benitez
Courtroom: 5A
Action Filed: May 17, 2017

Declaration of John D. Echeverria in Support of Defendant's Opposition to Plaintiffs' Motion for
Summary Judgment or, Alternatively, Partial Summary Judgment (17-cv-1017-BEN-JLB)

1 **DECLARATION OF JOHN D. ECHEVERRIA**

2 I, John D. Echeverria, declare:

3 1. I am a Deputy Attorney General with the California Department of
4 Justice and serve as counsel to Defendant Xavier Becerra, Attorney General of the
5 State of California ("Defendant"), in the above-captioned matter.

6 2. Except as otherwise stated, I have personal knowledge of the facts set
7 forth in this declaration, and if called upon as a witness I could testify competently
8 as to those facts. I make this declaration in support of Defendant's Opposition to
9 Plaintiffs' Motion for Summary Judgment or, Alternatively, Partial Summary
10 Judgment.

11 3. On October 6, 2017, Defendant served Plaintiffs with the Expert
12 Report of Lucy P. Allen. A true and correct copy of the Expert Report of Lucy P.
13 Allen is attached as **Exhibit 1**.

14 4. On November 3, 2017, Defendant served Plaintiffs with the Expert
15 Rebuttal Report of John J. Donohue. A true and correct copy of the Expert Rebuttal
16 Report of John J. Donohue is attached as **Exhibit 2**.

17 5. On January 9, 2018, Defendant served Plaintiffs with the Revised
18 Expert Report of Dr. Louis J. Klarevas. A true and correct copy of the Revised
19 Expert Report of Dr. Louis J. Klarevas is attached as **Exhibit 3**.

20 6. On October 6, 2017, Defendant served Plaintiffs with the Expert
21 Report of Christopher S. Koper. A true and correct copy of the Expert Report of
22 Christopher S. Koper is attached as **Exhibit 4**.

23 7. On December 18, 2017, Defendant deposed Plaintiffs' expert, Stephen
24 Helsley. A true and correct copy of relevant excerpts of the Reporter's Transcript
25 of the Deposition of Stephen Helsley is attached as **Exhibit 5**.

26 8. On December 19, 2017, Plaintiffs deposed Defendant's witness, Blake
27 Graham. A true and correct copy of relevant excerpts of the Reporter's Transcript
28 of the Deposition of Blake Graham is attached as **Exhibit 6**.

Declaration of John D. Echeverria in Support of Defendant's Opposition to Plaintiffs' Motion for
Summary Judgment or, Alternatively, Partial Summary Judgment (17-cv-1017-BEN-JLB)

1 9. On January 2, 2018, and continuing on January 4, 2018, Defendant
2 deposed Plaintiffs' expert, Carlisle Moody. A true and correct copy of relevant
3 excerpts of the Reporter's Transcript of the Deposition of Carlisle Moody is
4 attached as **Exhibit 7**.

5 10. On January 3, 2018, Defendant deposed Plaintiffs' expert, Gary Kleck.
6 A true and correct copy of relevant excerpts of the Reporter's Transcript of the
7 Deposition of Gary Kleck is attached as **Exhibit 8**.

8 11. On January 5, 2018, Plaintiffs deposed Defendant's expert,
9 Christopher S. Koper. A true and correct copy of relevant excerpts of the
10 Reporter's Transcript of the Deposition of Christopher S. Koper is attached as
11 **Exhibit 9**.

12 12. On January 18, 2018, Plaintiffs deposed Defendant's expert, Lucy P.
13 Allen. A true and correct copy of relevant excerpts of the Reporter's Transcript of
14 the Deposition of Lucy P. Allen and Deposition Exhibit 7 are attached as **Exhibit**
15 **10**.

16 13. On January 19, 2018, Plaintiffs deposed Defendant's expert, Louis
17 Klarevas. A true and correct copy of relevant excerpts of the Reporter's Transcript
18 of the Deposition of Louis Klarevas is attached as **Exhibit 11**.

19 14. A true and correct copy of Dep't of the Treasury, Bureau of Alcohol,
20 Tobacco, and Firearms (ATF), *Recommendation on the Importability of Certain*
21 *Semiautomatic Rifles* (1989) is attached as **Exhibit 12**.

22 15. A true and correct copy of Dep't of the Treasury, Bureau of Alcohol,
23 Tobacco, and Firearms (ATF), *Study on the Sporting Suitability of Modified*
24 *Semiautomatic Assault Rifles* (1998) is attached as **Exhibit 13**.

25 16. A true and correct copy of Sen. Bill No. 1446, 3d Reading Analysis,
26 Mar. 28, 2016 (2015-2016 Reg. Sess.) (Cal. 2016) is attached as **Exhibit 14**.

27 17. A true and correct copy of Prepared Testimony by Laurence H. Tribe,
28 *Proposals to Reduce Gun Violence: Protecting Our Communities While Respecting*

Declaration of John D. Echeverria in Support of Defendant's Opposition to Plaintiffs' Motion for
Summary Judgment or, Alternatively, Partial Summary Judgment (17-cv-1017-BEN-JLB)

1 *the Second Amendment: Hearing Before the Subcomm. on the Constitution, Civil*
2 *Rights and Human Rights, S. Comm. on the Judiciary* (Feb. 12, 2013) is attached as
3 **Exhibit 15.**

4 18. A true and correct copy of Mark Follman, et al., *U.S. Mass Shootings,*
5 *1982-2018: Data from Mother Jones' Investigation* (Mother Jones, 2018), available
6 at [https://www.motherjones.com/politics/2012/12/mass-shootings-mother-jones-](https://www.motherjones.com/politics/2012/12/mass-shootings-mother-jones-full-data/)
7 [full-data/](https://www.motherjones.com/politics/2012/12/mass-shootings-mother-jones-full-data/), is attached as **Exhibit 16.** This data was accessed and downloaded as an
8 Microsoft Excel file on April 9, 2018. The columns of the spreadsheet have been
9 expanded for readability.

10 19. A true and correct copy of Mayors Against Illegal Guns, *Analysis of*
11 *Recent Mass Shootings* (2013) is attached as **Exhibit 17.**

12 20. A true and correct copy of the Declaration of Professor Daniel Webster
13 in Support of Defendant Xavier Becerra's Opposition to Plaintiffs' Motion for
14 Preliminary Injunction (June 5, 2017) (Dkt. No. 15) is attached as **Exhibit 18.**

15 21. A true and correct copy of Larry Buchanan, et al., *Nine Rounds a*
16 *Second: How the Las Vegas Gunman Outfitted a Rifle to Fire Faster*, N.Y. Times,
17 Oct. 5 2017, available at
18 <https://www.nytimes.com/interactive/2017/10/02/us/vegas-guns.html>, is attached as
19 **Exhibit 19.**

20 22. A true and correct copy of Violence Policy Center, *High-Capacity*
21 *Ammunition Magazines are the Common Thread Running Through Most Mass*
22 *Shootings in the United States* (2018), available at
23 www.vpc.org/fact_sht/VPCshootinglist.pdf, is attached as **Exhibit 20.**

24 23. A true and correct copy of Alex Yablon, *Bans on High-Capacity*
25 *Magazines, Not Assault Rifles, Most Likely to Limit Shooting Carnage*, The Trace,
26 June 13, 2016, available at [https://www.thetrace.org/2016/06/high-capacity-](https://www.thetrace.org/2016/06/high-capacity-magazines-orlando-shooting/)
27 [magazines-orlando-shooting/](https://www.thetrace.org/2016/06/high-capacity-magazines-orlando-shooting/), is attached as **Exhibit 21.**

1 24. A true and correct copy of State of Connecticut, Division of Criminal
2 Justice, *Report of the State's Attorney for the Judicial District of Danbury on the*
3 *Shootings at Sandy Hook Elementary School* (2013) is attached as **Exhibit 22**.

4 25. A true and correct copy of Mark Follman, *More Guns, More Mass*
5 *Shootings—Coincidence?*, Mother Jones, Dec. 15, 2012, available at
6 <https://www.motherjones.com/politics/2012/09/mass-shootings-investigation/>, is
7 attached as **Exhibit 23**.

8 26. A true and correct copy of relevant excerpts from Louis Klarevas,
9 *Rampage Nation: Securing America from Mass Shootings* (2016) is attached as
10 **Exhibit 24**.

11 27. A true and correct copy of relevant excerpts from Robert J. Spitzer,
12 *Gun Law History in the United States and Second Amendment Rights*, 80 *Law &*
13 *Contemporary Problems* 55 (2017), available at
14 <http://scholarship.law.duke.edu/lcp/vol80/iss2/3>, is attached as **Exhibit 25**.

15 28. A true and correct copy of H.R. Rep. No. 103-489 (1994), 1994 WL
16 168883, reprinted in 1994 U.S.C.C.A.N. 1820, is attached as **Exhibit 26**.

17 29. A true and correct copy of The Safety for All Act of 2016, 2016 Cal.
18 Legis. Serv. Proposition 63 (West), is attached as **Exhibit 27**.

19 30. A true and correct copy of Sandy Hook Advisory Comm'n, *Final*
20 *Report of the Sandy Hook Advisory Commission* (2015) is attached as **Exhibit 28**.

21 31. A true and correct copy of *LAPD Chief Backs Ban on Some Ammo*
22 *Magazines*, NBC So. Cal., Mar. 2, 2011, available at
23 [https://www.nbclosangeles.com/news/local/beck-lapd-ammunition-ban-nra-](https://www.nbclosangeles.com/news/local/beck-lapd-ammunition-ban-nra-117261943.html)
24 [117261943.html](https://www.nbclosangeles.com/news/local/beck-lapd-ammunition-ban-nra-117261943.html), is attached as **Exhibit 29**.

25 32. A true and correct copy of C. S. Koper & D. C. Reedy, *Impact of*
26 *Handgun Types on Gun Assault Outcomes: A Comparison of Gun Assaults*
27 *Involving Semiautomatic Pistols and Revolvers*, 9 *Injury Prevention* 151 (2003) is
28 attached as **Exhibit 30**.

1 33. A true and correct copy of Brady Center to Prevent Gun Violence,
2 Assault Weapons: 'Mass Produced Mayhem' (2008) is attached as **Exhibit 31**.

3 34. A true and correct copy of the Testimony of Brian J. Siebel, Senior
4 Attorney, Brady Center to Prevent Gun Violence, Before the Council of the District
5 of Columbia (Oct. 1, 2008) is attached as **Exhibit 32**.

6 35. A true and correct copy of Christopher S. Koper et al., *Gunshot*
7 *Victimisations Resulting from High-Volume Gunfire Incidents in*
8 *Minneapolis: Findings and Policy Implications*, Injury Prevention, Feb. 24, 2018,
9 <http://injuryprevention.bmj.com/content/early/2018/02/24/injuryprev-2017-042635>,
10 is attached as **Exhibit 33**.

11 36. A true and correct copy of Nat. Law Enforcement P'ship to Prevent
12 Gun Violence, Protecting Communities from Assault Weapons and High-capacity
13 Ammunition Magazines (2017) is attached as **Exhibit 34**.

14 37. A true and correct copy of the Declaration of San Francisco Police
15 Department Officer Joseph Emanuel in Support of Plaintiff's Ex Parte Application
16 for Order to Show Cause Re: Preliminary Injunction, *People v. Badger Mountain*
17 *Supply, et al.*, No. CGC-17-557010 (S.F. Super. Feb. 21, 2017), is attached as
18 **Exhibit 35**. This declaration was submitted as Appendix B to the brief of Amici
19 Curiae City and County of San Francisco, the City of Los Angeles, and the City of
20 Sunnyvale in *Duncan v. Becerra*, 9th Cir. No. 17-56081 (9th Cir. Oct. 19, 2017)
21 (ECF No. 29).

22 38. A true and correct copy of the Declaration of Detective Michael
23 Mersereau of the Los Angeles Police Department in Support of Amici Curiae the
24 City and County of San Francisco, the City of Los Angeles, and the City of
25 Sunnyvale, *Duncan v. Becerra*, 9th Cir. No. 17-56081 (9th Cir. Oct. 19, 2017), is
26 attached as **Exhibit 36**. This declaration was submitted as Appendix K to the brief
27 of Amici Curiae City and County of San Francisco, the City of Los Angeles, and
28

1 the City of Sunnyvale in *Duncan v. Becerra*, 9th Cir. No. 17-56081 (9th Cir. Oct.
2 19, 2017) (ECF No. 29).

3 39. A true and correct copy of Mark Follman, et al., *A Guide to Mass*
4 *Shootings in America*, Mother Jones (last updated Mar. 10, 2018, 9:00 AM),
5 available at <https://www.motherjones.com/politics/2012/07/mass-shootings-map/>,
6 is attached as **Exhibit 37**.

7 40. A true and correct copy of David S. Fallis & James V. Grimaldi, *Va.*
8 *Data Show Drop in Criminal Firepower During Assault Gun Ban*, Wash. Post, Jan.
9 23, 2011, available at [http://www.washingtonpost.com/wp-](http://www.washingtonpost.com/wp-dyn/content/article/2011/01/22/AR2011012203452.html)
10 [dyn/content/article/2011/01/22/AR2011012203452.html](http://www.washingtonpost.com/wp-dyn/content/article/2011/01/22/AR2011012203452.html), is attached as **Exhibit 38**.

11 41. A true and correct copy of David S. Fallis, *Data Indicate Drop in*
12 *High-Capacity Magazines During Federal Gun Ban*, Wash. Post, Jan. 10, 2013,
13 available at [https://www.washingtonpost.com/investigations/data-point-to-drop-in-](https://www.washingtonpost.com/investigations/data-point-to-drop-in-high-capacity-magazines-during-federal-gun-ban/2013/01/10/d56d3bb6-4b91-11e2-a6a6-aabac85e8036_story.html?utm_term=.a7d9831fe6dd)
14 [high-capacity-magazines-during-federal-gun-ban/2013/01/10/d56d3bb6-4b91-](https://www.washingtonpost.com/investigations/data-point-to-drop-in-high-capacity-magazines-during-federal-gun-ban/2013/01/10/d56d3bb6-4b91-11e2-a6a6-aabac85e8036_story.html?utm_term=.a7d9831fe6dd)
15 [11e2-a6a6-aabac85e8036_story.html?utm_term=.a7d9831fe6dd](https://www.washingtonpost.com/investigations/data-point-to-drop-in-high-capacity-magazines-during-federal-gun-ban/2013/01/10/d56d3bb6-4b91-11e2-a6a6-aabac85e8036_story.html?utm_term=.a7d9831fe6dd), is attached as
16 **Exhibit 39**.

17 42. A true and correct copy of relevant excerpts from Gary Kleck, *Point*
18 *Blank: Guns and Violence in America* (1991) is attached as **Exhibit 40**.

19 43. A true and correct copy of Claude Werner, *The Armed Citizen -*
20 *Analysis of Five Years of Armed Encounters*, GunsSaveLives.com (Mar. 12, 2012),
21 available at [http://gunssavelives.net/self-defense/analysis-of-five-years-of-armed-](http://gunssavelives.net/self-defense/analysis-of-five-years-of-armed-encounters-with-data-tables/)
22 [encounters-with-data-tables/](http://gunssavelives.net/self-defense/analysis-of-five-years-of-armed-encounters-with-data-tables/), is attached as **Exhibit 41**.

23 44. A true and correct copy of California Voter Information Guide,
24 Firearms. Ammunition Sales. Initiative Statute. California Proposition 63 (2016),
25 available at http://repository.uchastings.edu/ca_ballot_props/1356, is attached as
26 **Exhibit 42**.

27 45. A true and correct copy of Larry Buchanan, et al., *How They Got Their*
28 *Guns*, N.Y. Times, Nov. 5, 2017), available at

6
Declaration of John D. Echeverria in Support of Defendant's Opposition to Plaintiffs' Motion for
Summary Judgment or, Alternatively, Partial Summary Judgment (17-cv-1017-BEN-JLB)

1 [https://www.nytimes.com/interactive/2015/10/03/us/how-mass-shooters-got-their-](https://www.nytimes.com/interactive/2015/10/03/us/how-mass-shooters-got-their-guns.html)
2 [guns.html](https://www.nytimes.com/interactive/2015/10/03/us/how-mass-shooters-got-their-guns.html), is attached as **Exhibit 43**.

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

5 Executed on April 9, 2018, at Los Angeles, California.

6
7 /s/ John D. Echeverria
8 John D. Echeverria
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1	Expert Report of Lucy P. Allen	00001-00033
2	Expert Rebuttal Report of John J. Donohue	00034-00072
3	Revised Expert Report of Louis J. Klarevas	00073-00120
4	Expert Report of Christopher S. Koper	00121-00433
5	Transcript of Deposition of Stephen Helsley (Excerpts)	00434-00456
6	Transcript of Deposition of Blake Graham, (Excerpts)	00457-00463
7	Transcript of Deposition of Carlisle Moody (Excerpts)	00464-00480
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11	Transcript of Deposition of Louis J. Klarevas (Excerpts)	00519-00533
12	Dep't of the Treasury, Bureau of Alcohol, Tobacco, and Firearms (ATF), <i>Recommendation on the Importability of Certain Semiautomatic Rifles</i> (1989)	00534-00553
13	Dep't of the Treasury, Bureau of Alcohol, Tobacco, and Firearms (ATF), <i>Study on the Sporting Suitability of Modified Semiautomatic Assault Rifles</i> (1998)	00554-00680
14	Sen. Bill No. 1446, 3d Reading Analysis, Mar. 28, 2016 (2015-2016 Reg. Sess.) (Cal. 2016)	00681-00684

<u>Exhibit</u>	<u>Description</u>	<u>Page(s)</u>
15	Prepared Testimony by Laurence H. Tribe, <i>Proposals to Reduce Gun Violence: Protecting Our Communities While Respecting the Second Amendment: Hearing Before the Subcomm. on the Constitution, Civil Rights and Human Rights, S. Comm. on the Judiciary</i> (Feb. 12, 2013) Rights, <i>Proposals to Reduce Gun Violence: Protecting Our Communities While Respecting the Second Amendment</i> (2013).	00685-00721
16	Mark Follman, et al., <i>U.S. Mass Shootings, 1982- 2018: Data from Mother Jones' Investigation</i> (Mother Jones, 2018)	00722-00736
17	Mayors Against Illegal Guns, <i>Analysis of Recent Mass Shootings</i> (2013)	00737-00772
18	Declaration of Professor Daniel Webster in Support of Defendant Xavier Becerra's Opposition to Plaintiffs' Motion for Preliminary Injunction (June 5, 2017) (Dkt. No. 15)	00773-00792
19	Larry Buchanan, et al., <i>Nine Rounds a Second: How the Las Vegas Gunman Outfitted a Rifle to Fire Faster</i> , N.Y. Times, Oct. 5 2017	00793-00797
20	Violence Policy Center, <i>High-Capacity Ammunition Magazines are the Common Thread Running Through Most Mass Shootings in the United States</i> (2018)	00798-00807
21	Alex Yablon, <i>Bans on High-Capacity Magazines, Not Assault Rifles, Most Likely to Limit Shooting Carnage</i> , The Trace, June 13, 2016	00808-00811
22	State of Connecticut, Division of Criminal Justice, <i>Report of the State's Attorney for the Judicial District of Danbury on the Shootings at Sandy Hook Elementary School</i> (2013)	00812-00860

<u>Exhibit</u>	<u>Description</u>	<u>Page(s)</u>
23	Mark Follman, <i>More Guns, More Mass Shootings—Coincidence?</i> , Mother Jones, Dec. 15, 2012	00861-00867
24	Louis Klarevas, <i>Rampage Nation: Securing America from Mass Shootings</i> (2016) (Excerpts)	00868-00898
25	Robert J. Spitzer, <i>Gun Law History in the United States and Second Amendment Rights</i> , 80 Law & Contemporary Problems 55 (2017)	00899-00904
26	H.R. Rep. No. 103-489 (1994)	00905-00981
27	The Safety for All Act of 2016, 2016 Cal. Legis. Serv. Proposition 63 (West)	00982-01011
28	Sandy Hook Advisory Comm'n, <i>Final Report of the Sandy Hook Advisory Commission</i> (2015)	01012-01289
29	<i>LAPD Chief Backs Ban on Some Ammo Magazines</i> , NBC So. Cal., Mar. 2, 2011	01290-01294
30	C. S. Koper & D. C. Reedy, <i>Impact of Handgun Types on Gun Assault Outcomes: A Comparison of Gun Assaults Involving Semiautomatic Pistols and Revolvers</i> , 9 Injury Prevention 151 (2003)	01295-01300
31	Brady Center to Prevent Gun Violence, <i>Assault Weapons: 'Mass Produced Mayhem'</i> (2008)	01301-01364
32	Testimony of Brian J. Siebel, Senior Attorney, Brady Center to Prevent Gun Violence, Before the Council of the District of Columbia (Oct. 1, 2008)	01365-01372
33	Christopher S. Koper et al., <i>Gunshot Victimisations Resulting from High-Volume Gunfire Incidents in Minneapolis: Findings and Policy Implications</i> , Injury Prevention, Feb. 24, 2018	01373-01377

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34	Nat. Law Enforcement P'ship to Prevent Gun Violence, Protecting Communities from Assault Weapons and High-capacity Ammunition Magazines (2017)	01378-01382
35	Declaration of San Francisco Police Department Officer Joseph Emanuel in Support of Plaintiff's Ex Parte Application for Order to Show Cause Re: Preliminary Injunction, <i>People v. Badger Mountain Supply, et al.</i> , No. CGC-17-557010 (S.F. Super. Feb. 21, 2017)	01383-01402
36	Declaration of Detective Michael Mersereau of the Los Angeles Police Department in Support of Amici Curiae the City and County of San Francisco, the City of Los Angeles, and the City of Sunnyvale, <i>Duncan v. Becerra</i> , 9th Cir. No. 17-56081 (9th Cir. Oct. 19, 2017)	01403-01412
37	Mark Follman, et al., <i>A Guide to Mass Shootings in America</i> , Mother Jones (last updated Mar. 10, 2018, 9:00 AM)	01413-01417
38	David S. Fallis & James V. Grimaldi, <i>Va. Data Show Drop in Criminal Firepower During Assault Gun Ban</i> , Wash. Post, Jan. 23, 2011	01418-01422
39	David S. Fallis, <i>Data Indicate Drop in High-Capacity Magazines During Federal Gun Ban</i> , Wash. Post, Jan. 10, 2013	01423-01427
40	Gary Kleck, <i>Point Blank: Guns and Violence in America</i> (1991) (Excerpts)	01428-01437
41	Claude Werner, <i>The Armed Citizen - Analysis of Five Years of Armed Encounters</i> , GunsSaveLives.com (Mar. 12, 2012)	001438-01445

1	<u>Exhibit</u>	<u>Description</u>	<u>Page(s)</u>
2	42	California Voter Information Guide, Firearms.	01446-01469
3		Ammunition Sales. Initiative Statute. California	
4		Proposition 63 (2016)	
5	43	Larry Buchanan, et al., <i>How They Got Their Guns</i> ,	01470-01478
6		N.Y. Times, Nov. 5, 2017)	
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**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF CALIFORNIA**

VIRGINIA DUNCAN, RICHARD LEWIS,
PATRICK LOVETTE, DAVID MARGUGLIO,
CHRISTOPHER WADDELL, and
CALIFORNIA RIFLE & PISTOL
ASSOCIATION, INCORPORATED, a
California corporation,

Plaintiffs,

vs.

XAVIER BECERRA, in his official capacity as
Attorney General of the State of California; and
DOES 1-10,

Defendants.

17-cv-1017-BEN-JLB

**EXPERT REPORT OF
LUCY P. ALLEN**

Judge: Hon. Roger T. Benitez
Action Filed: May 17, 2017

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I. SCOPE OF ASSIGNMENT

1. I have been asked by the Office of the Attorney General of California to address the following issues: (a) the number of rounds of ammunition fired by individuals using a gun in self-defense; (b) weapons used in mass shootings; and (c) the rate at which firearms are used in California for self-defense in a home.

II. QUALIFICATIONS AND REMUNERATION

A. Qualifications

2. I am a Managing Director of NERA Economic Consulting (“NERA”), a member of NERA’s Securities and Finance Practice and Chair of NERA’s Product Liability and Mass Torts Practice. NERA provides practical economic advice related to highly complex business and legal issues arising from competition, regulation, public policy, strategy, finance, and litigation. NERA was established in 1961 and now employs approximately 500 people in more than 20 offices worldwide.

3. In my over 20 years at NERA, I have been engaged as an economic consultant or expert witness in numerous projects involving economic and statistical analysis. I have been qualified as an expert and testified in court on various economic and statistical issues relating to the flow of guns into the criminal market. I have testified at trials in Federal District Court, before the New York City Council Public Safety Committee, the American Arbitration Association and the Judicial Arbitration Mediation Service, as well as in depositions.

4. I have an A.B. from Stanford University, an M.B.A. from Yale University, and M.A. and M. Phil. degrees in Economics, also from Yale University. Prior to joining NERA, I was an Economist for both President George H. W. Bush’s and President Bill Clinton’s Council of Economic Advisers. My resume with recent publications and testifying experience is included as Appendix A.

B. Remuneration

5. NERA is being compensated for time spent by me and my team at standard billing rates and for out-of-pocket expenses at cost. NERA currently bills for my time at \$850 per hour. NERA's fees are not in any way contingent upon the outcome of this matter.

III. MATERIALS CONSIDERED

6. In preparing this report, I considered the following materials:
- a) Complaint for Declaratory and Injunctive Relief, dated May 17, 2017 ("Complaint");
 - b) Memorandum of Points and Authorities in Support of Plaintiffs' Motion for Preliminary Injunction, dated May 26, 2017;
 - c) Attorney General's Opposition to Plaintiffs' Motion for Preliminary Injunction, dated June 5, 2017;
 - d) Plaintiffs' Objections to Defendant's Evidence in Support of Opposition to Motion for Preliminary Injunction, dated June 9, 2017;
 - e) Order Granting Preliminary Injunction, dated June 29, 2017;
 - f) Declaration of Massad Ayoob in Support of Plaintiffs' Motion for Preliminary Injunction, dated May 26, 2017;
 - g) Declaration of Stephen Helsley in Support of Plaintiffs' Motion for Preliminary Injunction, dated May 26, 2017;
 - h) Declaration of Gary Kleck in Support of Plaintiffs' Motion for Preliminary Injunction, dated May 26, 2017;
 - i) Supplemental Declaration of Gary Kleck in Support of Plaintiffs' Motion for Preliminary Injunction, dated June 9, 2017;
 - j) Declaration of Professor John J. Donohue in Support of Defendant Xavier Becerra's Opposition to Plaintiffs' Motion for Preliminary Injunction, dated June 5, 2017;

- k) Declaration of Professor Blake Graham in Support of Defendant Xavier Becerra's Opposition to Plaintiffs' Motion for Preliminary Injunction, dated June 5, 2017;
- l) Declaration of Professor Daniel W. Webster in Support of Defendant Xavier Becerra's Opposition to Plaintiffs' Motion for Preliminary Injunction, dated June 5, 2017;
- m) NRA Institute for Legislative Action, Armed Citizen Stories, <https://www.nraila.org/gun-laws/armed-citizen.aspx>, last accessed May 28, 2017, and supporting news stories for the incidents obtained through Factiva and Google searches;
- n) Claude Werner, "The Armed Citizen – A Five Year Analysis," <http://gunssaveslives.net/self-defense/analysis-of-five-years-of-armed-encounters-with-data-tables>, accessed January 10, 2014;
- o) News stories on incidents of self-defense with a firearm in the home from Factiva between January 2011 and May 2017;
- p) Freedman, David A., and David H. Kaye, "Reference Guide on Statistics," *Reference Manual on Scientific Evidence* (Washington, D.C.: The National Academies Press, 3rd ed., 2011), pp. 211-302;
- q) Fisher, Franklin M., "Multiple Regression in Legal Proceedings," 80 *Columbia Law Review* 702 (1980);
- r) Mother Jones: "US Mass Shootings, 1982-2017: Data From Mother Jones' Investigation," updated October 2, 2017, <http://www.motherjones.com/politics/2012/12/mass-shootings-mother-jones-full-data>, accessed October 2, 2017; "A Guide to Mass Shootings in America," updated October 2, 2017, <http://www.motherjones.com/politics/2012/07/mass-shootings-map>, accessed October 2, 2017; "What Exactly is a Mass Shooting," *Mother Jones*, August 14, 2012, <http://www.motherjones.com/mojo/2012/08/what-is-a-mass-shooting>. Additional details for the mass shootings obtained through Factiva and Google searches;

- s) Citizens Crime Commission of New York City: "Mayhem Multiplied: Mass Shooters and Assault Weapons," 2016, <http://www.nycrimecommission.org/pdfs/CCC-MayhemMultiplied-June2016.pdf>; "Mass Shooting Incidents in America (1984-2012)," <http://www.nycrimecommission.org/mass-shooting-incidents-america.php>, accessed June 1, 2017. Additional details for the mass shootings obtained through Factiva and Google searches;
- t) Kleck, Gary, "Large-Capacity Magazines and the Casualty Counts in Mass Shootings: The Plausibility of Linkages," 17 *Justice Research and Policy* 28 (2016);
- u) "Analysis of Recent Mass Shootings," *Mayors Against Illegal Guns*, September 2013;
- v) "Crime in California 2016," *California Department of Justice: Criminal Justice Statistics Center*;
- w) "Firearm Violence, 1993-2011," *U.S. Department of Justice: Bureau of Justice Statistics*, May 2013;
- x) Federal Emergency Management Agency (FEMA): U.S. Fire Administration, *Residential and nonresidential building fire and fire loss estimates by property use and cause (2003-2015)*, <https://www.usfa.fema.gov/data/statistics/>, accessed September 28, 2017;
- y) U.S. Census Bureau, *State Population Totals Tables: 2010-2016*, <https://www.census.gov/data/tables/2016/demo/popest/state-total.html>, accessed September 28, 2017;
- z) Centers for Disease Control and Prevention (CDC): National Center for Health Statistics, *Injury Mortality: United States*, <https://data.cdc.gov/NCHS/NCHS-Injury-Mortality-United-States/nt65-c7a7>, accessed September 28, 2017;
- aa) National Weather Service, *How Dangerous is Lightning?* <http://www.lightningsafety.noaa.gov/odds.shtml>, accessed September 28, 2017.

IV. FINDINGS

A. Number of rounds fired by individuals in self-defense

7. Plaintiffs claim the banned “large-capacity magazines” (which are magazines capable of holding more than ten rounds) are commonly used in the home for self-defense. In particular, the Complaint claims, “There is little dispute that magazines having a capacity over 10 rounds are popular for self-defense purposes. [...] Each available round is an additional opportunity to end a threat. That is precisely why millions of Americans choose magazines over ten rounds for self-defense, including in the home.”¹

8. Analysis of data from the NRA Institute for Legislative Action, as well as my own study of news reports on incidents of self-defense with a firearm, indicates that it is rare for a person, when using a firearm in self-defense, to fire more than ten rounds. The NRA maintains a database of “Armed Citizen” stories describing private citizens who have successfully defended themselves, or others, using a firearm (“NRA Armed Citizen database”). According to the NRA, the “Armed Citizen” stories “highlight accounts of law-abiding gun owners in America using their Second Amendment rights to defend self, home and family.”² Although the methodology used to compile the NRA Armed Citizen database of stories is not explicitly detailed by the NRA, and the database itself is not readily replicable, the NRA Armed Citizen database was the largest collection of accounts of citizen self-defense compiled by others that I was able to find. In light of the positions taken by the entity compiling the data, I would expect that any selection bias would be in favor of stories that put use of guns in self-defense in the best possible light. In addition to analyzing incidents in the NRA Armed Citizen database (2011 through May 2017), I performed my own systematic, scientific study of news reports on incidents of self-defense with a firearm in the home, covering the same time period.

9. My team and I performed an analysis of incidents in the NRA Armed Citizen database that occurred between January 2011 and May 2017. For each incident, the city/county, state, venue (whether the incident occurred on the street, in the home, or elsewhere) and the

¹ Complaint at 47.

² NRA Institute for Legislative Action, Armed Citizens, <https://www.nraila.org/gun-laws/armed-citizen/>, last accessed May 28, 2017.

number of shots fired were tabulated.³ The information was gathered for each incident from both the NRA synopsis and, where available, an additional news story. An additional news story was found for over 95% of the incidents in the NRA Armed Citizen database.

10. According to this analysis of incidents in the NRA Armed Citizen database, defenders fired 2.2 shots on average. Out of 736 incidents, there were two incidents (0.3% of all incidents), in which the defender was reported to have fired more than 10 bullets. In 18.2% of incidents, the defender did not fire any shots, and simply threatened the offender with a gun. For incidents occurring in the home (56% of total), defenders fired an average of 2.1 shots, and fired no shots in 16.1% of incidents.⁴ The table below summarizes these findings:

³ The following incidents were excluded from the analysis: (1) duplicate incidents, (2) wild animal attacks, and (3) one incident where the supposed victim later pleaded guilty to covering up a murder. When the exact number of shots fired was not specified, we used the average for the most relevant incidents with known number of shots. For example, if the story stated that "shots were fired" this would indicate that at least two shots were fired and thus we used the average number of shots fired in all incidents in which two or more shots were fired and the number of shots was specified.

⁴ A separate study of incidents in the NRA Armed Citizen database for an earlier period (the five year period from 1997 through 2001) found similar results. Specifically, this study found that, on average, 2.2 shots were fired by defenders and that in 28% of incidents of armed citizens defending themselves the individuals fired no shots at all. See Claude Werner, "The Armed Citizen – A Five Year Analysis," <http://gunssaveslives.net/self-defense/analysis-of-five-years-of-armed-encounters-with-data-tables>, accessed January 10, 2014.

**Number of Shots Fired in Self-Defense
Based on NRA Armed Citizen Incidents in the United States
January 2011 - May 2017**

	Shots Fired by Individual in Self-Defense	
	Overall	Incidents in Home
Average Number of Shots Fired	2.2	2.1
Number of Incidents with No Shots Fired	134	66
Percent of Incidents with No Shots Fired	18.2%	16.1%
Number of Incidents with >10 Shots Fired	2	2
Percent of Incidents with >10 Shots Fired	0.3%	0.5%

Notes and Sources:

Data from NRA Armed Citizen database covering 736 incidents (of which 411 were in the home) from January 2011 through May 2017. Excludes duplicate incidents, wild animal attacks and one incident where the supposed victim later pleaded guilty to covering up a murder.

11. We also performed the same analysis of the NRA Armed Citizen database limited to incidents that occurred in the state of California. According to this analysis, defenders in California fired 2.0 shots on average. Out of 47 incidents, there were no incidents in which the defender was reported to have fired more than 10 bullets. In 27.7% of incidents, the defender did not fire any shots, and simply threatened the offender with a gun. For incidents occurring in the home (60% of total), defenders fired an average of 1.9 shots, and fired no shots in 32.1% of incidents. The table below summarizes these findings for California:

**Number of Shots Fired in Self-Defense
Based on NRA Armed Citizen Incidents in California
January 2011 - May 2017**

	Shots Fired by Individual in Self-Defense	
	Overall	Incidents in Home
Average Number of Shots Fired	2.0	1.9
Number of Incidents with No Shots Fired	13	9
Percent of Incidents with No Shots Fired	27.7%	32.1%
Number of Incidents with >10 Shots Fired	0	0
Percent of Incidents with >10 Shots Fired	0.0%	0.0%

Notes and Sources:

Data from NRA Armed Citizen database covering 47 incidents in California (of which 28 were in the home) January 2011 through May 2017. Excludes duplicate incidents and wild animal attacks.

12. In addition to our analysis of incidents in the NRA Armed Citizen database, we performed a systematic, scientific study of news reports on incidents of self-defense with a firearm in the home, covering the same time period used in our analysis of the NRA Armed Citizen database.

13. To identify relevant news stories to include in our analysis, we performed a comprehensive search of published news stories using Factiva, an online news reporting service and archive owned by Dow Jones, Inc. that aggregates news content from nearly 33,000 sources. The search covered the same period used in our analysis of incidents in the NRA Armed Citizen database (January 2011 to May 2017). The search identified all stories that contained the following keywords in the headline or lead paragraph: one or more words from “gun,” “shot,” “shoot,” “fire,” or “arm” (including variations on these keywords, such as “shooting” or “armed”), plus one or more words from “broke in,” “break in,” “broken into,” “breaking into,” “burglar,” “intruder,” or “invader” (including variations on these keywords) and one or more

words from “home,” “apartment,” or “property” (including variations on these keywords).⁵ The region for the Factiva search was set to “United States.” The search returned approximately 35,000 stories for the period January 2011 to May 2017.⁶

14. Using a random number generator, a random sample of 200 stories was selected for each calendar year, yielding 1,400 stories in total.⁷ These 1,400 stories were reviewed to identify those stories that were relevant to the analysis, *i.e.*, incidents of self-defense with a firearm in or near the home. This methodology yielded a random selection of 200 news stories describing incidents of self-defense with a firearm in the home out of a population of approximately 4,800 relevant stories. Thus, we found that out of the over 70 million news stories aggregated by Factiva between January 2011 and May 2017, approximately 4,800 news stories were on incidents of self-defense with a firearm in the home. We analyzed a random selection of 200 of these stories.

15. For each news story, the city/county, state and number of shots fired were tabulated. When tabulating the number of shots fired, we used the same methodology as that used to analyze stories in the NRA Armed Citizen database.⁸ We then identified other stories describing the same incident on Factiva based on the date, location and other identifying information, and recorded the number of times that each incident was covered by Factiva news stories.

16. According to our study of a random selection from approximately 4,800 relevant stories on Factiva describing incidents of self-defense with a firearm in the home, the average number of shots fired per story was 2.61. This is not a measure of the average shots fired *per*

⁵ The precise search string used was: (gun* or shot* or shoot* or fire* or arm*) and (“broke in” or “break in” or “broken into” or “breaking into” or burglar* or intrud* or inva*) and (home* or “apartment” or “property”). An asterisk denotes a wildcard, meaning the search includes words which have any letters in place of the asterisk. For example, a search for shoot* would return results including “shoots,” “shooter” and “shooting.” The search excluded duplicate stories classified as “similar” on Factiva.

⁶ We compared a sample of stories in the NRA Armed Citizen database to the Factiva search and found that the Factiva search contained all of the NRA stories with the exception of those published by sources not tracked by Factiva.

⁷ The random numbers were generated by sampling with replacement.

⁸ When the exact number of shots fired was not specified, we used the average for the most relevant incidents with known number of shots. For example, if the story stated that “shots were fired” this would indicate that at least two shots were fired and thus we used the average number of shots fired in all incidents in which two or more shots were fired and the number of shots was specified.

incident, however, because the number of stories covering an incident varies, and the variation is not independent of the number of shots fired. We found that there was a statistically significant relationship between the number of shots fired in an incident and the number of news stories covering an incident.⁹ We found that on average the more shots fired in a defensive gun use incident, the greater the number of stories covering an incident. For example, as shown in the table below, we found that incidents in Factiva news stories with zero shots fired were covered on average by 1.8 news stories, while incidents with six or more shots fired were covered on average by 10.4 different news stories.

**Average Number of News Stories by Number of Shots Fired
In Factiva Stories on Incidents of Self-Defense with a Firearm
January 2011 - May 2017**

Number of Shots Fired By Defender	Average Number of News Stories
0	1.8
1 to 2	2.8
3 to 5	3.8
6 or more	10.4

Notes and Sources:

Based on news stories describing defensive gun use in a random selection of Factiva stories between 2011 and May 2017 using the search string: (gun* or shot* or shoot* or fire* or arm*) and ("broke in" or "break in" or "broken into" or "breaking into" or burglar* or intrud* or inva*) and (home* or "apartment" or "property"), with region set to "United States" and excluding duplicate stories classified as "similar" on Factiva. Methodology for tabulation of shots fired as per footnote 8.

⁹ Based on a linear regression of the number of news stories as a function of the number of shots fired, the results were statistically significant at the 1% level (more stringent than the 5% level commonly used by academics and accepted by courts. See for example, Freedman, David A., and David H. Kaye, "Reference Guide on Statistics," *Reference Manual on Scientific Evidence* (Washington, D.C.: The National Academies Press, 3rd ed., 2011), pp. 211-302, and Fisher, Franklin M., "Multiple Regression in Legal Proceedings," 80 *Columbia Law Review* 702 (1980).)

17. After adjusting for this disparity in news coverage, we find that the average number of shots fired per incident covered is 2.34.¹⁰ Note that this adjustment does not take into account the fact that some defensive gun use incidents may not be picked up by *any* news story. Given the observed relationship that there are more news stories when there are more shots fired, one would expect that the incidents that are not written about would on average have fewer shots than those with news stories. Therefore, the expectation is that these results, even after the adjustment, are biased upward (*i.e.*, estimating too high an average number of shots and underestimating the percent of incidents in which no shots were fired).

18. As shown in the table below, according to the study of Factiva news stories, in 11.6% of incidents the defender did not fire any shots, and simply threatened the offender with a gun. In 97.3% of incidents the defender fired 5 or fewer shots. There were no incidents where the defender was reported to have fired more than 10 bullets.

¹⁰ The adjustment reflects the probability that a news story on a particular incident would be selected at random from the total population of news stories on incidents of self-defense with a firearm in the home. The formula used for the adjustment is:

$$\frac{\sum_{i=1}^n \left(\text{Shots Fired}_i \times \frac{R_i}{C_i} \right)}{\sum_{i=1}^n \left(\frac{R_i}{C_i} \right)}$$

where:

n = random selection of news stories on incidents of self-defense with a firearm in the home

R_i = number of search results on Factiva in the calendar year of incident i

C_i = number of news stories covering incident i

**Number of Shots Fired in Self-Defense in the Home
Based on Random Selection of News Stories in Factiva
January 2011 - May 2017**

Estimated population of news reports in Factiva on self-defense with a firearm in the home	4,841
Random selection of news reports	200
Average Number of Shots Fired	2.34
Median Number of Shots Fired	2.03
Number of Incidents with No Shots Fired	23
Percent of Incidents with No Shots Fired	11.6%
Number of Incidents with ≤ 5 Shots Fired	195
Percent of Incidents with ≤ 5 Shots Fired	97.3%
Number of Incidents with > 10 Shots Fired	0
Percent of Incidents with > 10 Shots Fired	0.0%

Notes and Sources:

Based on news stories describing defensive gun use in a random selection of Factiva stories between 2011 and May 2017 using the search string: (gun* or shot* or shoot* or fire* or arm*) and ("broke in" or "break in" or "broken into" or "breaking into" or burglar* or intrud* or inva*) and (home* or "apartment" or "property"), with region set to "United States" and excluding duplicate stories classified as "similar" on Factiva. Methodology for tabulation of shots fired as per footnote 8. Number of incidents probability-weighted as per footnote 10.

19. In sum, an analysis of incidents in the NRA Armed Citizen database, as well as our own study of a random sample from approximately 4,800 news stories describing incidents of self-defense with a firearm, indicates that it is rare for a person, when using a firearm in self-defense, to fire more than ten rounds.

B. Mass shootings

1. Use of large-capacity magazines in mass shootings

20. We analyzed two sources detailing historical mass shootings: 1) Mother Jones, “US Mass Shootings, 1982-2017: Data From Mother Jones’ Investigation,”¹¹ and 2) the Citizens Crime Commission of New York City, “Mayhem Multiplied: Mass Shooters and Assault Weapons”¹² and “Mass Shooting Incidents in America (1984-2012).”¹³

21. The definition of a mass shooting and the period covered differed somewhat for each of the sources. The Mother Jones data that we analyzed covers 91 mass shootings from 1982 to October 2017. Mother Jones includes mass shootings in which a shooter killed four or more people in one incident in a public place and excludes crimes involving armed robbery or gang violence.¹⁴ Starting in January 2013, Mother Jones changed its definition of a mass shooting to include instances when a shooter killed three or more people, consistent with a change in the federal definition of a mass shooting.¹⁵ The Citizens Crime Commission data that we analyzed covers 73 mass shootings from 1984 to June 2016. Citizens Crime Commission includes mass shootings in which a shooter killed four or more people in a public place and was unrelated to another crime (such as robbery or domestic violence).¹⁶ We combined the data from

¹¹ “US Mass Shootings, 1982-2017: Data From Mother Jones’ Investigation,” *Mother Jones*, updated October 2, 2017, <http://www.motherjones.com/politics/2012/12/mass-shootings-mother-jones-full-data>, accessed October 2, 2017.

¹² “Mayhem Multiplied: Mass Shooters and Assault Weapons,” *Citizens Crime Commission of New York City*, 2016.

¹³ “Mass Shooting Incidents in America (1984-2012),” *Citizens Crime Commission of New York City*, <http://www.nycrimecommission.org/mass-shooting-incidents-america.php>, accessed June 1, 2017.

¹⁴ “A Guide to Mass Shootings in America,” *Mother Jones*, updated October 2, 2017, <http://www.motherjones.com/politics/2012/07/mass-shootings-map>. See also, “What Exactly is a Mass Shooting,” *Mother Jones*, August 14, 2012, <http://www.motherjones.com/mojo/2012/08/what-is-a-mass-shooting>.

¹⁵ “A Guide to Mass Shootings in America,” *Mother Jones*, updated October 2, 2017, <http://www.motherjones.com/politics/2012/07/mass-shootings-map>. Note this analysis of the Mother Jones data may not match other analyses because Mother Jones periodically updates its historical data.

The Mother Jones data includes three incidents involving two shooters (Columbine High School, San Bernardino and Westside Middle School).

¹⁶ Note that the Citizens Crime Commission data are obtained from two sources. The first source covers 72 mass shootings from 1984 to 2016, in which a shooter killed four or more people in a public place and was unrelated

both sources and searched news stories on each mass shooting to obtain data on shots fired where available.¹⁷ See attached Appendix B for a summary of the combined data.

22. Based on the combined data we found that large-capacity magazines (those with a capacity to hold more than 10 rounds of ammunition) are often used in mass shootings. Magazine capacity is known in 83 out of the 96 mass shootings (86%) considered in this analysis. We found that large-capacity magazines were used in the majority of mass shootings since 1982 regardless of how mass shootings with unknown magazine capacity are treated. In particular, out of 83 mass shootings with known magazine capacity, 54 involved large-capacity magazines or 65% of mass shootings with known magazine capacity. Even assuming the mass shootings with unknown magazine capacity *all* did not involve large-capacity magazines, the majority of mass shootings involved large capacity magazines (*i.e.*, 54 out of 96 mass shootings or 56%).

23. The combined data on mass shootings indicates that it is common for offenders to fire more than ten rounds when using a gun with a large-capacity magazine in mass shootings. In particular, in mass shootings that involved use of large-capacity magazine guns, the average number of shots fired was 72.¹⁸

2. Casualties in mass shootings with large-capacity magazine guns compared with other mass shootings

24. Based on our analysis of the combined mass shootings data in the past 35 years, casualties were higher in the mass shootings that involved large-capacity magazine guns than in

to another crime (such as robbery or domestic violence). See "Mayhem Multiplied: Mass Shooters and Assault Weapons," *Citizens Crime Commission of New York City*, 2016.

The second source covers 33 mass shootings from 1984 to 2012, in which a shooter killed four or more people and the gun used by the shooter had a magazine capacity greater than ten. All but one of the mass shooting incidents in the second source are covered by the first, but the combination of the two sources provides additional detail, such as the number of shots fired. See "Mass Shooting Incidents in America (1984-2012)," *Citizens Crime Commission of New York City*, <http://www.nycrimcomission.org/mass-shooting-incidents-america.php>, accessed June 1, 2017.

¹⁷ The October 1, 2017 Las Vegas Strip mass shooting occurred a few days before the filing of this report and thus, any information or statistics on this mass shooting are preliminary.

¹⁸ There were 36 mass shootings in which the magazine used was known to be a large capacity magazine and the number of shots fired were known. The October 1, 2017 Las Vegas Strip mass shooting occurred a few days before the filing of this report. Details on the number of shots fired are still preliminary and thus are not included in this analysis. (News stories indicate hundreds of shots were fired.)

other mass shootings. In particular, we found an average number of fatalities or injuries of 30 per mass shooting with a large-capacity magazine versus 9 for those without.¹⁹

3. Percent of mass shooters' guns legally obtained

25. The combined data on mass shootings indicates that the majority of guns used in mass shootings were obtained legally.²⁰ According to the data, shooters in at least 71% of mass shootings in the past 35 years obtained their guns legally (at least 68 of the 96 mass shootings) and at least 76% of the guns used in these 96 mass shootings were obtained legally (at least 170 of the 224 guns).²¹

C. Rate in California that victims use a firearm in self-defense in the home

26. Plaintiffs claim the banned large-capacity magazines are commonly used in the home for self-defense.²² We estimated how common it is in California for a person in their home to defend themselves with a gun against an armed robber.

27. Using California-specific crime data collected by the California Department of Justice,²³ we estimated the number of residential robberies committed with a firearm. This estimate was based on the average annual rate for the six-year period between 2011-2016 using

¹⁹ An analysis of the mass shootings detailed in an article by Plaintiffs' expert Gary Kleck yielded similar results (21 average fatalities or injuries in mass shootings involving large-capacity magazines versus 8 for those without). The article covered 88 mass shooting incidents between 1994 and 2013. See Kleck, Gary, "Large-Capacity Magazines and the Casualty Counts in Mass Shootings: The Plausibility of Linkages," 17 *Justice Research and Policy* 28 (2016).

A 2013 study by Mayors Against Illegal Guns found that when mass shootings involved assault weapons or high capacity magazines, the number of deaths was higher. The study was based on data from the FBI and media reports covering the period January 2009 through January 2013. The study found that mass shootings where assault weapons or high-capacity magazines were used resulted in an average of 14.4 people shot and 7.8 deaths versus other mass shootings that resulted in 5.7 people shot and 4.8 deaths. See "Analysis of Recent Mass Shootings," *Mayors Against Illegal Guns*, September 2013.

²⁰ The determination of whether guns were obtained legally is based on Mother Jones reporting.

²¹ Mother Jones did not indicate whether the guns were obtained legally for 10% of mass shootings (9 out of the 91 mass shootings covered by Mother Jones).

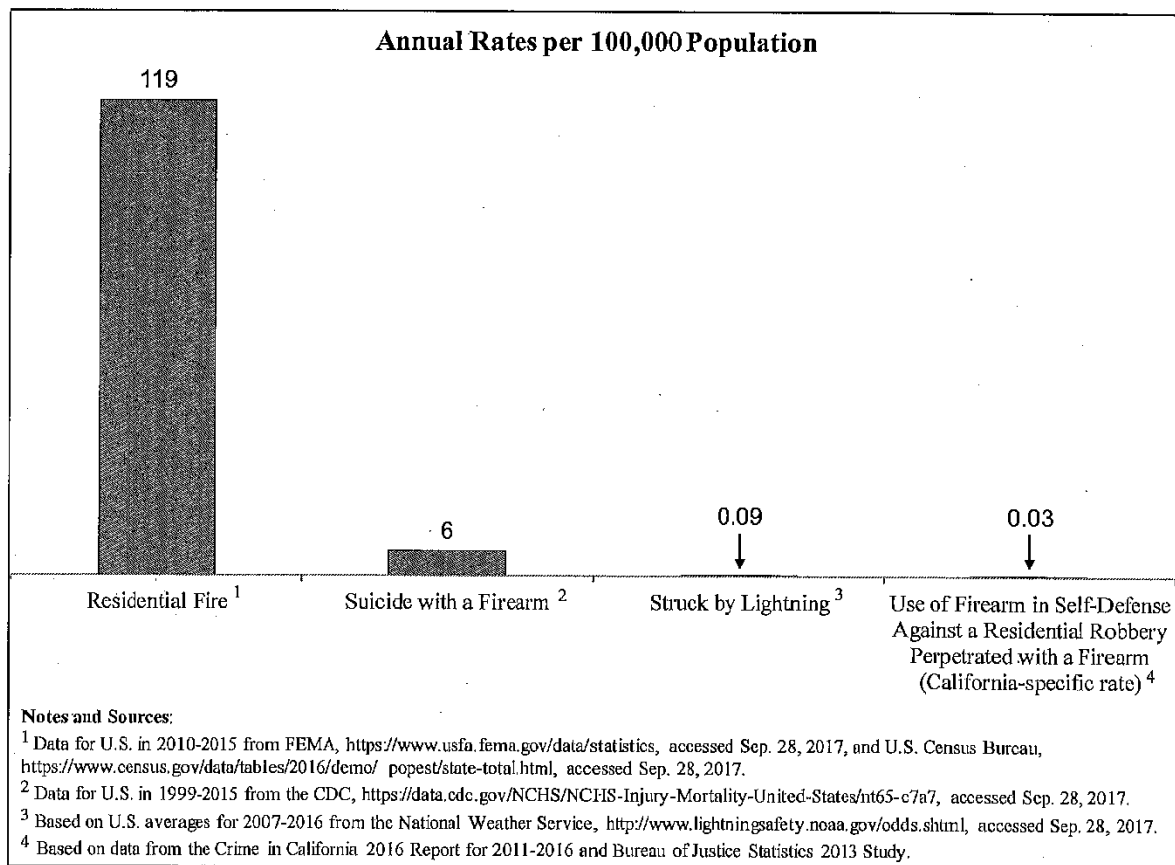
²² Complaint at 47.

²³ "Crime in California 2016," *California Department of Justice: Criminal Justice Statistics Center*.

California annual data on the number of residential robberies adjusted for the percentage of robberies committed with a firearm in California.

28. To this California estimate, the national rate from the Bureau of Justice Statistics at which victims in nonfatal violent crimes used a firearm in self-defense was applied to determine an annual rate that victims use a firearm in self-defense in a residential robbery perpetrated with a firearm.²⁴ We estimated an annual rate of 0.03 instances per 100,000 persons in California in which a victim used a firearm in self-defense in a residential robbery perpetrated with a firearm (0.3 incidents per million people or less than one in a million).

29. The chart below illustrates how this rate compares with annual rates of other events: residential fires, suicide with a firearm and being struck by lightning.



²⁴ This rate is obtained from "Firearm Violence, 1993-2011," *U.S. Department of Justice: Bureau of Justice Statistics*, May 2013, p. 12, Table 11.

The chart shows that the annual rate of a person being struck by lightning is around one in a million. The rate in California of a victim using a firearm in self-defense in an armed residential robbery is three times less than being struck by lightning. Further, the chart shows when comparing a person in California's odds of using a firearm in self-defense in an armed residential robbery to other risks, the person is over 200 times more likely to commit suicide with a firearm, and almost 4,000 times more likely to have a fire in their home.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read 'Lucy P. Allen', is written over a horizontal line.

Lucy P. Allen

October 6, 2017

New York, NY

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Appendix A

MANAGING DIRECTOR

Education

YALE UNIVERSITY
M.Phil., Economics, 1990
M.A., Economics, 1989
M.B.A., 1986

STANFORD UNIVERSITY
A.B., Human Biology, 1981

Professional Experience

1994-Present	<p>National Economic Research Associates, Inc. <u>Managing Director</u>. Responsible for economic analysis in the areas of securities, finance and environmental and tort economics. <u>Senior Vice President (2003-2016)</u>. <u>Vice President (1999-2003)</u>. <u>Senior Consultant (1994-1999)</u>.</p>
1992-1993	<p>Council of Economic Advisers, Executive Office of the President <u>Staff Economist</u>. Provided economic analysis on regulatory and health care issues to Council Members and interagency groups. Shared responsibility for regulation and health care chapters of the <i>Economic Report of the President, 1993</i>. Working Group member of the President's National Health Care Reform Task Force.</p>
1986-1988 1983-1984	<p>Ayers, Whitmore & Company (General Management Consultants) <u>Senior Associate</u>. Formulated marketing, organization, and overall business strategies including: Plan to improve profitability of chemical process equipment manufacturer. Merger analysis and integration plan of two equipment manufacturers. Evaluation of Korean competition to a U.S. manufacturer. Diagnostic survey for auto parts manufacturer on growth obstacles. Marketing plan to increase international market share for major accounting firm.</p>

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Summer 1985 **WNET/Channel Thirteen, Strategic Planning Department**
Associate. Assisted in development of company's first long-term strategic plan. Analyzed relationship between programming and viewer support.

1981-1983 **Arthur Andersen & Company**
Consultant. Designed, programmed and installed management information systems. Participated in redesign/conversion of New York State's accounting system. Developed municipal bond fund management system, successfully marketed to brokers. Participated in President's Private Sector Survey on Cost Control (Grace Commission). Designed customized tracking and accounting system for shipping company.

Teaching

1989- 1992 **Teaching Fellow, Yale University**
Honors Econometrics
Intermediate Microeconomics
Competitive Strategies
Probability and Game Theory
Marketing Strategy
Economic Analysis

Publications, Speeches and Conference Papers

"Snapshot of Recent Trends in Asbestos Litigation: 2017 Update," (co-author), NERA Report, 2017.

"Asbestos: Economic Assessment of Bans and Declining Production and Consumption," World Health Organization, 2017.

"Snapshot of Recent Trends in Asbestos Litigation: 2016 Update," (co-author), NERA Report, 2016.

"Economic Dimension and Societal Costs and Benefits of Banning Asbestos," presented at the World Health Organization, Regional Office for Europe conference, Assessing the Economic Costs of the Health Impacts of Environmental and Occupational Factors: The Economic Dimension of Asbestos, Bonn, Germany, 2016.

"Snapshot of Recent Trends in Asbestos Litigation: 2015 Update," (co-author), NERA Report, 2015.

Participant in panel on "Expert Reports and Depositions" at PLI Expert Witness 2014, hosted by the Practising Law Institute, New York, New York, 2014.

"Snapshot of Recent Trends in Asbestos Litigation: 2014 Update," (co-author), NERA Report, 2014.

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"High Frequency Trading --A Primer in 1,800,000 Milliseconds" before the Litigation Group at Morrison Foerster, New York, New York, 2014.

"Snapshot of Recent Trends in Asbestos Litigation: 2013 Update," (co-author), NERA Report, 2013.

"Asbestos Payments per Resolved Claim Increased 75% in the Past Year – Is This Increase as Dramatic as it Sounds? Snapshot of Recent Trends in Asbestos Litigation: 2012 Update," (co-author), NERA Report, 2012.

"Snapshot of Recent Trends in Asbestos Litigation: 2011 Update," (co-author), NERA White Paper, 2011.

Participant in panel at The Implications of Matrixx, hosted by NERA Economic Consulting, New York, New York, 2011.

"2011 & Beyond--Predicting Mass Tort Litigation: with a Focus on Pharmaceutical Torts" presented at Emerging Insurance Coverage and Allocation Issues, hosted by Perrin Conferences, New York, New York, 2011.

Presented recent trends in settlements, predicting settlement amounts, and the use of economic analysis at mediation in the "Settlement Trends & Tactics" panel at Securities Litigation & Enforcement: Current Developments & Strategies, hosted by the New York City Bar, New York, New York, 2010.

"Snapshot of Recent Trends in Asbestos Litigation: 2010 Update," (co-author), NERA White Paper, 2010.

"Settlement Trends and Tactics" presented at Securities Litigation During the Financial Crisis: Current Development & Strategies, hosted by the New York City Bar, New York, New York, 2009.

"GM and Chrysler Bankruptcies: Potential Impact on Other Asbestos Defendants" presented at Asbestos Litigation Conference: A Comprehensive National Overview and Outlook, hosted by Perrin Conferences, San Francisco, California, 2009.

"Snapshot of Recent Trends in Asbestos Litigation," (co-author), NERA White Paper, 2009.

"Emerging Economies and Product Recall -- Are the Claims Coming?" presented at The International Reinsurance Summit 2008, Hamilton, Bermuda, 2008.

"China Product Recalls: What's at Stake and What's Next," (co-author), NERA Working Paper, 2008.

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"Recent Trends in Securities Litigation" presented at Strategies, Calculations & Insurance in Complex Business Litigation, hosted by the Directors Roundtable, New York, New York, 2008.

"The Current Landscape" presented at Mealey's Product Recall Liability Conference: Made in China and Beyond, Washington, DC, 2007.

"China Product Recalls: What's at Stake and What's Next" presented at China Product Recalls, sponsored by National Economic Research Associates, New York, New York, 2007.

"Damages and Loss Causation in Shareholder Class Actions after Dura" presented at Securities Litigation: Emerging Trends in Enforcement and Winning Litigation Strategies hosted by the International Quality & Productivity Center, New York, New York, 2006.

"Forecasting Product Liability by Understanding the Driving Forces," (co-author), The International Comparative Legal Guide to Product Liability, 2006.

"Recent Trends in Securities Class Action Litigation," presented at The Class Action Litigation Summit Program Class Action in the Securities Industry, Washington, D.C., 2003.

"Product Liability Claims Estimation – Four Steps, Four Myths" presented at Standard & Poor's Seminar, New York, New York, 2001.

"How Bad Can It Be? The Economics of Damages and Settlements in Shareholder Class Actions," Balancing Disclosure and Litigation Risks for Public Companies (Or Soon-To-Be Public Companies) Seminar, sponsored by Alston & Bird LLP and RR Donnelley Financial, Nashville, Tennessee, 2000.

"Securities Litigation Reform: Problems and Progress," Viewpoint, November 1999, Issue No. 2 (co-authored).

"Trends in Securities Litigation and the Impact of the PSLRA," Class Actions & Derivative Suits, American Bar Association Litigation Section, Vol. 9, No. 3, Summer 1999 (co-authored).

"Random Taxes, Random Claims," Regulation, Winter 1997, pp. 6-7 (co-authored).

"Adverse Selection in the Market for Used Construction Equipment," presented at the NBER Conference on Research in Income and Wealth, Federal Reserve Board, June 1992.

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Expert Reports, Depositions & Testimony (4 years)

Deposition Testimony and Expert Report before the United States District Court for the Western District of Texas, Austin Division in *City of Pontiac General Employees' Retirement System v. Dell, Inc., et al.*, 2017.

Deposition Testimony and Expert Report before the United States District Court for the Southern District of Texas, Houston Division in *In re Willbros Group, Inc. Securities Litigation*, 2017.

Declaration before the United States District Court Eastern District of California in *William Wiese, et al. v. Xavier Becerra, et al.* and *Virginia Duncan, et al. v. Xavier Becerra, et al.*, 2017.

Deposition Testimony and Expert Report before the United States District Court for the Southern District of Texas, Houston Division in *In re Cobalt International Energy Inc. Securities Litigation.*, 2017.

Testimony, Deposition Testimony and Expert Report before the United States District Court for the Northern District of Texas, Dallas Division in *DEKA Investment GmbH, et al. v. Santander Consumer USA Holdings, Inc., et al.*, 2017.

Deposition Testimony before the Superior Court of the State of North Carolina for Mecklenburg County in *Next Advisor, Inc. v. LendingTree, Inc.*, 2017

Deposition Testimony and Expert Report before the Supreme Court of the State of New York, County of New York in *Iroquois Master Fund Ltd., et al. v. Hyperdynamics Corporation*, 2016.

Deposition Testimony and Expert Report before the United States District Court for the Northern District of Texas, Dallas Division in *The Archdiocese of Milwaukee Supporting Fund, Inc., et al. v. Halliburton Company, et al.*, 2016.

Expert Report before the United States District Court for the Northern District of Georgia, Atlanta Division, in *In re Suntrust Banks, Inc. ERISA Litigation*, 2016.

Deposition Testimony and Expert Report before the Superior Court of New Jersey, Union County, in *Syngenta Crop Protection, Inc. v. Insurance Company of North America et al.*, 2015.

Declaration before the United States District Court Northern District of Georgia, in *John Noble, et al. v. Premiere Global Services, Inc., et al.*, 2015.

Deposition Testimony and Expert Report before the United States District Court Central District of California, in *Amanda Sateriale, et al. v. RJ Reynolds Tobacco Co. et al.*, 2015.

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Rebuttal Report and Expert Report in the United States of America before the Securities and Exchange Commission in *Houston American Energy Corp., et al.*, 2014.

Testimony, Deposition Testimony and Expert Report before the United States District Court for the Northern District of Texas, Dallas Division in *The Archdiocese of Milwaukee Supporting Fund, Inc., et al. v. Halliburton Company, et al.*, 2014.

Deposition Testimony and Expert Report before the United States District Court for the Eastern District of Pennsylvania in *Power Restoration International, Inc. v. PepsiCo, Inc., Bottling Group, LLC, and Frito-Lay Trading Company (Europe), GmbH*, 2014.

Deposition Testimony and Expert Reports before the United States District Court Southern District of New York in *In re Lower Manhattan Disaster Site Litigation*, 2014.

Deposition Testimony and Expert Report before the United States District Court Southern District of Florida in *Atul Kumar Sood, et al. v. Catalyst Pharmaceutical Partners Inc., et al.*, 2014.

Declaration before the Superior Court of Gwinnett County State of Georgia in *City of Riviera Beach General Employees Retirement System, et al. v. Aaron's Inc., et al., Norfolk County Retirement System, et al. v. Aaron's Inc., et al.*, 2014.

Deposition Testimony, Surrebuttal Report and Expert Report before the United States District Court Middle District of Tennessee Nashville Division in *Garden City Employees' Retirement System and Central States, Southeast and Southwest Areas Pension Fund, et al. v. Psychiatric Solutions, Inc., et al.*, 2014.

Declaration before the United States District Court Northern District of California San Jose Division in *Fyock, et al. v. The City of Sunnyvale, et al.*, 2014.

Deposition Testimony and Expert Report before the United States District Court for the District of Maryland (Northern Division) in *Kolbe, et al. v. O'Malley, et al.*, 2014.

Declaration before the United States District Court Northern District of California in *San Francisco Veteran Police Officers Association, et al. v. The City and County of San Francisco, et al.*, 2014.

Testimony and Declaration before the United States Bankruptcy Court Southern District of New York in *In re Residential Capital, LLC, et al.*, 2013.

Deposition Testimony and Expert Report before the United States District Court for the Eastern District of Michigan Southern Division in *Timothy Hennigan, Aaron McHenry, and Christopher Cocks, et al. v. General Electric Company*, 2013.

Declaration before the United States District Court for the Western District of New York in *New York State Rifle and Pistol Association, Inc., et al. v. Cuomo, et al.*, 2013.

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Expert Report before the United States District Court for the District of New Jersey in *Charles Stanziale, Jr. v. PepsiCo, Inc., et al.*, 2013.

Deposition Testimony before the United States District Court for the Southern District of New York, *In re Winstar Communications Securities Litigation*, 2013.

Supplemental Report before the United States District Court for the District of New Jersey in *Howmedica Osteonics Corp. v. Zimmer, Inc., et al.*, 2013.

Expert Report before the United States District Court of New Jersey in *Boris Goldenberg, et al. v. Indel, Inc., et al.*, 2013.

Deposition Testimony and Expert Report before the United States Court of Federal Claims in *Starr International Company, Inc. v. the United States of America*, 2013.

Expert Report before the Circuit Court for the County of Fairfax in *John DeGroote as liquidating trustee for and on behalf of the BearingPoint, Inc. Liquidating Trust v. F. Edwin Harbach, et al.*, 2013.

Appendix B
Combined Mass Shootings Data
1982 – October 2017

Case	Location	Date	Source	Large Cap. Mag. ^a	Fatalities ^b	Injuries ^b	Total Fatalities & Injuries ^b	Shots Fired ^c	Gun(s) Obtained Legally? ^c	Offenders' Number of Guns
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)
1. Las Vegas Strip	^d Las Vegas, NV	10/1/2017	MJ	Yes	59 ^d	527 ^d	586 ^d	- ^d	Yes ^d	23 ^d
2. San Francisco UPS	San Francisco, CA	6/14/2017	MJ	Yes	3	2	5	-	No	2
3. Pennsylvania Supermarket	Tunkhannock, PA	6/7/2017	MJ	No	3	0	3	59 ^e	-	2
4. Fiamma Workplace	Orlando, FL	6/5/2017	MJ	-	5	0	5	-	-	1
5. Ohio Nursing Home	Kirkersville, OH	5/12/2017	MJ	-	3	0	3	-	-	2
6. Fresno Downtown	Fresno, CA	4/18/2017	MJ	No	3	0	3	16 ^f	-	1
7. Fort Lauderdale Airport	Fort Lauderdale, FL	1/6/2017	MJ	-	5	6	11	15 ^g	Yes	1
8. Cascade Mall	Burlington, WA	9/23/2016	MJ	-	5	0	5	-	-	1
9. Baton Rouge Police	Baton Rouge, LA	7/17/2016	MJ	Yes	3	3	6	43 ^h	-	3
10. Dallas Police	Dallas, TX	7/7/2016	MJ	Yes	5	11	16	-	Yes	3
11. Orlando Nightclub	Orlando, FL	6/12/2016	MJ/CC	Yes	49/50	53	102/103	110 ⁱ	Yes	2
12. Excel Industries	Hesston, KS	2/25/2016	MJ	Yes	3	14	17	-	Yes	2
13. Kalamazoo	Kalamazoo County, MI	2/20/2016	MJ	-	6	2	8	-	Yes	1
14. San Bernardino	San Bernardino, CA	12/2/2015	MJ/CC	Yes	14/16	21	35/37	150 ^j	Yes	4
15. Planned Parenthood Clinic	Colorado Springs, CO	11/27/2015	MJ	-	3	9	12	-	-	1
16. Colorado Springs	Colorado Springs, CO	10/31/2015	MJ	Yes	3	0	3	-	Yes	3
17. Umpqua Community College	Roseburg, OR	10/1/2015	MJ/CC	Yes	9/10	9	18/19	-	Yes	6
18. Chattanooga Military Center	Chattanooga, TN	7/16/2015	MJ/CC	Yes	5/6	2/3	7/9	-	Yes	3
19. Charleston Church	Charleston, SC	6/17/2015	MJ/CC	Yes	9	1	10	-	Yes	1
20. Trestle Trail Bridge	Menasha, WI	6/11/2015	MJ	-	3	1	4	-	Yes	2
21. Marysville High School	Marysville, WA	10/24/2014	MJ/CC	Yes	5	1	6	-	Stolen	1
22. Isla Vista	Santa Barbara, CA	5/23/2014	MJ	Yes	6	13	19	50 ^k	Yes	3
23. Fort Hood	Fort Hood, TX	4/3/2014	MJ	-	3	12	15	-	Yes	1
24. Alturas Tribal	Alturas, CA	2/20/2014	MJ	-	4	2	6	-	-	2
25. Washington Navy Yard	Washington, D.C.	9/16/2013	MJ/CC	No	12/13	8/7	20	-	Yes	2

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(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)
26. Hialeah	Hialeah, FL	7/26/2013	MJ/CC	Yes	7	0	7	10 ¹	Yes	1
27. Santa Monica	Santa Monica, CA	6/7/2013	MJ/CC	Yes	6	3/4	9/10	70 ^m	Yes	2
28. Federal Way	Federal Way, WA	4/21/2013	MJ	-	5	0	5	-	Yes	2
29. Upstate New York	Herkimer County, NY	3/13/2013	MJ	-	5	2	7	-	Yes	1
30. Newtown School	Newtown, CT	12/14/2012	MJ/CC	Yes	28	2	30	154	Stolen	4/3
31. Accent Signage Systems	Minneapolis, MN	9/27/2012	MJ/CC	Yes	7	1/2	8/9	46	Yes	1
32. Sikh Temple	Oak Creek, WI	8/5/2012	MJ/CC	Yes	7	3	10	-	Yes	1
33. Aurora Movie Theater	Aurora, CO	7/20/2012	MJ/CC	Yes	12	70	82	80	Yes	4
34. Seattle Café	Seattle, WA	5/30/2012	MJ/CC	No	6	1	7	-	Yes	2
35. Oikos University	Oakland, CA	4/2/2012	MJ/CC	No	7	3	10	-	Yes	1
36. Su Jung Health Sauna	Norcross, GA	2/22/2012	MJ	-	5	0	5	-	Yes	1
37. Seal Beach	Seal Beach, CA	10/14/2011	MJ/CC	No	8	1	9	-	Yes	3
38. IHOP	Carson City, NV	9/6/2011	MJ/CC	Yes	5	7	12	-	Yes	3
39. Grand Rapids	Grand Rapids, MI	7/7/2011	CC	Yes	8	2	10	10	-	1
40. Tucson	Tucson, AZ	1/8/2011	MJ/CC	Yes	6	13	19	33	Yes	1
41. Hartford Beer Distributor	Manchester, CT	8/3/2010	MJ/CC	Yes	9	2	11	11	Yes	2
42. Yoyito Café	Hialeah, FL	6/6/2010	CC	No	5	3	8	9 ⁿ	-	-
43. Coffee Shop Police	Parkland, WA	11/29/2009	MJ/CC	No	4/5	1/0	5	-	Stolen	2
44. Fort Hood	Fort Hood, TX	11/5/2009	MJ/CC	Yes	13	30/32	43/45	214	Yes	1
45. Binghamton	Binghamton, NY	4/3/2009	MJ/CC	Yes	14	4	18	99	Yes	2
46. Carthage Nursing Home	Carthage, NC	3/29/2009	MJ/CC	No	8	3/2	11/10	-	Yes	2
47. Atlantis Plastics	Henderson, KY	6/25/2008	MJ/CC	No	6	1	7	-	Yes	1
48. Northern Illinois University	DeKalb, IL	2/14/2008	MJ/CC	Yes	5/6	21	26/27	54	Yes	4
49. Kirkwood City Council	Kirkwood, MO	2/7/2008	MJ/CC	No	6	2	8	-	Stolen	2
50. Westroads Mall	Omaha, NE	12/5/2007	MJ/CC	Yes	9	4/5	13/14	14	Stolen	1

Exhibit 1
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Appendix B
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1982 – October 2017

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(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)
51. Crandon	Crandon, WI	10/7/2007	MJ/CC	Yes	6/7	1	7/8	30 ^o	Yes	1
52. Virginia Tech	Blacksburg, VA	4/16/2007	MJ/CC	Yes	32/33	23/17	55/50	176	Yes	2
53. Trolley Square	Salt Lake City, UT	2/12/2007	MJ/CC	No	6	4	10	-	No	2
54. Amish School	Lancaster County, PA	10/2/2006	MJ/CC	No	6	5	11	-	Yes	3
55. Capitol Hill	Seattle, WA	3/25/2006	MJ/CC	Yes	7	2	9	-	Yes	4
56. Goleta Postal	Goleta, CA	1/30/2006	MJ/CC	Yes	8	0	8	-	Yes	1
57. Red Lake	Red Lake, MN	3/21/2005	MJ/CC	No	10	5/6	15/16	-	Stolen	3
58. Living Church of God	Brookfield, WI	3/12/2005	MJ/CC	Yes	7/8	4	11/12	-	Yes	1
59. Damageplan Show	Columbus, OH	12/8/2004	MJ/CC	No	5	7/3	12/8	15 ^p	Yes	1
60. Hunting Camp	Meteor, WI	11/21/2004	CC	Yes	6	3	9	20	-	1
61. Windy City Warehouse	Chicago, IL	8/27/2003	CC	No	7	0	7	-	-	-
62. Lockheed Martin	Meridian, MS	7/8/2003	MJ/CC	Yes	7	8	15	-	Yes	5
63. Navistar	Melrose Park, IL	2/5/2001	MJ/CC	Yes	5	4	9	-	Yes	4
64. Wakefield	Wakefield, MA	12/26/2000	MJ/CC	Yes	7	0	7	37	Yes	3
65. Hotel	Tampa, FL	12/30/1999	MJ/CC	No	5	3	8	-	Yes	2
66. Xerox	Honolulu, HI	11/2/1999	MJ/CC	Yes	7	0	7	28	Yes	1
67. Wedgwood Baptist Church	Fort Worth, TX	9/15/1999	MJ/CC	Yes	8	7	15	30	Yes	2
68. Atlanta Day Trading	Atlanta, GA	7/29/1999	MJ	-	9	13	22	-	Yes	4
69. Columbine High School	Littleton, CO	4/20/1999	MJ/CC	Yes	13/15	24	37/39	188	No	4
70. Thurston High School	Springfield, OR	5/21/1998	MJ/CC	Yes	4	25	29	50	No	3
71. Westside Middle School	Jonesboro, AR	3/24/1998	MJ/CC	Yes	5	10	15	26	Stolen	9/10
72. Connecticut Lottery	Newington, CT	3/6/1998	MJ/CC	Yes	5	1/0	6/5	5	Yes	1
73. Caltrans Maintenance Yard	Orange, CA	12/18/1997	MJ/CC	Yes	5	2	7	144	Yes	1
74. R.E. Phelon Company	Aiken, SC	9/15/1997	MJ/CC	No	4	3	7	-	No	1
75. Fort Lauderdale	Fort Lauderdale, FL	2/9/1996	MJ/CC	No	6	1	7	14 ^q	Yes	2

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(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)
76. Piper Technical Center	Los Angeles, CA	7/19/1995	CC	Yes	4	0	4	-	-	-
77. Walter Rossler Company	Corpus Christi, TX	4/3/1995	MJ/CC	No	6	0	6	-	Yes	2
78. Air Force Base	Fairchild Base, WA	6/20/1994	MJ/CC	Yes	5/6	23	28/29	50 ^r	Yes	1
79. Chuck E. Cheese	Aurora, CO	12/14/1993	MJ/CC	No	4	1	5	-	-	1
80. Long Island Railroad	Garden City, NY	12/7/1993	MJ/CC	Yes	6	19	25	30	Yes	1
81. Luigi's Restaurant	Fayetteville, NC	8/6/1993	MJ/CC	No	4	8	12	-	Yes	3
82. 101 California Street	San Francisco, CA	7/1/1993	MJ/CC	Yes	9	6	15	75	No	3
83. Watkins Glen	Watkins Glen, NY	10/15/1992	MJ/CC	No	5	0	5	-	Yes	1
84. Lindhurst High School	Olivehurst, CA	5/1/1992	MJ/CC	No	4	10	14	-	Yes	2
85. Royal Oak Postal	Royal Oak, MI	11/14/1991	MJ/CC	No	5	5/4	10/9	-	Yes	1
86. University of Iowa	Iowa City, IA	11/1/1991	MJ/CC	No	6	1	7	-	Yes	1
87. Luby's Cafeteria	Killeen, TX	10/16/1991	MJ/CC	Yes	24	20	44	100	Yes	2
88. GMAC	Jacksonville, FL	6/18/1990	MJ/CC	Yes	10	4	14	14	Yes	2
89. Standard Gravure Corporation	Louisville, KY	9/14/1989	MJ/CC	Yes	9	12	21	21	Yes	5
90. Stockton Schoolyard	Stockton, CA	1/17/1989	MJ/CC	Yes	6	29/30	35/36	106	Yes	2
91. ESL	Sunnyvale, CA	2/16/1988	MJ/CC	No	7	4	11	-	Yes	7
92. Shopping Centers	Palm Bay, FL	4/23/1987	MJ/CC	Yes	6	14/10	20/16	40 ^s	Yes	3
93. United States Postal Service	Edmond, OK	8/20/1986	MJ/CC	No	15	6	21	-	Yes	3
94. San Ysidro McDonald's	San Ysidro, CA	7/18/1984	MJ/CC	Yes	22	19	41	257	Yes	3
95. Dallas Nightclub	Dallas, TX	6/29/1984	MJ/CC	Yes	6	1	7	-	No	1
96. Welding Shop	Miami, FL	8/20/1982	MJ	No	8	3	11	-	Yes	1
Large Capacity Magazine Average					10.3	20.0	30.2	71.5		
Non-Large Capacity Magazine Average					6.3	2.9	9.2	22.6		

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(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)

Notes and Sources:

Data from Mother Jones ("US Mass Shootings, 1982-2017: Data from Mother Jones' Investigation," accessed June 1, 2017) and the Citizens Crime Commission of New York City ("Mayhem Multiplied: Mass Shooters and Assault Weapons," 2016, and "Citizens Crime Commission of New York City, Mass Shooting Incidents in America (1984-2012)," accessed June 1, 2017).

MJ indicates Mother Jones data. CC indicates Citizens Crime Commission of New York City data. If sources differ on data, "n" is added between values. In these instances, values from MJ are listed first. Except where noted, all data on shots fired obtained from CC.

^a Large capacity magazines are those with a capacity to hold more than 10 rounds of ammunition.

^b Offender(s) included in counts of fatalities and injuries.

^c The determination of whether guns were obtained legally is based on Mother Jones reporting.

^d The October 1, 2017 Las Vegas Strip mass shooting occurred a few days before the filing of this report and thus, any information and statistics on this mass shooting are preliminary.

^e Shots fired from: "Killer in Supermarket Shooting Posted Chilling Videos Online, Laiding Columbine Massacre," *Washington Post*, June 9, 2017.

^f Shots fired from: "Hate Crime is Suspected After Gunman Kills 3 White Men in Downtown Fresno," *Los Angeles Times*, April 19, 2017.

^g Shots fired from: "Fort Lauderdale Shooting Suspect Appears in Court, Ordered Held Without Bond," *Washington Post*, January 9, 2017.

^h Shots fired from: "Baton Rouge Cop Killer Left Note, Fired At Least 43 Rounds," *CNN*, July 9, 2017.

ⁱ Shots fired from: "We Thought It Was Part of the Music": How the Pulse Nightclub Massacre Unfolded in Orlando," *The Telegraph*, June 13, 2016.

^j Shots fired from: "San Bernardino Suspects Left Trail of Clues, but No Clear Motive," *New York Times*, December 3, 2015.

^k Shots fired from: "Sheriff: Elliot Rodger Fired 50-plus Times in Isle Vista Rampage," *Los Angeles Times*, June 4, 2014.

^l Shots fired from: "Shooter Set \$10,000 on Fire in Hialeah Shooting Rampage," *NBC News*, July 28, 2013.

^m Shots fired from: "Police Call Santa Monica Gunman 'Ready for Battle,'" *New York Times*, June 8, 2013.

ⁿ Shots fired from: "Hialeah Gunman's Rage Over Estranged Wife Leaved 5 Dead," *Sun-Sentinel*, June 7, 2010.

^o Shots fired from: "Small Town Grieves for 6, and the Killer," *Los Angeles Times*, October 9, 2007.

^p Shots fired from: "National Briefing | Midwest: Ohio: Shooter At Club May Have Reloaded," *New York Times*, January 15, 2005.

^q Shots fired from: "5 Beach Workers in Florida are Slain by Ex-Colleague," *New York Times*, February 10, 1996.

^r Shots fired from: "Man Bent On Revenge Kills 4, Hurts 23 -- Psychiatrist Is First Slain In Rampage At Fairchild Air Force Base," *The Seattle Times*, June 21, 1994.

^s Shots fired from: "6 Dead in Florida Sniper Siege; Police Seize Suspect in Massacre," *Chicago Tribune*, April 25, 1987.

DECLARATION OF SERVICE BY E-MAIL and U.S. Mail

Case Name: **Duncan, Virginia et al v. Xavier Becerra**
No.: **17-cv-1017-BEN-JLB**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service with postage thereon fully prepaid that same day in the ordinary course of business.

On October 6, 2017, I served the attached **EXPERT REPORT OF LUCY P. ALLEN** by transmitting a true copy via electronic mail. In addition, I placed a true copy thereof enclosed in a sealed envelope, in the internal mail system of the Office of the Attorney General, addressed as follows:

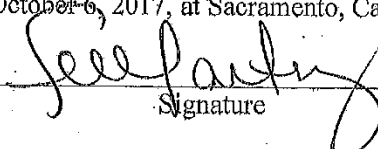
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I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on October 6, 2017, at Sacramento, California.

Chris McCartney
Declarant


Signature

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12838755.docx

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10
11 IN THE UNITED STATES DISTRICT COURT
12 FOR THE SOUTHERN DISTRICT OF CALIFORNIA
13
14

15 **VIRGINIA DUNCAN, et al.,**

16 Plaintiffs,

17 v.

18
19 **XAVIER BECERRA, in his official**
20 **capacity as Attorney General of the**
State of California, et al.,

21 Defendants.
22
23
24
25
26
27
28

17-cv-1017-BEN-JLB

**EXPERT REBUTTAL REPORT
OF JOHN J. DONOHUE**

Judge: Hon. Roger T. Benitez
Action Filed: May 17, 2017

EXPERT REBUTTAL REPORT OF JOHN J. DONOHUE (17-cv-1017-BEN-JLB)

Exhibit 2
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Expert Rebuttal Report of John J. Donohue

Duncan v. Becerra, United States District Court (S.D. Cal.),
Case No.: 17CV1017 BEN JLB
November 2, 2017

BACKGROUND AND QUALIFICATIONS

1. I, John J. Donohue, am the C. Wendell and Edith M. Carlsmith Professor of Law at Stanford Law School. After earning a law degree from Harvard and a Ph.D. in economics from Yale, I have been a member of the legal academy since 1986. I have previously held tenured positions as a chaired professor at both Yale Law School and Northwestern Law School. I have also been a visiting professor at a number of prominent law schools, including Harvard, Yale, the University of Chicago, Cornell, the University of Virginia, Oxford, Toei University (Tokyo), St. Gallen (Switzerland), and Renmin University (Beijing).
2. For a number of years, I have been teaching a course at Stanford on empirical law and economics issues involving crime and criminal justice, and I have previously taught similar courses at Yale Law School, Tel Aviv University Law School, the Gerzensee Study Center in Switzerland, and St. Gallen University School of Law in Switzerland. I have consistently taught courses on law and statistics for two decades.
3. I am a Research Associate of the National Bureau of Economic Research and a member of the American Academy of Arts and Sciences. I was a Fellow at the Center for Advanced Studies in Behavioral Sciences in 2000-01, and served as the co-editor (handling empirical articles) of the *American Law and Economics Review* for six years. I have also served as the President of the American Law and Economics Association and as Co-President of the Society of Empirical Legal Studies.
4. I am also a member of the Committee on Law and Justice of the National Research Council ("NRC"), which "reviews, synthesizes, and proposes research related to crime,

law enforcement, and the administration of justice, and provides an intellectual resource for federal agencies and private groups.”¹

5. My research and writing uses empirical analysis to determine the impact of law and public policy in a wide range of areas, and I have written extensively about the relationship between rates of violent crime and firearms regulation. My complete credentials and list of publications are stated in my curriculum vitae, a true and correct copy of which is attached as Exhibit A.
6. The following lists all of the cases in which I have testified as an expert in the past 4 years. I filed an expert declaration in each of two cases involving a National Rifle Association (“NRA”) challenge to city restrictions on the possession of large-capacity magazines:

Fyock v. City of Sunnyvale, United States District Court (N.D. Cal.), Case No. 4:13-cv-05807-PJH, January 2014.

San Francisco Veteran Police Officers Association v. City and County of San Francisco, United States District Court (N.D. Cal.), Case No. C 13-05351 WHA, January 2014.
7. I also filed an expert declaration in a case involving a challenge by the NRA to Maryland’s restrictions on assault weapons and large-capacity magazines:

Tardy v. O’Malley (currently listed as *Kolbe v. Hogan*), United States District Court (District of Maryland), Case 1:13-cv-02841-CCB, February 2014.

In all these cases, the relevant gun regulations have (ultimately) been sustained in the relevant federal appellate courts.
8. In addition to filing an earlier expert declaration in this case, I also filed (on June 1, 2017) an expert declaration in a case involving a challenge by the NRA to California’s restrictions on carrying of weapons in public:

Flanagan v. Becerra, United States District Court (C.D. Cal.), Case No. 2:16-cv-06164-JAK-AS.
9. I am being compensated at my government rate of \$425 per hour.

¹ See <http://www7.national-academies.org/claj/> online for more information about the NRC.

SUBSTANTIVE CONCLUSIONS

10. The events in Las Vegas on October 1, 2017, have underscored—yet again—the wisdom of the efforts of the California legislature, with the overwhelming support of the voters of the state, “to aid in the shaping and application of those wise restraints that make men free” by banning from our state the large-capacity magazines (LCMs)² that were a key element enabling the extent of the carnage in that horrific mass shooting.³ It is my opinion that if, rather than allowing the federal ban on these devices to lapse in 2004, the country had moved to the more complete ban that California has finally adopted, tragedies like the one in Las Vegas would have been far less deadly and damaging to countless individuals who have been maimed and injured throughout the United States and perhaps the world.⁴ It is also my opinion that Section 32310’s ban on possession of LCMs would decrease the mayhem from at least some mass killings in California, by making it incrementally harder for those bent on mass destruction to implement their criminal designs.

Response to Curcuruto Report

11. In opposition to the ban on LCMs, plaintiffs offer two additional expert reports. The first report is from James Curcuruto of the National Shooting Sports Foundation.
12. Mr. Curcuruto provides irrelevant information, opining as his main conclusion that “There are at least one hundred million magazines of a capacity of more than ten rounds in possession of American citizens” (Curcuruto Report at 3), only to concede later that he really does not know but “it is safe to say whatever the actual number of such magazines

² LCMs are defined as ammunition-feeding devices with the capacity to hold more than 10 rounds of ammunition.

³ The quote is from John MacArthur Maguire and is enshrined at the Harvard Law School library. See <https://asklib.law.harvard.edu/friendly.php?slug=faq/115309> (last visited Nov. 1, 2017).

⁴ The horrendous mass killing in Norway by Anders Breivik, endangered by the restrictive gun laws of Europe, was salvaged by his ability to procure ten 30-round high-capacity magazines from the United States. Stephanie Condon, “Norway Massacre Spurs Call for New U.S. Gun Laws,” CBS News, July 28, 2011, *available at* <https://www.cbsnews.com/news/norway-massacre-spurs-calls-for-new-us-gun-laws/> (last visited Nov. 1, 2017).

in United States consumers' hands is, it is in the tens-of-millions." (Curcuruto Report at 4.)

13. While Mr. Curcuruto offers his wildly varying estimates of the number of high-capacity magazines in the United States, his undifferentiated national speculations offer no insight into how many of these magazines are possessed in rural areas throughout the United States. As a result, his figures would have little relevance to the appropriate regulatory regime for a state with large urban population centers like California. Mr. Curcuruto does not discuss the stock of high-capacity magazines in California, which of course will be far lower on a per capita basis because it has been unlawful to add to this stock for decades.

14. National surveys such as the General Social Survey (GSS) and research by the Pew Research Center and the National Behavioral Risk Factor Surveillance System consistently find a persistent decline in household gun ownership over the past several decades. A March 2013 report from the Pew Research Center states:

The Pew Research Center has tracked gun ownership since 1993, and our surveys largely confirm the General Social Survey trend. In our December 1993 survey, 45% reported having a gun in their household; in early 1994, the GSS found 44% saying they had a gun in their home. A January 2013 Pew Research Center survey found 33% saying they had a gun, rifle or pistol in their home, as did 34% in the 2012 wave of the General Social Survey.⁵

15. Because this reliable social science data shows that the number of households that own guns has likely dropped in recent decades, and certainly has not grown, the robust gun sales in recent years cannot be attributed to increasingly broad gun ownership. Instead, these sales predominantly represent purchases of guns by members of households that previously owned guns, as well as purchases in anticipation that certain gun bans will be enacted with grandfather clauses that will generate profits from the higher prices that follow when the supply of certain weapons or LCMs is restricted.

⁵ Pew Research Center, *Why Own a Gun? Protection is Now Top Reason*, Section 3: Gun Ownership Trends and Demographics, March 12, 2013, available at <http://www.people-press.org/2013/03/12/section-3-gun-ownership-trends-and-demographics> (last visited on November 2, 2017).

16. I am not aware of any current social science research providing an estimate for the number of American households that own LCMs or for the number of LCMs in private hands in America. It is reasonable to assume, however, that consumer demand for LCMs is similar to demand for firearms generally.
17. If that is the case, then LCM ownership by household is also likely to be concentrated, with increased numbers of LCMs held by a declining share of households. This would be consistent with a January 2013 New York Times/CBS News nationwide poll of 1,110 adults showing that nearly two-thirds of Americans favored a ban on LCMs.⁶ This is roughly the percentage of California voters who cast their ballots to rid the state of these devices.
18. Thus, Mr. Curcuruto's unsubstantiated claims about the number of LCMs in private hands should not be confused with broad possession across America, but merely proliferation in the hands of a stable or dwindling number of households. Indeed, plaintiff's other expert, Stephen Helsley, makes this point when he states: "My associates who have such pistols [that accept LCMs] also have a considerable number of spare magazines for them. In my case, I have one 19-round and eight 17-round magazines for my Glock." (Helsley Report at 5.)
19. Moreover, it is unclear what relevance the stock of high-capacity magazines could make to determinations about what can be lawfully banned. Had the federal ban on these magazines not been lifted in 2004, the stock would have been dramatically lower than it is today, and since the 1994 federal ban was lawful, efforts by the gun industry to flood the market with these magazines in its wake can hardly be thought to deprive state governments of the ability to regulate in ways that were available to them prior to 1994.

Response to Helsley Report

⁶ Jennifer Steinhauer, *Pro-Gun Lawmakers Are Open to Limits on Size of Magazines*, N.Y. Times, Feb. 18, 2013, available at http://www.nytimes.com/2013/02/19/us/politics/lawmakers-look-at-ban-on-high-capacity-gun-magazines.html?_r=1 & (last visited November 2, 2017).

20. The second expert report submitted for the plaintiffs is from Stephen Helsley. Noting that for the past 24 years, he was a state liaison for and then consultant to the National Rifle Association, Helsley states that soldiers during war and “on duty, uniformed police officers” often use guns equipped with high-capacity magazines. Without acknowledging that the risks faced by soldiers and police are vastly different from those faced by civilians, Helsley then states the following:

The home-owner and the concealed weapon permit holder want a pistol that can hold significantly more cartridges than a revolver for the same reason a law enforcement officer or soldier wants one—to increase his or her chances of staying alive. For virtuous citizens buy their guns to protect themselves from the same criminals that police carry guns to protect the citizens, the public, and themselves. (Helsley Report at 5).

21. But private individuals have completely different needs than police officers. The former only need to scare off criminals (or hold them off until the police arrive). The police need to effectuate arrests. Thus, while having the criminal run away is a desired outcome for the average citizen, this is a bad outcome for a police officer, which is why an extended gun battle is extremely rare for law-abiding citizens and far more common for the police. Accordingly, Helsley’s effort to look to officer-involved shootings to make judgments about the needs of average citizens widely misses the mark. (Helsley Report at 7).

22. In opposing the ban on high-capacity magazines, Helsley’s claims that “Gunfights frequently involve a lot of ‘missing.’” (Helsley Report at 7.) He then combines that with the fact that the average citizen is not well-trained and is under stress when threatened to argue that more bullets should be sprayed by law-abiding citizens because some of their bullets will likely hit “barriers such as vehicles or walls.” (Helsley Report at 7.) But all of these factors actually provide strong support for a ban on LCMs rather than an argument against such a ban. Helsley doesn’t consider that bullets fired by a modern weapon with an LCM will easily penetrate walls, threatening family members or occupants in attached dwellings. This point was dramatically underscored when a hapless concealed carry permit holder attending a gun safety class inadvertently fired his weapon, which discharged a bullet that easily penetrated the classroom wall, striking and

killing the owner of the gun store who was working in the next room.⁷ Encouraging untrained, stressed individuals to spray bullets from a high-capacity magazine is a recipe for generating similar unwelcome outcomes that will put family members and neighbors at considerable risk.

23. If high-capacity magazines had been completely barred from the civilian market, many lives would have been saved as the destructive capacity of mass shooters would have been appropriately restricted. The *New York Times* video of the recent Las Vegas shooting shows how the Las Vegas concert attendees would use the pauses in firing when the shooter's high-capacity magazines were spent to flee the deadly venue before more shots were fired.⁸ If Stephen Paddock had been limited to using only 10-round magazines during his deadly rampage, potentially hundreds of victims at the concert could have been spared.

24. A prescient December 2016 editorial in the *Las Vegas Sun* noted the danger presented—and the lack of practical use for—LCMs:

By overwhelmingly supporting universal background checks for firearms purchases, Clark County voters made it abundantly clear last month that they were concerned about gun violence.

Now, it's time for Las Vegas-area lawmakers to go a step further to protect Nevadans and push to ban the sale of high-capacity magazines in the state.

⁷ Peter Holley, *Ohio gun store owner accidentally killed by student during firearm-safety class*, *Washington Post*, June 19, 2016, available at https://www.washingtonpost.com/news/morning-mix/wp/2016/06/19/ohio-gun-store-owner-accidentally-killed-by-student-during-firearm-safety-class/?utm_term=.ed4c232d20ad (last visited Nov. 1, 2017).

Another example of how doors and walls do not stop bullets from modern handguns occurred on September 13, 2015, when “39-year-old Mike Lee Dickey was babysitting an 8-year-old Casa Grande, Arizona boy. According to police, at about 2 a.m., Dickey was in the bathroom removing his .45-caliber handgun from the waistband of his pants when he unintentionally discharged the gun. The bullet passed through two doors and struck the 8-year-old in his arm while he lay sleeping in a nearby bedroom. The boy was flown to a hospital in Phoenix for treatment.” *8-year-old boy unintentionally shot by babysitter*, *Ohh Shoot*, Sept. 13, 2016, available at <http://ohhshoot.blogspot.com/2015/09/8-year-old-boy-unintentionally-shot-by.html> (last visited Nov. 1, 2017).

⁸ Malachy Browne, et al., *10 Minutes. 12 Gunfire Bursts. 30 Videos. Mapping the Las Vegas Massacre*, N.Y. TimesVideo, Oct. 21, 2017, available at <https://www.nytimes.com/video/us/100000005473328/las-vegas-shooting-timeline-12-bursts.html> (last visited Nov. 1, 2017).

Eight states and the District of Columbia already have imposed such prohibitions, and with good reason. There's simply no legitimate civilian use for magazines that hold dozens upon dozens of rounds of ammunition.

Don't believe us? Fine, then listen to Clark County Sheriff Joe Lombardo.

"I'm a very avid hunter, I was in the military myself, and there's no need to have a high-capacity magazine for any practical reason," Lombardo said during a recent interview with the Sun.

To the contrary, the dangers posed by such magazines are obvious. Lombardo says the time it takes for suspects to change magazines gives potential victims an opportunity to escape and law enforcement officials an opportunity to safely fire back. That being the case, the fewer times a shooter has to switch out magazines, the fewer the chances for people to get away and authorities to get a protected shot.⁹

25. Sheriff Lombardo's views were similarly endorsed in the testimony of United States Attorney (District of Colorado) John Walsh before the Senate Judiciary Committee on February 27, 2013, in which he noted:

From the point of view of most law enforcement professionals, a perspective I share as a long-time federal prosecutor and sitting United States Attorney, shutting off the flow of military-style assault weapons and high-capacity magazines is a top public safety priority. [...]

One of the most disturbing aspects of the recent mass shootings our Nation has endured is the ability of a shooter to inflict massive numbers of fatalities in a matter of minutes due to the use of high-capacity magazines. High-capacity magazines were defined in the 1994 ban as magazines capable of holding more than 10 rounds, and this is a definition the Department endorses. The devastating impact of such magazines is not limited to their use in military-style assault rifles; they have also been used with horrific results in recent mass shootings involving handguns. The 2007 mass shooting at Virginia Tech involved a shooter using handguns with high-capacity magazines. Similarly, recent mass shootings in Tucson, Arizona; Oak Creek, Wisconsin; and Fort Hood, Texas all involved handguns with magazines holding more than 10 rounds. As evidenced by these events, a high capacity magazine can turn any weapon into a tool of mass violence. Forcing an individual bent on inflicting large numbers of casualties to stop and reload creates the opportunity to reduce the possible death toll in two ways: first, by affording a chance for law enforcement or bystanders to intervene during a pause to reload; and second, by giving bystanders and potential victims an opportunity to seek cover or escape when there is an interruption in the firing.

⁹ *High-capacity magazine ban a must for Nevadans' safety*, Las Vegas Sun, Dec. 11, 2016, available at <https://lasvegassun.com/news/2016/dec/11/high-capacity-magazine-ban-a-must-for-nevadans-saf/> (last visited Nov. 1, 2017).

This is not just theoretical: In the mass shooting in Tucson, for example, 9-year old Christina-Taylor Green was killed by the 13th shot from a 30-round high-capacity magazine. The shooter was later subdued as he was trying to reload his handgun after those 30 shots. The outcome might have been different if the perpetrator had been forced to reload after firing only 10 times.

Furthermore, high-capacity magazines are not required for defending one's home or deterring further action by a criminal. The majority of shootings in self-defense occur at close range, within a distance of three yards. In such a scenario, and at such close ranges, a 10-round magazine is sufficient to subdue a criminal or potential assailant. Nor are high-capacity magazines required for hunting or sport shooting. Like military-style assault weapons, high-capacity magazines should be reserved for war, and for law enforcement officers protecting the public. The continued commercial sale of high-capacity magazines serves only to provide those determined to produce a high body count with the opportunity and the means to inflict maximum damage. Indeed, there is evidence suggesting that when the previous ban was in effect, it reduced the number of high-capacity magazines seized by the police, as well as the lethality of incidents.¹⁰[The citation is from Walsh's statement.]¹¹

Respectfully submitted,



¹⁰ See, David S. Fallis and James V. Grimaldi, *In Virginia, high-yield clip seizures rise*, Washington Post, Jan. 23, 2011, available at <http://www.washingtonpost.com/wp-dyn/content/article/2011/01/22/AR2011012204046.html> (last visited Nov. 1, 2017).

¹¹ Statement of John F. Walsh before the United States Senate Committee on the Judiciary, <https://www.judiciary.senate.gov/imo/media/doc/2-27-13WalshTestimony.pdf> (last visited Nov. 1, 2017).

Exhibit A

Exhibit 2
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EMPLOYMENT

Full-time Positions

- Stanford Law School, C. Wendell and Edith M. Carlsmith Professor of Law, September 2010 to the present.
- Yale Law School, Leighton Homer Surbeck Professor of Law, July 2004 to August 2010.
- Stanford Law School, Professor of Law, September 1995 to June 2004.
 - William H. Neukom Professor of Law, February 2002 – June 2004.
 - John A. Wilson Distinguished Faculty Scholar, March 1997 – January 2002.
 - Academic Associate Dean for Research, since July 2001 – July 2003.
 - Stanford University Fellow, September 2001 – May 2003.
- Northwestern University School of Law:
 - Class of 1967 James B. Haddad Professor of Law, September 1994-August 1995
 - Harry B. Reese Teaching Professor, 1994-1995
 - Professor of Law, May 1991-September 1994
 - Associate Professor, May 1989-May 1991
 - Assistant Professor, September 1986-May 1989.
- Research Fellow, American Bar Foundation, September 1986-August 1995.
- Associate Attorney, Covington & Burling, Washington, D.C., October 1978-July 1981 (including last six months as Attorney, Neighborhood Legal Services)
- Law Clerk to Chief Justice T. Emmet Clarke, U.S. District Court, Hartford, Connecticut, September 1977-August 1978.

Temporary Appointments

- Visiting Professor, Bocconi University, Milan, Italy, October- November 2012, April 2014, and June 2015.
- 2011 Faculty Scholar in Residence, University of Denver Sturm College of Law, April 21-22, 2011.
- Visiting Fellow, The Milton Friedman Institute for Research in Economics, University of Chicago, October 2009
- Schmidheiny Visiting Professor of Law and Economics, St. Gallen University, November – December, 2007.
- Visiting Lecturer in Law and Economics, Gerzensee Study Center, Switzerland, June 2007.
- Visiting Professor, Tel Aviv University School of Law, May 2007.
- Herbert Smith Visitor to the Law Faculty, University of Cambridge, England, February 2006.
- Visiting Professor, Harvard Law School, January 2003.

- Fellow, Center for Advanced Studies in the Behavioral Sciences, Stanford, California, Academic year 2000-01.
- Visiting Professor, Yale Law School, Fall, 1999.
- Professor, Center for the Study of American Law in China, Renmin University Law School, Beijing, July 1998.
- Visiting Professor of Law and Economics, University of Virginia, January 1997.
- Lecturer, Toei University School of Law, Yokohama, Japan, May-June 1996.
- Cornell Law School, Distinguished Visiting Fellow in Law and Economics, April 8-12, 1996 and September 25-29, 2000
- Visiting Professor, University of Chicago Law School, January 1992-June 1992.
- Visiting Professor of Law and Economics, University of Virginia Law School, January 1990-May 1990.
- Fellow, Yale Law School Program in Civil Liability, July 1985-August 1986.
- Private Practice (part-time), New Haven, Connecticut, September 1981-August 1986.
- Instructor in Economics, Yale College, September 1983-August 1985.
- Summer Associate, Donovan Leisure Newton & Irvine, New York, Summer 1982.
- Summer Associate, Perkins, Coie, Stone, Olsen & Williams, Seattle, Washington, Summer 1976.
- Research Assistant, Prof. Laurence Lynn, Kennedy School of Government, Harvard University, Summer 1975.
- LSAT Tutor, Stanley Kaplan Education Center, Boston, Massachusetts; Research Assistant, Prof. Philip Heymann, Harvard Law School; Research Assistant, Prof. Gordon Chase, Harvard School of Public Health. (During Law School).

EDUCATION

Yale University, 1981-1986

- University Fellow in Economics; M.A. 1982, M. Phil. 1984, Ph.D. 1986.
 - Dissertation: "A Continuous-Time Stochastic Model of Job Mobility: A Comparison of Male-Female Hazard Rates of Young Workers." Awarded with Distinction by Yale.
 - Winner of the Michael E. Borus Award for best social science dissertation in the last three years making substantial use of the National Longitudinal Surveys--awarded by the Center for Human Research at Ohio State University on October 24, 1988.
- National Research Service Award, National Institute of Health.
- Member, Graduate Executive Committee; Graduate Affiliate, Jonathan Edwards College.

Harvard Law School, 1974-1977 (J.D.)

- Graduated Cum Laude.
- Activities: Law Clerk (Volunteer) for Judge John Forte, Appellate Division of the District Court of Central Middlesex; Civil Rights, Civil Liberties Law Review; Intra-mural Athletics; Clinical Placement (Third Year): (a) First Semester: Massachusetts Advocacy Center; (b) Second Semester: Massachusetts Attorney General's Office--Civil Rights and Consumer Protection Divisions. Drafted comments for the Massachusetts Attorney General on the proposed U.S. Department of Justice settlement of its case against Bechtel Corporation's adherence to the Arab Boycott of Israeli companies.

Hamilton College, 1970-1974 (B.A.)

- Departmental Honors in both Economics and Mathematics
 - Phi Beta Kappa (Junior Year)
- Graduated fourth in class with the following academic awards:
 - Brockway Prize
 - Edwin Huntington Memorial Mathematical Scholarship
 - Fayerweather Prize Scholarship
 - Oren Root Prize Scholarship in Mathematics
- President, Root-Jessup Public Affairs Council.

PUBLICATIONS

Books and Edited Volumes:

- Law and Economics of Discrimination, Edward Elgar Publishing, 2013.
- Employment Discrimination: Law and Theory, Foundation Press, 2005, 2009 (2d edition) (with George Rutherglen).
- Economics of Labor and Employment Law: Volumes I and II, Edward Elgar Publishing, 2007. http://www.e-elgar.co.uk/bookentry_main.lasso?id=4070
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- "Diverting the Coasean River: Incentive Schemes to Reduce Unemployment Spells," 99 Yale Law Journal 549 (1989).
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- "Reply to Professors Ellickson and Stigler," 99 Yale Law Journal 635 (1989).

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- "Judge Bork, Anti-Trust Law, and the Bending of 'Original Intent'," Chicago Tribune, sec.1, pg. 15, July 22, 1987.
- "Posner's Third Symphony: Thinking about the Unthinkable," 39 Stanford Law Review 791 (1987)(with Ian Ayres).
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- "Section 1 Cases," Sherman's Summations, Vol.3, No.2, Sherman Act Committee of the A.B.A. Antitrust Section, Fall, 1982, at 49.
- "An Evaluation of the Constitutionality of S. 114, The Proposed Federal Death Penalty Statute," Hearings before the U.S. Senate Judiciary Committee, April 27, 1981, at 151.
- "Godfrey v. Georgia: Creative Federalism, the Eighth Amendment, and the Evolving Law of Death," 30 Catholic University Law Review 13 (1980).
- "Criminal Code Revision--Contempt of Court and Related Offenses," Hearings before the Subcommittee on Criminal Justice of the House Judiciary Committee, July 18, 1979, at 1087.

Blog Posts:

- "Orlando to Las Vegas: Guns, Law, and Mass Shootings in the U.S.," Stanford Law School Legal Aggregate Blog, October 3, 2017, <https://law.stanford.edu/2017/10/03/orlando-to-las-vegas-guns-and-law/>.
- "Moore v. Texas and the Pathologies that Still Mar Capital Punishment in the U.S.," March 29, 2017, <https://law.stanford.edu/2017/03/29/moore-v-texas-and-the-pathologies-that-mar-capital-punishment-in-the-u-s/>.
- "Trump and Gun Policy," Stanford Law School Legal Aggregate Blog, November 12, 2016, <http://stanford.io/2eoWnna>.
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- "Dodging the Death Penalty Bullet On Child Rape," <http://balkin.blogspot.com/2008/07/dodging-death-penalty-bullet-on-child.html> (July 2008).
- "Why I'd Stick With Yale Clerks-- Some Econometric Ruminations," <http://balkin.blogspot.com/2008/04/why-id-stick-with-yale-clerks-some.html> (April 2008).

WORKSHOPS AND ADDRESSES

- Panelist, "Public Carry: Defending Against Efforts to Expand Carry Laws," **National Gun Violence Prevention Meeting**, Washington, D.C., October 18, 2017
- "Keynote Presentation: Right-to-Carry Laws and Violent Crime," **Second Amendment Litigation & Jurisprudence Conference, The Law Center to Prevent Gun Violence**, October 16, 2017.
- "The Latest Evidence on Abortion Legalization and Crime," **Conference on Empirical Legal Studies, Cornell University**, October 13, 2017.
- "Corney, Trump, and the Puzzling Pattern of Crime in 2015 and Beyond," **University of Texas School of Law and Economics Seminar**, April 24, 2017; **Faculty Workshop, UC Davis School of Law**, April 10, 2017; **Law and Social Science Seminar, Texas A&M University School of Law**, March 6, 2017; **Quantlaw, University of Arizona Law School**, February 17, 2017.
- Debate with Kent Scheidegger on Capital Punishment, **Philosophy of Punishment Seminar, JFK University School of Law**, March 18, 2017.
- "The Evidence on Guns and Gun Laws," **Federal Bar Council Program on Guns and Gun Laws -- Rancho Mirage, California**, February 23, 2017.
- "Guns, Crime and Race in America," **Stanford's Center for Population Health Sciences, Stanford Medical School**, October 17, 2016.
- "Evaluating the Death Penalty," **Forum on California Propositions 62 and 66, Stanford Law School**, September 14, 2016.
- "Empirical Analysis and the Fate of Capital Punishment," **Colloquium, Presley Center for Crime and Justice Studies; University of California, Riverside**, October 24, 2016.
- "Gun Violence and Mental Illness," **Department of Psychiatry, Stanford University**, August 25, 2016.
- "The Battle Over Gun Policy in America," **Physicians and Social Responsibility" seminar; Stanford Medical School**, October 3, 2016; **Bioethics Committee of the San Mateo County Medical Association**, April 27, 2016; **The League of Women Voters of Palo Alto**, April 19, 2016; **Human Rights and Health Seminar, Stanford**

University, April 12, 2016; Bechtel International Center, Stanford University, February 23, 2016; Stanford in Government Seminar, Haas Center, Stanford University, February 2, 2016.

- American Economic Association Continuing Education Course "The Economics of Crime" (with Jens Ludwig), AEA Annual Meeting, San Francisco, January 5-7, 2016.
- "Race and Arbitrariness in the Connecticut Death Penalty," University of Connecticut School of Law, Nov. 20, 2015.
- "Connecticut v. Santiago and the Demise of the Connecticut Death Penalty," Faculty Workshop, Stanford Law School, August 19, 2015.
- "Do Handguns Make Us Safer? A State-Level Synthetic Controls Analysis of Right-to-Carry Laws," Second Amendment Conference, Covington and Burling, New York, May 14, 2015; NBER Summer Institute, Cambridge, MA, July 23, 2015; Faculty Workshop, Stanford Law School, November 11, 2015.
- "U.S. Criminal Justice Under Siege: Will Becker or Beccaria Prevail?" Faculty Seminar, Bocconi University School of Law, Milan, Italy, June 18, 2015.
- "Can You Believe Econometric Evaluations of Law, Policy, and Medicine?" Stanford Law School, Legal Theory Workshop, March 1, 2007; Faculty Workshop, Tel Aviv University School of Law, May 14, 2007; Faculty Workshop, University of Haifa Law School, May 16, 2007; Law and Economics Workshop, Georgetown Law School, September 19, 2007; Law and Economics Workshop, St. Gallen Law School, Switzerland, November 29, 2007; and Yale Law School, February 25, 2008; Law and Economics Workshop, Swiss Institute of Technology, Zurich, Switzerland, May 21, 2008; Faculty Workshop, University of Virginia Law School, October 24, 2008; Plenary Session, Latin American and Caribbean Law and Economics Association, Universitat Pompeu Fabra (Barcelona), June 15, 2009; Google, Milan, Italy, June 8, 2015.
- Commentator: "'Throw Away the Jail or Throw Away The Key? The Effect of Punishment on Recidivism and Social Cost,'" by Miguel F. P. de Figueiredo, American Law and Economics Association Meetings, Columbia Law School, May 15, 2015.
- "Broken Windows, Stop and Frisk, and Ferguson," 2015 Justice Collaboratory Conference: Policing Post-Ferguson, Yale Law School, April 17, 2015.
- "Assessing the Development and Future of Empirical Legal Studies," Stanford Law School course on Modern American Legal Thought, February 25, 2015.
- Commentator: "Payday Lending Restrictions and Crimes in the Neighborhood," by Yilan Xu, 9th Annual Conference on Empirical Legal Studies, Boalt Hall, Berkeley, CA, November 7, 2014.
- "An Empirical Evaluation of the Connecticut Death Penalty Since 1973: Are There Unconstitutional Race, Gender and Geographic Disparities?" Faculty Workshop, Economics Department, Rice University, Houston, TX, Feb. 18, 2014; Law and Economics Workshop, University of Virginia Law School, September 11, 2014; Faculty Colloquium, University of San Diego School of Law, October 3, 2014.
- "What's Happening to the Death Penalty? A Look at the Battle in Connecticut," Hamilton College, Clinton, New York, June 6, 2014.

- Panel Member, Research Methods Workshop, Conference for Junior Researchers on Law and Society, **Stanford Law School**, May 15, 2014.
- "Logit v. OLS: A Matter of Life and Death," Annual Meeting of the American Law and Economics Association, **University of Chicago**, May 9, 2014.
- "Guns: Law, Policy, Econometrics," Second Amendment Litigation and Jurisprudence Conference, **Jenner & Block**, Chicago, May 8, 2014.
- "The Impact of Antidiscrimination Law: The View 50 Years after the Civil Rights Act of 1964," **Renaissance Weekend**, Liguna Niguel, CA, Feb. 15, 2014.
- "Concealed Carry and Stand Your Ground Law," **Renaissance Weekend**, Liguna Niguel, CA, Feb. 15, 2014.
- "Reducing Gun Violence," Forum on Gun Violence Reduction, **Mountainview City Hall**, Mountainview, CA, Feb. 8, 2014.
- "Gun Policy Debate," **C-SPAN**, National Cable Satellite Corporation, Jan. 16, 2014. <<http://www.c-span.org/video/?317256-1/GunPoll>>.
- "Trial and Decision in the Connecticut Death Penalty Litigation," Faculty Workshop, **Stanford Law School**, November 20, 2013.
- "Rethinking America's Illegal Drug Policy," Law and Economics Workshop, **Harvard Law School**, April 20, 2010; NBER Conference, "Economic Crime Control," **Boalt Hall**, Berkeley, CA, January 16, 2010; NBER Summer Institute Pre-Conference "Economic Crime Control," July 23, 2009; **Whitney Center** Lecture Series, Hamden, CT, October 5, 2009; Law and Economics Workshop, **University of Chicago Law School**, October 13, 2009; Seminar for Spanish Law Professors, **Harvard Law School**, October 23, 2009; The Criminal Law Society, **Stanford Law School**, March 31, 2011, **University of Denver Sturm College of Law**, April 21, 2011; Law and Economics Workshop, **Boalt Hall**, Berkeley, CA, October 17, 2011; Shaking the Foundations Conference, **Stanford Law School**, November 2, 2013.
- "The Challenge to the Connecticut Death Penalty," **Yale Law School**, Death Penalty Clinic, November 5, 2007; Graduate Student Seminar, November 11, 2009; Stanford Program in International Legal Studies Seminar, **Stanford Law School**, Nov. 11, 2010; Faculty Workshop, **Stanford Law School**, June 8, 2011; Faculty workshop, **Duke Law School**, April 13, 2012; Program on Public Policy, **Stanford University**, May 2, 2012; Annual Meeting of the American Law and Economics Association, **Vanderbilt Law School**, Nashville, TN, May 18, 2013; Faculty Workshop, **University of Arizona Law School**, October 17, 2013; 8th Annual Conference on Empirical Legal Studies, **University of Pennsylvania Law School**, October 26, 2013.
- Commentator: "How to Lie with Rape Statistics" by Corey Rayburn Yung, 8th Annual Conference on Empirical Legal Studies, **University of Pennsylvania Law School**, October 2013.
- "An Empirical Look at Gun Violence in the U.S." **University of Arizona Law School**, October 17, 2013
- Discussant, "Sex Offender Registration and Plea Bargaining," **NBER Labor Summer Institute**, Cambridge, MA, July 25, 2013.
- "What Works in the War Against Crime?" **Renaissance Weekend**, Jackson Hole, Wyoming, July 5, 2013.

- Seminar Presentation, "Statistics and the Streets – Curbing Crime, Realities of the Death Penalty, and Successes in Public Safety," **Renaissance Weekend**, Jackson Hole, Wyoming, July 5, 2013.
- Flashes of Genius (Glimpses of Extra-ordinarily Novel Thinking) -- "Stemming Gun Violence," **Renaissance Weekend**, Jackson Hole, Wyoming, July 5, 2013.
- "Can Laws Reduce Crime?" Safe Oakland Speakers Series, Holy Names University, Oakland, CA, May 1, 2013, <http://www.ustream.tv/channel/safe-oakland-speaker-series>
- Presentation on "The Death Penalty in America" on a panel on "human rights and criminal justice systems in the world," Science for Peace conference at Bocconi University in Milan, Italy, November 15, 2012. <http://www.fondazioneveronesi.it/scienceforpeace2012/>
- Seminar Presentation, "America's Criminal Justice System," **Renaissance Weekend**, Santa Monica, CA., Feb. 19, 2012.
- "Statistical Inference, Regression Analysis and Common Mistakes in Empirical Research," SPILLS Fellow's Workshop, **Stanford Law School**, February 2, 2012.
- "New Evidence in the 'More Guns, Less Crime' Debate: A Synthetic Controls Approach," Conference on Empirical Legal Studies, **Northwestern Law School**, November 4, 2011.
- "Drug Legalization and its Alternatives," *Lessons from the Economics of Crime: What Works in Reducing Offending?* **CESifo Venice Summer Institute Workshop**, July 22, 2011.
- "Incapacitating Addictions: Drug Policy and American Criminal Justice," in *Rethinking the War on Drugs through the US-Mexico Prism*, **Yale Center for the Study of Globalization**, May 12, 2011.
- Plenary Session: Flashes of Genius (Glimpses of Extra-ordinarily Novel Thinking) -- "Has Legalized Abortion Reduced Crime?" **Renaissance Weekend**, Liguna Niguel, CA., Feb. 18, 2011.
- "An Evidence-Based Look at the More Guns, Less Crime Theory (after Tucson)" The American Constitution Society for Law and Policy (ACS), **Stanford Law School**, January 25, 2011; **Renaissance Weekend**, Liguna Niguel, CA., Feb. 19, 2011; "Faculty Forum" at the External Relations Office, **Stanford Law School**, April 5, 2011.
- "Empirical Evaluation of Law: The Dream and the Nightmare," SPILLS Fellows Lecture, **Stanford Law School**, January 15, 2015; Legal Studies Workshop, **Stanford Law School**, Feb. 7, 2011; **Renaissance Weekend**, Liguna Niguel, CA., Feb. 20, 2011; **University of Denver Sturm College of Law**, April 22, 2011; Presidential Address, Annual Meeting of the American Law and Economics Association, **Columbia University**, May 20, 2011.
- Death Sentencing in Connecticut," **American Society of Criminology Annual Meeting**, San Francisco, Nov. 17, 2010.
- "The Impact of Right to Carry Laws and the NRC Report: Lessons for the Empirical Evaluation of Law and Policy," Conference on Empirical Legal Studies, **Yale Law School**, Nov. 6, 2010.
- Comment on Bushway and Gelbach, "Testing for Racial Discrimination in Ball Setting Using Nonparametric Estimation of a Parametric Model," Conference on Empirical Legal Studies, **Yale Law School**, Nov. 6, 2010.

- Commentator, "A Test of Racial Bias in Capital Sentencing," **NBER Political Economy Program Meeting**, April 23, 2010.
- "The (Lack of a) Deterrent Effect of Capital Punishment," Faculty Workshop, **University of Chicago Economics Department**, October 21, 2009.
- Keynote Address, "The Evolution of Econometric Evaluation of Crime and Deterrence," 1st Paris & Bonn Workshop on Law and Economics: The Empirics of Crime and Deterrence, **University of Paris Ouest Nanterre**, September 24, 2009.
- Comment on Cook, Ludwig, and Samaha, "Gun Control after *Heller*: Litigating Against Regulation," **NBER Regulation and Litigation Conference, The Boulders, Carefree, Arizona**, September 11, 2009.
- "Impact of the Death Penalty on Murder in the US," Faculty Workshop, Law School, **Universitat Pompeu Fabra (Barcelona)**, June 18, 2009.
- Comment on Joanna Shepherd's "The Politics of Judicial Opposition," **Journal of Institutional and Theoretical Economics Conference, Kloster Eberbach, Germany**, June 12, 2009.
- "The Great American Crime Drop of the '90s: Some Thoughts on Abortion Legalization, Guns, Prisons, and the Death Penalty," **Hamilton College, Clinton, NY**, June 5, 2009.
- "The Impact of the ADA on the Employment and Earnings of the Disabled," **American Law and Economics Association Meetings**, University of San Diego, May 15, 2009.
- "Crime and Punishment in the United States," **Eastern State Penitentiary, Yale Alumni Event, Philadelphia, PA**, April 26, 2009.
- "Measuring Culpability in Death Penalty Cases," Conference on Applications of Economic Analysis in Law, **Fuqua School of Business, Duke University**, April 18, 2009.
- "Autopsy of a Financial Crisis," Workshop on New International Rules and Bodies for Regulating Financial Markets, **State University of Milan**, March 23, 2009.
- "Yet Another Refutation of the More Guns, Less Crime Hypothesis – With Some Help From Moody and Marvel," Law and Economics Workshop, **NYU Law School**, March 10, 2009.
- Intelligence-Squared Debate: "Guns Reduce Crime," **Rockefeller University, New York**, October 28, 2008.
- "The D.C. Handgun Controls: Did the Supreme Court's Decision Make the City Safer?" Debate, **The Contemporary Club of Albemarle, Charlottesville, VA**, October 23, 2008.
- "Evaluating the Empirical Claims of the Woman-Protective Anti-Abortion Movement," Panel on The Facts of the Matter: Science, Public Health, and Counseling, **Yale Conference on the Future of Sexual and Reproductive Rights, Yale Law School**, October 11, 2008.
- "Empirical Evaluation of Gun Policy," **Harvard Law School**, October 9, 2008.
- "Assessing the Relative Benefits of Incarceration: The Overall Change Over the Previous Decades and the Benefits on the Margin," **Russell Sage Foundation, New York**, May 3, 2007; Law and Economics Workshop, **Tel Aviv University School of Law**, May 28, 2008.
- Death Penalty Debate with Orin Kerr, **Bloggingheads**, April 11, 2008.

- "Evaluating Connecticut's Death Penalty Regime," Faculty Public Interest Conversation, **Yale Law School**, April 9, 2008.
- "The Death Penalty in Connecticut and the United States," **The Whitney Center**, Hamden, CT, November 5, 2007; Seminar on Advanced Criminal Law: Criminal Sentencing and the Death Penalty, **Fordham Law School**, April 8, 2008; Law and Economics Workshop, **Swiss Institute of Technology**, Zurich, Switzerland, May 20, 2008.
- Radio Interview, "The Death of Capital Punishment?" Morning Edition: Where We Live, **WNPR**, Connecticut, March 10, 2008.
- Comment on Thomas Dee's "Born to Be Mild: Motorcycle Helmets and Traffic Safety," **American Economics Association Meetings**, New Orleans, Louisiana, January 4, 2008.
- "The Empirical Revolution in Law and Policy: Jubilation and Tribulation," Keynote Address, **Conference on Empirical Legal Studies, NYU Law School**, November 9, 2007.
- "The Optimal Rate of Incarceration," **Harvard Law School**, October 26, 2007.
- "Empirical Evaluation of Law: The Impact on U.S Crime Rates of Incarceration, the Death Penalty, Guns, and Abortion," Law and Economics Workshop, **St. Gallen Law School**, Switzerland, June 25, 2007.
- Comment on Eric Baumer's "A Comprehensive Assessment of the Contemporary Crime Trends Puzzle," Committee on Law and Justice Workshop on Understanding Crime Trends, **National Academy of Sciences**, Washington, D.C., April 25, 2007.
- Comment on Bernard Harcourt, Third Annual Criminal Justice Roundtable Conference, **Yale Law School**, "Rethinking the Incarceration Revolution Part II: State Level Analysis," April 14, 2006.
- "Corporate Governance In America: The Disney Case," **Catholic University Law School**, Milan, Italy, March 19, 2007.
- "The U.S Tort System," (Latin American) Linkages Program, **Yale Law School**, February 13, 2007.
- Panel Member, "Guns and Violence In the U.S.," **Yale University, International Center**, January 24, 2007.
- "Economic Models of Crime and Punishment," Punishment: The U.S. Record; A Social Research Conference at **The New School**, New York City, Nov. 30, 2006
- Comment on Baldus et al, "Equal Justice and the Death Penalty: The Experience fo the United States Armed Forces, Conference on Empirical Legal Studies, **University of Texas Law School**, Austin, Texas, October 27, 2006.
- "Empirical Evaluation of Law: The Promise and the Peril," **Harvard Law School**, October 26, 2006.
- "Estimating the Impact of the Death Penalty on Murder," Law and Economics Workshop, **Harvard Law School**, September 12, 2006; Conference on Empirical Legal Studies, **University of Texas Law School**, October 28, 2006; Joint Workshop, Maryland Population Research Center and School of Public Policy, **University of Maryland**, March 9, 2007.
- "Why Are Auto Fatalities Dropping so Sharply?" Faculty Workshop, **Wharton**, Philadelphia, PA, April 19, 2006.
- "The Law of Racial Profiling," Law and Economic Perspectives on Profiling Workshop, **Northwestern University Department of Economics**, April 7, 2006.

- "Landmines and Goldmines: Why It's Hard to Find Truth and Easy To Peddle Falsehood in Empirical Evaluation of Law and Policy," Rosenthal Lectures, Northwestern University School of Law, April 4-6, 2006.
- "The Impact of Legalized Abortion on Crime," American Enterprise Institute, March 28, 2006.
- "The Impact of Damage Caps on Malpractice Claims: Randomization Inference with Difference-in-Differences," Conference on Medical Malpractice, The Rand Corporation, March 11, 2006.
- "Powerful Evidence the Death Penalty Deters?" Leighton Homer Surbeck Chair Lecture, Yale Law School, March 7, 2006.
- "Uses and Abuses of Empirical Evidence in the Death Penalty Debate," Faculty Workshop, University of Connecticut Law School, October 18, 2005; Faculty Workshop, UCLA Law School, February 3, 2006; Law and Economics Workshop, Stanford Law School, February 16, 2006; ; Law Faculty, University of Cambridge, Cambridge, England, February 28, 2006; University of Illinois College of Law, Law and Economics Workshop, March 2, 2006; Faculty Workshop, Florida State University Law School, March 30, 2006; ALEA, Berkeley, CA May 6, 2006; University of Chicago Law School, Law and Economics Workshop, May 9, 2006.
- "Is Gun Control Illiberal?" Federalist Society Debate with Dan Kahan at Yale Law School, January 31, 2006.
- "Witness to Deception: An Insider's Look at the Disney Trial," 2005-2006 Distinguished Lecture, Boston University School of Law, November 10, 2005; Center for the Study of Corporate Law, Yale Law School, November 3, 2005; Law Offices of Herbert Smith, London, England, February 23, 2006; Law Faculty, University of Cambridge, Cambridge, England, February 27, 2006.
- "Understanding the Surprising Fall in Crime in the 1990s," Rotary Club, Orange, CT, August 5, 2005; Faculty Workshop, Yale School of Management, September 21, 2005.
- Panel Member, "The Board's Role in Corporate Strategy," The Yale Global Governance Forum, Yale School of Management, September 8, 2005.
- "Crime and Abortion," Museo de la Ciudad de Mexico, Mexico City, October 20, 2003.
- "Allocating Resources towards Social Problems and Away From Incarceration as a Means of Reducing Crime," MacArthur Foundation Research Network on Adolescent Development and Juvenile Justice, San Francisco, CA, February 28, 2003.
- "Shooting Down the More Guns, Less Crime Hypothesis," Stanford Law School, Law and Economics Seminar, January 28, 2003; Faculty Workshop, Center for the Study of Law and Society, Boalt Hall, University of California, Berkeley, Feb. 24, 2003; Development Workshop, Stanford Law School, April 25, 2003; Faculty Workshop, Stanford Law School, July 2, 2003; Law and Public Affairs Program Workshop, Princeton University, September 29, 2003; Stanford Alumni Weekend, Stanford University, October 17, 2003; Faculty Workshop, CIDE, Mexico City, October 20, 2003.
- "The Impact of Legalized Abortion on Teen Childbearing," NBER Labor Summer Institute, Cambridge, MA, July 30, 2002.
- "Do Concealed Handgun Laws Reduce Crime?" Faculty Workshop, Stanford Law School, October 4, 2000; First-Year Orientation, Stanford Law School, September 5, 2001; Faculty Workshop, Harvard Law School, April 26, 2002; Faculty Workshop, Columbia Law School, April 29, 2002.
- "The Evolution of Employment Discrimination Law in the 1990s: An Empirical Investigation," Fellows Workshop, American Bar Foundation, February 11, 2002.

- "The Role of Discounting in Evaluating Social Programs Impacting on Future Generations: Comment on Arrow and Revesz," Colloquium on Distributive Justice, **Stanford Law School**, Oct. 18, 2001.
- "The Impact of Wrongful Discharge Laws," **NBER Labor Summer Institute**, Cambridge, MA, July 30, 2001; Labor and Employment Seminar, **NYU Law School**, October 16, 2001; Faculty Workshop, **Stanford Law School**, September 18, 2002; **Yale Law School**, January, 2004.
- "Racial Profiling: Defining the Problem, Understanding the Cause, Finding the Solution," **American Society of Criminology Conference**, San Francisco, CA, November 15, 2000.
- "Institutional Architecture for Building Private Markets," Conference on "Latin America and The New Economy" at **Diego Portales University** in Santiago, Chile, October 26, 2000.
- "The History and Current Status of Employment Discrimination Law in the United States," **Unicapital School of Law**, (Centro Universitario Capital), Sao Paulo, Brazil, March 10, 2000.
- "Corporate Governance in Developing Countries: Opportunities and Dangers," Conference on Neoliberal Policies for Development: Analysis and Criticism," **University of Sao Paulo Law School**, March 13, 2000
- "Legalized Abortion and Crime," Law and Economics Workshop, **University of Pennsylvania Law School**, September 21, 1999; Faculty Workshop, **Yale Law School**, September 27, 1999; **John Jay College of Criminal Justice**, October 7, 1999; Faculty Workshop, **Quinnipiac Law School**, October 13, 1999; Faculty Workshop, **University of Connecticut Law School**, October 19, 1999; **University of Virginia Law School**, October 25, 1999; Faculty Workshop, **Baruch College**, November 9, 1999; MacArthur Foundation Social Interactions and Economic Inequality Network Meeting, **Brookings Institution**, December 4, 1999; Faculty Workshop, **NYU Law School**, January 21, 2000; Faculty Workshop, **University of San Diego Law School**, February 18, 2000; Public Economics Workshop, Department of Economics, **Stanford University**, April 28, 2000; Law and Economics Workshop, **University of California at Berkeley Law School**, September 18, 2000; Faculty Workshop, **Cornell Law School**, September 26, 2000; OB-GYN Grand Rounds, **Stanford Medical School**, October 2, 2000; **Center for Advanced Studies in the Behavioral Sciences**, October 11, 2000; Faculty Workshop, **Graduate School of Business**, February 5, 2002.
- Panel member, Session on Executive Compensation, Director's College, **Stanford Law School**, March 23, 1999.
- "Exploring the Link Between Legalization of Abortion in the 1970s and Falling Crime in the 1990s," Law and Economics Workshop, **Harvard Law School**, March 16, 1999; Law and Economics Workshop, **University of Chicago Law School**, April 27, 1999; Faculty Workshop, **Stanford Law School**, June 30, 1999.
- "Is the Increasing Reliance on Incarceration a Cost-Effective Strategy of Fighting Crime?" Faculty Workshop, **University of Wisconsin School of Social Science**, February 19, 1999.
- "What Do We Know About Options Compensation?" Institutional Investors Forum, **Stanford Law School**, May 29, 1998.
- Commentator on Orlando Patterson's presentation on "The Ordeal of Integration," **Stanford Economics Department**, May 20, 1998.
- "Understanding The Time Path of Crime," Presentation at Conference on Why is Crime Decreasing? **Northwestern University School of Law**, March 28, 1998; Faculty Workshop, **Stanford Law School**, September 16, 1998; Faculty Workshop, **University of Michigan Law School**, February 18, 1999.
- Commentator, Conference on Public and Private Penalties, the **University of Chicago Law School**, Dec. 13-14, 1997.

- "Some Thoughts on Affirmative Action," Presentation at a conference on Rethinking Equality in the Global Society, Washington University School of Law, November 10, 1997.
- Commentator on Chris Jencks' Presentation on Welfare Policy, Stanford Economics Department, October 8, 1997.
- "The Impact of Race on Policing, Arrest Patterns, and Crime," Faculty Workshop, Stanford Law School, September 10, 1997; Law and Economics Workshop, University of Southern California Law School, October 23, 1997; Law and Economics Workshop, Columbia University Law School, November 24, 1997; Law and Economics Workshop, Haas School of Business, University of California at Berkeley, February 19, 1998; Annual Meeting of the American Law and Economics Association, University of California at Berkeley, May 8, 1998; Conference on the Economics of Law Enforcement, Harvard Law School, October 17, 1998.
- "Crime in America: Understanding Trends, Evaluating Policy," Stanford Sierra Camp, August 1997.
- "Executive Compensation: What Do We Know?" TIAA-CREF Committees on Corporate Governance and Social Responsibility, Center for Economic Policy Research, Stanford University, June 27, 1997; NASDAQ Director's Day, Stanford University, June 30, 1997.
- Panel Chair, Criminal Law (Theory), Criminal Law (Empirical), and Labor/Discrimination/Family Law, American Law and Economics Association, University of Toronto Law School, May 9-10, 1997.
- Commentator, "Diversity in Law School Hiring," Stanford Law School, February 25, 1997.
- Keynote Speaker, "The Optimal Rate of Crime," 11th Annual Conference, The Oklahoma Academy for State Goals, Tulsa, Oklahoma, May 7, 1996.
- Panel member, Session on Executive Compensation, Director's College, Stanford Law School, March 28-29, 1996.
- "The Power of Law: Can Law Make a Difference in Improving the Position of Women and Minorities in the Labor Market?" The Fellows of the American Bar Foundation, Baltimore, Maryland, February 3, 1996.
- "Public Action, Private Choice and Philanthropy: Understanding the Sources of Improvement in Black Schooling Quality in Georgia, 1911-1960," Stanford Faculty Workshop, January 24, 1996; Faculty Workshop, University of Virginia Law School, January 22, 1997; National Bureau of Economic Research, Cambridge, Massachusetts, Labor Studies Conference, April 3, 1998.
- Commentator, "The Effect of Increased Incarceration on Crime," Meetings of the American Economics Association, San Francisco, January 6, 1996.
- Commentator, Symposium on Labor Law, University of Texas Law School, November 10-11, 1995.
- Panel Member, Symposium on Criminal Justice, Stanford Law School, October 6-7, 1995.
- Commentator, "The Litigious Plaintiff Hypothesis," Industrial and Labor Relations Conference, Cornell University, May 19, 1995.
- Commentator on Keith Hylton's, "Fee Shifting and Predictability of Law," Faculty Workshop, Northwestern University School of Law, February 27, 1995.
- "The Selection of Employment Discrimination Disputes for Litigation: Using Business Cycle Effects to Test the Priest/Klein Hypothesis," Stanford University, Law and Economics Seminars, October 31, 1994.

- "Is the United States at the Optimal Rate of Crime?" Faculty Workshop, **Indiana University School of Law**, Indianapolis, November 18, 1993; Faculty Workshop, **Northwestern University School of Law**, April 18, 1994; Law and Economics Workshop, **Stanford Law School**, April 28, 1994; Meetings of the American Law and Economics Association, **Stanford Law School**, May 13, 1994; **American Bar Foundation**, September 7, 1994; Faculty Workshop, **DePaul Law School**, September 21, 1994; Law and Economics Workshop, **University of Chicago Law School**, October 11, 1994; Faculty Seminar, **Stanford Law School**, October 31, 1994; Law and Economics Luncheon, **Stanford Law School**, November 1, 1994; Faculty Seminar Workshop, **University of Illinois College of Law**, Champaign, November 22, 1994; Law and Economics Workshop, **Harvard Law School**, November 29, 1994; School Alumni Luncheon, **Chicago Club**, December 13, 1994; **Northwestern Law School**; Law and Economics Workshop, **Yale Law School**, February 1, 1996; Faculty Workshop, **Cornell Law School**, April 10, 1996; Faculty Workshop, **Tokyo University Law School**, June 4, 1996; Panel on "The Economics of Crime," **Western Economics Association Meeting**, San Francisco, July 1, 1996.
- "The Broad Path of Law and Economics," Chair Ceremony, **Northwestern University School of Law**, September 30, 1994.
- Commentator on Paul Robinson's "A Failure of Moral Conviction," **Northwestern University School of Law**, September 20, 1994.
- "The Do's of Diversity, The Don'ts of Discrimination," **Kellogg School of Business, Northwestern University**, May 17, 1994.
- "Does Law Matter in the Realm of Discrimination?" **Law and Society Summer Institute**, Pala Mesa Lodge, Fallbrook, California, June 25, 1993.
- Commentator, "The Double Minority: Race and Sex Interactions in the Job Market," **Society for the Advancement of Socio-Economics, New School for Social Research**, March 28, 1993.
- "The Effects of Joint and Several Liability on Settlement Rates: Mathematical Symmetries and Meta-Issues in the Analysis of Rational Litigant Behavior," **Economic Analysis of Civil Procedure**, **University of Virginia School of Law**, March 26, 1993.
- Debate with Richard Epstein on Employment Discrimination Law, **Chicago Federalist Society**, February 23, 1993.
- Panel Chair, "Optimal Sanctions and Legal Rules in Tort and Criminal Law," **Meetings of Annual Association of Law and Economics, Yale Law School**, May 15, 1992.
- Panel Member, "The Law and Economics of Employment at Will," **The Institute For Humane Studies**, Fairfax, Virginia, March 27, 1992.
- "The Efficacy of Title VII," Debate with Professor Richard Epstein, **University of Chicago Law School**, February 26, 1992.
- Moderator, "Using Testers to Demonstrate Racial Discrimination," **University of Chicago Law School**, February 13, 1992.
- "Law & Macroeconomics: The Effect of the Business Cycle on Employment Discrimination Litigation," **Law and Society Workshop, Indiana University**, November 6, 1991; Faculty Workshop, **University of North Carolina Law School**, Chapel Hill, November 8, 1991; Faculty Workshop, **Northwestern University School of Law**, December 11, 1991; Law and

- Economics Conference, **Duquesne Law School**, March 14, 1992; **University of Chicago Law School**, April 2, 1992.
- Panel Chair and Commentator, "New Perspectives on Law and Economics," **Society for the Advancement of Socioeconomics**, Stockholm, June 17, 1991; **Law and Society Meetings**, Amsterdam, June 29, 1991.
- Panel Chair, "Regulation of International Capital Markets," **Law and Society Meetings**, Amsterdam, June 27, 1991.
- Panel Chair, "The Law and Economics of Discrimination," **American Association of Law and Economics**, **University of Illinois Law School**, May 24, 1991.
- "The Economics of Employment Discrimination Law," **Industrial Relations Research Association**, Chicago, Illinois, March 4, 1991.
- "Does Current Employment Discrimination Law Help or Hinder Minority Economic Empowerment?" Debate with Professor Richard Epstein, **The Federalist Society**, **Northwestern Law School**, February 26, 1991.
- Panel Member, "The Law and Economics of Employment Discrimination," **AALS Annual Meeting**, Washington, D.C., January 6, 1991.
- "Re-Evaluating Federal Civil Rights Policy," Conference on the Law and Economics of Racial Discrimination in Employment, **Georgetown University Law Center**, November 30, 1990.
- "Opting for the British Rule," Faculty Seminar, **Northwestern Law School**, September 11, 1990; Faculty Seminar, **University of Virginia Law School**, September 14, 1990; Law and Economics Seminar, **University of Michigan Law School**, October 18, 1990; Faculty Workshop, **NYU Law School**, November 14, 1990; Faculty Workshop, **University of Florida Law School**, March 18, 1991.
- "The Effects of Fee Shifting on the Settlement Rate: Theoretical Observations on Costs, Conflicts, and Contingency Fees," at the **Yale Law School Conference "Modern Civil Procedure: Issues in Controversy,"** June 16, 1990.
- "Studying the Iceberg From Its Tip?: An Analysis of the Differences Between Published and Unpublished Employment Discrimination Cases," **Law and Society Meetings**, Berkeley, California, May 31, 1990.
- Panel Discussion on Tort Reform, **University of Pennsylvania Law School**, April 27, 1990.
- Panel Discussion of "The Role of Government in Closing the Socio-Economic Gap for Minorities," at the **Federalist Society National Symposium on "The Future of Civil Rights Law,"** **Stanford Law School**, March 16, 1990.
- "Continuous versus Episodic Change: The Impact of Affirmative Action and Civil Rights Policy on the Economic Status of Blacks," **University of Virginia Economics Department**, February 15, 1990; **Princeton University Department of Economics**, February 21, 1990 (with James Heckman); Law & Economics Workshop, **University of Toronto Law School**, October 8, 1991.
- "Sex Discrimination in the Workplace: An Economic Perspective," Fellows Seminar, **American Bar Foundation**, October 16, 1989.
- "The Changing Nature of Employment Discrimination Litigation," Law and Economics Workshop, **Columbia Law School**, March 23, 1989; Faculty Seminar, **University of Virginia Law School**, March 24, 1989; Law and Economics Workshop, **University of Chicago**, April 25, 1989; **Law & Society Meeting**; Madison, Wisconsin,

June 8, 1989; Labor Economics Workshop, **University of Illinois**, Chicago, November 1, 1989; Law & Economics Workshop, **University of Pennsylvania Law School**, November 9, 1989; Law and Economics Seminar, **University of California at Berkeley**, October 4, 1990; Law and Social Science Workshop, **Northwestern University**, February 3, 1991; Law and Economics Seminar, **Stanford Law School**, March 21, 1991; Faculty Workshop, **Cornell Law School**, April 3, 1991; Visiting Committee, **Northwestern Law School**, April 5, 1991.

- "Law & Economics: The Third Phase," The Association of General Counsel, **Northwestern University School of Law**, October 14, 1988.
- "Employment Discrimination Litigation," **Northwestern Law School Alumni Monthly Loop Luncheon**, **Chicago Bar Association**, May 31, 1988.
- "The Morality of the Death Penalty." A debate with Ernest Van Den Haag. **Northwestern University School of Law**, April 19, 1988.
- "Models of Deregulation of International Capital Markets." A presentation with David Van Zandt, Faculty Seminar, **Northwestern University School of Law**, April 1, 1988; Visiting Committee, May 5, 1988.
- "Is Title VII Efficient?" A debate with Judge Richard Posner, Faculty Seminar, **Northwestern University School of Law**, November 20, 1987.
- "The Senate's Role in Confirming Supreme Court Nominees: The Historical Record," **Northwestern University School of Law**, September 22, 1987.
- "Diverting the Coasean River: Incentive Schemes to Reduce Unemployment Spells," Yale Law School Civil Liability Workshop, March 30, 1987; Faculty Seminar, **Northwestern University School of Law**, March 18, 1987; **University of Southern California Law Center**, May 1, 1987; and Seminar in Law and Politics, Department of Political Science, **Northwestern University**, May 8, 1987; Labor Workshop, Department of Economics, **Northwestern University**, October 27, 1987; **AALS Annual Meeting**, New Orleans, January 7, 1989.
- "Women in the Labor Market--Are Things Getting Better or Worse?" **Hamilton College**, February 23, 1987.
- "The Changing Relative Quit Rates of Young Male and Female Workers," **Hamilton-Colgate Joint Faculty Economics Seminar**, February 23, 1987.
- "Living on Borrowed Money and Time--U.S. Fiscal Policy and the Prospect of Explosive Public Debt," **Orange Rotary Club**, February 22, 1985.
- "Capital Punishment in the Eighties," **Hamilton College**, April 6, 1981.
- "Terms and Conditions of Sale Under the Uniform Commercial Code," Executive Sales Conference, **National Machine Tool Builders' Association**, May 12, 1980.

PROFESSIONAL ACTIVITIES

- Member, Committee on Law and Justice, National Research Council, October 2011 – present.
- Fellow of the Society for Empirical Legal Studies, 2015 - present.
- Co-Editor (with Steven Shavell), American Law and Economics Review, May 2006 – August 2012.
- President, American Law and Economics Association, May 2011 – May 2012.

- Co-President, Society for Empirical Legal Studies, November 2011 - August 2012. Member, Board of Directors from November 2011 - November 2014.
- Testified before the Connecticut Legislature in Support of Senate Bill 1035 and House Bill 6425 (A Bill to Eliminate the Death Penalty), March 7, 2011; Testified again before the Connecticut Judiciary Committee on March 14, 2012.
- Member of the Special Committee on ALI Young Scholars Medal, October 2009 - February 2011.
- Vice-President/President Elect, American Law and Economics Association, June 2010 - May 2011.
- Secretary-Treasurer, American Law and Economics Association, June 2009 - May 2010.
- Board of Advisors, Yale Law School Center for the Study of Corporate Law, July 2004 - August 2010.
- Evaluated the Connecticut death penalty system: "Capital Punishment in Connecticut, 1973-2007: A Comprehensive Evaluation from 4600 murders to One Execution," http://works.bepress.com/john_donohue/137/
- Member, Panel on Methods for Assessing Discrimination, National Academy of Sciences, September 2001 - June 2004. Resulting Publication: National Research Council, Measuring Racial Discrimination (2004), <http://www.nap.edu/catalog/10887.html>
- Member, National Science Foundation Review Panel, Law and Social Sciences, September, 1999 - April 2001.
- Editorial Board, Journal of Empirical Legal Studies, July 2003 - present.
- Editorial Board, International Review of Law and Economics, October 1999 - present.
- Editorial Board, Law and Social Inquiry, February 2000 - present.
- Board of Editors, American Law and Economics Review, August 1998 - April 2013.
- Consultant, Planning Meeting on Measuring the Crime Control Effectiveness of Criminal Justice Sanctions, National Academy of Sciences, Washington, D.C., June 11, 1998
- Member, Board of Directors, American Law and Economics Association, June 1994-May 1997. Member, ALEA Nominating Committee, July 1995-May 1996. Member, Program Committee, July 1996-May 1998 and July 2000 - May 2002.
- Statistical Consultant, 7th Circuit Court of Appeals Settlement Conference Project (December, 1994).
- Testified before U.S. Senate Labor Committee on evaluating the Job Corps, October 4, 1994.
- Assisted the American Bar Association Standing Committee on the Federal Judiciary in evaluating the qualifications of Ruth Bader Ginsburg (June 1993) and David Souter (June, 1990).
- Chair, AALS Section on Law and Economics, January 1990-January 1991.
- Economic Consultant to Federal Courts Study Committee. Analyzing the role of the federal courts and projected caseload for Judge Richard Posner's subcommittee. February 1989-March 1990.
- Member, 1990 AALS Scholarly Papers Committee.

- Member, Advisory Board, Corporate Counsel Center, Northwestern University School of Law. Since December 1987.
- Associate Editor, Law and Social Inquiry. Summer 1987-December 1989.
- Interviewed Administrative Law Judge candidates for U.S. Office of Personnel Management. Chicago, Illinois. May 23, 1988.
- Member, Congressman Bruce Morrison's Military Academy Selection Committee. Fall 1983.
- 1982 Candidate for Democratic Nomination, Connecticut State Senate, 14th District (Milford, Orange, West Haven).

PRO BONO LEGAL WORK

- Death Penalty case: Heath v. Alabama. Fall 1986-Fall 1989.
- Wrote brief opposing death sentence in Navy spy case. Court ruled in favor of defendant on September 13, 1985.
- Staff Attorney, Neighborhood Legal Services, January-July 1981.
- Appealed sentence of death for Georgia defendant to the United States Supreme Court. Sentence vacated on May 27, 1980. Baker v. Georgia.
- Court-appointed representation of indigent criminal defendant in District of Columbia Superior Court, February-July 1980.

RESEARCH GRANTS

- Stanford University Research Fund, January 1997 and January 1998.
- The National Science Foundation (project with James Heckman), December 1992; (project with Steve Levitt), July 1997.
- Fund for Labor Relations Studies, University of Michigan Law School, March 1988.

BAR ADMISSIONS

- Connecticut - October 1977; District of Columbia - March 1978 (Currently Inactive Status); United States Supreme Court - November 1980; U.S. District Court for the District of Connecticut - February 14, 1978.

PROFESSIONAL and HONORARY ASSOCIATIONS

- American Academy of Arts and Sciences (since April 2009).
- Research Associate, National Bureau of Economic Research (since October 1996) -- in Law and Economics and Labor Studies.
- American Law Institute (since September 29, 2010).
- Member, Fellows of the Society for Empirical Legal Studies (since October 2015).
- American Bar Association
- American Economic Association

- American Law and Economics Association

PERSONAL

- Born: January 30, 1953.

DECLARATION OF SERVICE BY E-MAIL and U.S. Mail

Case Name: **Duncan, Virginia et al v. Xavier Becerra**

No.: **17-cv-1017-BEN-JLB**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service with postage thereon fully prepaid that same day in the ordinary course of business.

On November 3, 2017, I served the attached **EXPERT REBUTTAL REPORT OF JOHN J. DONOHUE** by transmitting a true copy via electronic mail. In addition, I placed a true copy thereof enclosed in a sealed envelope, in the internal mail system of the Office of the Attorney General, addressed as follows:

C. D. Michel
Michel & Associates, P.C.
180 E. Ocean Boulevard, Suite 200
Long Beach, CA 90802
E-mail Address:
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Erin E. Murphy
Kirkland & Ellis LLP
655 15th Street N.W.
Washington D.C. 20005
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erin.murphy@kirkland.com

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on November 3, 2017, at Sacramento, California.

N. Newlin

Declarant



Signature

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Exhibit 2
Page 00072

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Attorney General of California
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Supervising Deputy Attorney General
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Attorney General Xavier Becerra
10

11 IN THE UNITED STATES DISTRICT COURT
12 FOR THE SOUTHERN DISTRICT OF CALIFORNIA
13
14

15 **VIRGINIA DUNCAN, et al.,**

16 Plaintiffs,

17 v.

**REVISED EXPERT REPORT OF
DR. LOUIS KLAREVAS**

18
19 **XAVIER BECERRA, in his official
capacity as Attorney General of the
20 State of California, et al.,**

21 Defendants.
22
23
24
25
26
27
28

Judge: Hon. Roger T. Benitez
Action Filed: May 17, 2017

1 **EXPERT REPORT OF DR. LOUIS KLAREVAS**

2 **I. ASSIGNMENT**

3 I was retained by counsel for the Defendant Xavier Becerra, in his official
4 capacity as Attorney General of California, for the purposes of providing an expert
5 opinion on large-capacity magazines and mass shootings.

6 **II. QUALIFICATIONS AND BACKGROUND**

7 I am a security policy analyst and, currently, Associate Lecturer of Global
8 Affairs at the University of Massachusetts–Boston. I am also the author of
9 *Rampage Nation: Securing America from Mass Shootings* (Prometheus 2016), one
10 of the most comprehensive studies on gun massacres in the United States.

11 I am a political scientist by training, with a B.A. from the University of
12 Pennsylvania and a Ph.D. from American University. My most recent research
13 examines the nexus between American public safety and large-scale gun violence.

14 During the course of my nearly 20-year career as an academic, I have served
15 on the faculties of the George Washington University, the City University of New
16 York, and New York University. At New York University, I founded and
17 coordinated the graduate concentration in Transnational Security. I have also
18 served as a Defense Analysis Research Fellow at the London School of Economics
19 and Political Science and as United States Senior Fulbright Scholar in Security
20 Studies at the University of Macedonia.

21 In addition to having made well over 100 media and public speaking
22 appearances, I am the author or co-author of more than 20 scholarly articles and
23 over 70 commentary pieces. My most recent research project (undertaken in
24 collaboration with Prof. David Hemenway of Harvard University) assesses the
25 effectiveness of restrictions on large-capacity magazines in reducing gun
26 massacres.

27 Last year, I served on a team of experts, coordinated through Johns Hopkins
28 University, tasked with examining the implications of allowing guns on college

1 campuses. Furthermore, I was one of 32 experts surveyed by the *New York Times*
2 for a review of proposals aimed at curbing gun violence in the United States.¹

3 Besides the present case, I have been retained by the California Attorney
4 General's office in *Wiese v. Becerra*, Case Number 2:17-cv-00903-WBS-KJN,
5 Eastern District of California, Sacramento Division. *Wiese* is similar to the present
6 case in that it also involves a challenge against California's regulation of large-
7 capacity magazines. Earlier this year, I served as an expert for the State of
8 Colorado, as it defended a legal challenge to its ban on large-capacity magazines in
9 *Rocky Mountain Gun Owners, et al. v. Hickenlooper*, Case Number 2013CV33879,
10 District Court, City and County of Denver, Colorado. This is the only time that I
11 have testified or been deposed in a legal proceeding in the past five years. I have
12 also provided consultative services to the United States Institute of Peace and the
13 Federal Bureau of Investigation.

14 A more detailed list of my credentials and professional experiences can be
15 found in my curriculum vitae, which is attached as Appendix A.

16 **III. RETENTION AND COMPENSATION**

17 I am being compensated for my time in this case on an hourly basis at a rate of
18 \$300 per hour. My compensation is not contingent on the results of my analysis or
19 the substance of my testimony.

20 **IV. BASIS FOR OPINION AND MATERIAL CONSIDERED**

21 My opinion is based on the pleadings filed in this case, including the Court's
22 Order of June 29, 2017, granting a temporary injunction, as well as the materials
23 discussed in this report, including the resources cited in the footnotes and the data
24 presented in Appendix B.

25
26 ¹ Quoc Trung Bui and Margaret Sanger-Katz, "How to Prevent Gun Deaths? Where
27 Experts and the Public Agree," *New York Times*, January 10, 2017, available at
28 [https://www.nytimes.com/interactive/2017/01/10/upshot/How-to-Prevent-Gun-](https://www.nytimes.com/interactive/2017/01/10/upshot/How-to-Prevent-Gun-Deaths-The-Views-of-Experts-and-the-Public.html)
[Deaths-The-Views-of-Experts-and-the-Public.html](https://www.nytimes.com/interactive/2017/01/10/upshot/How-to-Prevent-Gun-Deaths-The-Views-of-Experts-and-the-Public.html) (last accessed October 4, 2017).

1 **V. OPINION**

2 It is my professional opinion, based upon my extensive review and analysis of
3 data from the past five decades, that: (1) gun massacres presently pose the deadliest
4 threat to the safety and security of American society, and the problem is growing;
5 (2) gun massacres involving large-capacity magazines, on average, have resulted in
6 a greater loss of life than similar incidents that did not involve large-capacity
7 magazines; and (3) jurisdictions where bans on the possession of large-capacity
8 magazines were in effect experienced fewer gun massacres, per capita, than
9 jurisdictions where such bans were not in effect. As a result, restrictions on LCMs
10 have the potential to significantly reduce the number of lives lost in mass
11 shootings.²

12 **A. Gun Massacres Are a Growing Threat to Public Safety**

13 In 1984, an individual armed with, among other firearms, an Uzi assault
14 weapon walked into a McDonald's restaurant in San Ysidro, California, and
15 murdered 21 people, making it the deadliest mass shooting in American history at
16 the time. It was a tragic marker that was short-lived, as the United States
17 experienced several deadlier shootings in the years that followed: 23 people killed
18 in a gun rampage in Killeen, Texas, in 1991; 32 people killed in a gun rampage at

19 ² In my book *Rampage Nation*, I defined a mass shooting as "any violent attack that
20 results in four or more individuals incurring gunshot wounds." I then differentiated
21 between three different categories of mass shooting: (1) Nonfatal are those mass
22 shootings in which no one dies; (2) Fatal are those mass shootings in which at least
23 one victim dies; and (3) High-Fatality are those mass shootings in which six or
24 more victims die. Throughout my book and in this report, I use the terms "high-
25 fatality mass shooting" and "gun massacre" interchangeably. Of the three
26 categories of mass shooting, gun massacres are the deadliest, resulting in the
27 highest fatality tolls per individual incidents. Given that gun massacres are the
28 most lethal and most disturbing, my original dataset in *Rampage Nation* focused on
and surveyed all known gun massacres in the United States from 1966-2015. Louis
Klarevas, *Rampage Nation: Securing America from Mass Shootings* 47-48
(Prometheus 2016).

1 Virginia Tech in Blacksburg, Virginia, in 2007; 27 people killed, including 20 first-
2 graders, in a gun rampage in Newtown, Connecticut, in 2012; 49 people killed in a
3 gun rampage in Orlando, Florida. This year, the United States reached a new
4 milestone when a gunman attacked a crowd of concert-attendees in Las Vegas,
5 Nevada, murdering an unprecedented 58 people in a single shooting. All six
6 massacres had one factor in common: the perpetrator used a semiautomatic firearm
7 armed with an ammunition-feeding device holding more than 10 bullets.³ Such
8 ammunition-feeding devices are frequently referred to as large-capacity magazines
9 (LCMs).⁴

10 In the past decade, gun massacres—like the Newtown, Orlando, Las Vegas,
11 and Sutherland Springs rampages—have been the deadliest individual acts of
12 violence in the United States. In fact, every single intentional act of violence in the
13 past decade that has claimed ten or more lives has been a mass shooting (*see* App.
14 B, tbl. 1), making gun attacks the greatest and most credible threat to the security
15 and safety of American society in the present era.

16 In preparation for my book *Rampage Nation*, I assembled 50 years of data
17 capturing all known gun massacres in the United States.⁵ Since 1968, there have
18

19 ³ App. B, tbl. 2.

20 ⁴ Magazines can come in a variety of capacities, including but not limited to 5, 8,
21 10, 15, 17, 20, 30, 40, 50, and even 100 rounds. The definition of “large-capacity
22 magazine” varies by state. For instance, California and Connecticut define them as
23 ammunition-feeding devices holding more than 10 bullets, whereas Colorado and
24 New Jersey define them as ammunition-feeding devices holding more than 15
25 bullets. *See* Law Center to Prevent Gun Violence, *Large Capacity Magazines*,
26 available at [http://smartgunlaws.org/gun-laws/policy-areas/classes-of-](http://smartgunlaws.org/gun-laws/policy-areas/classes-of-weapons/large-capacity-magazines)
27 weapons/large-capacity-magazines (last accessed October 4, 2017). For purposes
28 of this report, unless otherwise stated, LCMs will hereinafter refer to magazines
with a capacity greater than 10 rounds.

⁵ My book, which was published in 2016, covered the 50-year period of 1966-2015.
In preparation of this report, I have updated the dataset of gun massacres to cover

1 been a total of 114 gun massacres, resulting in the loss of a combined 1,035 lives.
2 *See* App. B, tbl. 2 & figs. 1-2. The data show that the past decade (2008-2017) has
3 been the worst on record, accounting for nearly one-third of all gun massacre
4 incidents from the past five decades (37 out of 114) and over 40 percent of all
5 deaths lost in such high-fatality mass shootings (428 out of 1,035).⁶ In fact, this
6 past year (2017) is the deadliest year of the past 50 years, with 100 people dying in
7 gun massacres.⁷ In other words, mass shootings pose a grave threat to the United
8 States, and the threat is growing.

9 **B. The Use of LCMs Is a Major Factor in the Rise of Gun**
10 **Massacre Violence**

11 A review of the data from the past 50 years indicates that gun massacres have
12 grown in terms of frequency and lethality. The data also point to another striking
13 pattern: the use of LCMs in the commission of gun massacres has risen in vast
14 proportions. *See* App. B, tbl. 2 & figs. 3-4.

15 A comparison of the ten-year period of 1968-1977 with the most recent
16 decade of 2008-2017 shows that the number of gun massacres involving LCMs has
17 increased eight-fold, from three to 24. Even more disturbing, the number of deaths
18 attributable to LCM-involving gun massacres has jumped over 17-fold between the
19 same two ten-year periods, from 19 to 330. Indeed, the 24 LCM-involving gun
20 massacres from the past decade account for 45 percent of all LCM-involving gun
21 massacres since 1968, and the 330 deaths attributable to the 24 incidents of the past
22 decade account for 55 percent of all deaths resulting from LCM-involving gun
23 massacres since 1968. To present the data in another manner, between 1968-1977,
24 only 17 percent of gun massacres involved LCMs, and those shootings accounted

25 the 50-year period from 1968 to 2017.

26 ⁶ App. B, tbl. 2 & figs. 1-2.

27 ⁷ *Id.*

1 for only 16 percent of all gun massacre fatalities from that decade. By contrast,
2 between 2008-2017, 65 percent of gun massacres involved LCMs, and those
3 shootings accounted for 77 percent of all gun massacre fatalities from that decade.
4 These are gigantic increases of 282 percent and 381 percent, respectively.⁸

5 LCMs provide multiple advantages to active shooters. Offensively, LCMs
6 increase kill potential. Basically, the more bullets a gunman can fire at a target, the
7 more potential wounds he can inflict. Furthermore, the more bullets that strike a
8 victim, the higher the odds that that person will die. There are two forces that allow
9 LCMs to increase kill potential: rapid-fire capability and multiple-impact
10 capability.

11 When inserted into either a semiautomatic or fully-automatic weapon, an
12 LCM facilitates the ability of an active shooter to fire a large number of rounds at
13 an extremely quick rate. This phenomenon—rapid-fire capability—comes in handy
14 when a target is in a gunman's line of sight for only a few seconds. For example,
15 rapid-fire capability allows a decent shooter to fire three rounds per second with a
16 semiautomatic firearm and ten rounds per second with an automatic firearm. That
17 results in numerous chances to hit a target in a very short window of opportunity.

18 LCMs also facilitate the ability of a shooter to strike a human target with
19 more than one round. This phenomenon—multiple-impact capability—increases
20 the chances that the victim, when struck by multiple rounds, will die. At least two
21 separate studies have found that, when compared to the fatality rates of gunshot
22 wound victims who were hit by only a single bullet, the fatality rates of those
23 victims hit by more than one bullet were over 60 percent higher.⁹ The implication

24
25 ⁸ App. B, tbl. 2 & figs. 3-4.

26 ⁹ Daniel W. Webster, et al., "Epidemiologic Changes in Gunshot Wounds in
27 Washington, DC, 1983-1990," 127 *Archives of Surgery* 694-698 (June 1992); and
28 Christopher S. Koper & Jeffrey A. Roth, The Impact of the 1994 Federal Assault
Weapon Ban on Gun Violence Outcomes: An Assessment of Multiple Outcome

1 is straightforward: being able to strike human targets with more than one bullet
2 increases the shooter's chances of killing his victims. In essence, LCMs are force
3 multipliers when it comes to kill potential—and the evidence from gun massacres
4 supports this commonsense conclusion.

5 Of the 114 gun massacres since 1968, 53 involved LCMs, resulting in a
6 cumulative 600 deaths. See App. B, tbl. 2 & fig. 5. The average death toll for the
7 53 gun massacres involving LCMs is 11.32 fatalities per shooting.¹⁰ By contrast,
8 the average death toll for the 61 incidents for which there is no evidence of LCM
9 usage is 7.13 fatalities per shooting.¹¹ In other words, the use of LCMs in
10 massacres resulted in a 59 percent increase in fatalities per incident.¹² In the past

11 Measures and Some Lessons for Policy Evaluation, 17 *Journal of Quantitative*
12 *Criminology* 33-74 (March 2001); see also, Angela Sauaia, et al., Fatality and
13 Severity of Firearm Injuries in a Denver Trauma Center, 2000-2013, 315 *J. of the*
14 *Am. Med. Ass'n* 2465-2467 (June 14, 2015).

15 ¹⁰ App. B, tbl. 2 & fig. 5.

16 ¹¹ *Id.* T-tests confirm that the differences in death tolls by LCM status are
17 statistically significant ($p < .01$ level). The difference remained statistically
18 significant ($p < .01$ level) regardless of whether non-LCM incidents were limited to
19 only those that did not involve LCMs or also included incidents for which the LCM
20 status was unknown.

21 ¹² The standard methodology is to attribute all deaths in LCM-involving mass
22 shootings to the use of LCMs and to treat cases for which the status of LCM usage
23 is unknown as incidents not involving LCMs. See Gary Kleck, Large-Capacity
24 Magazines and the Casualty Counts in Mass Shootings, 17 *Justice Research &*
25 *Policy* 28-47 (June 2016). Therefore, the calculation of the 11.32 mean average is
26 determined by dividing the total number of gun massacres involving LCMs (53)
27 into the total number of deaths resulting from those incidents (600). App. B, tbl. 2
28 & fig. 5. However, some of the people murdered in five of the 53 LCM-involving
gun massacres were shot and killed by firearms that were not LCM-capable. When
these five shootings are adjusted to reflect only deaths that were the result of LCM-
capable firearms—San Ysidro (19 out of 21 deaths), Littleton (5 out of 13 deaths),
Kirkwood (5 out of 6 deaths), Aurora (10 out of 12 deaths), and Newtown (26 out
of 27 deaths)—the cumulative death toll decreases to 586. This adjustment drops
the average death toll per LCM-involving incident to 11.06 fatalities, which in turn

1 decade, the difference is even more pronounced: 7.54 versus 13.75 deaths per
2 incident.¹³ This is a 82 percent increase in the average death toll, attributed to the
3 use of LCMs. Moreover, since 1968, LCMs have been used in 74 percent of all
4 gun massacres with 10 or more deaths, as well as in 100 percent of all gun
5 massacres with 20 or more deaths—establishing a relationship between LCMs and
6 the deadliest gun massacres.¹⁴

7 In addition to the offensive advantage that LCMs provide, there is the
8 advantage of extended cover. During an active shooting, perpetrators are either
9 firing their guns or not firing their guns. While pulling the trigger, it is extremely
10 difficult for those in harm's way to take successful defensive maneuvers. But if
11 gunmen run out of bullets, there is a lull in the shootings. This precious down-time
12 affords those in the line of fire with a chance to flee, hide, or fight back.

13 There are countless examples of individuals fleeing or taking cover while
14 active shooters paused to reload. For instance, in 2012, nine first-graders at Sandy
15 Hook Elementary School in Newtown, Connecticut, literally pushed their attacker
16 aside as he was swapping out magazines, allowing them to escape from their
17

18 results in a 55-percent increase (as opposed to a 59-percent increase) in deaths per
19 incident attributed to the use of LCMs. The revised fatality attributions are based
20 on my review of official government documents and autopsy reports pertaining to
21 the three respective mass shootings. Furthermore, the calculation of the 7.13 mean
22 average is determined by dividing the number of incidents for which the status of
23 LCM usage was either none or unknown (61) into the total number of deaths
24 resulting from those incidents (435). However, removing the nine cases wherein
25 the status of LCM usage is unknown from the set of 61 total cases results in 52
26 incidents and 373 cumulative fatalities. This adjustment decreases the average
27 death toll per non-LCM-involving incident to 7.17 fatalities, which in turn results in
28 a 58 percent increase (as opposed to a 59 percent increase) in deaths per incident
attributed to the use of LCMs. App. B, tbl. 2 & fig. 5.

¹³ App. B, tbl. 2 & figs. 1-5.

¹⁴ App. B, tbl. 2.

1 classroom and dash to safety.¹⁵ There is also the possibility that someone will rush
2 a rampage gunman and try to tackle him (or at the very least try to wrestle his
3 weapon away from him) while he pauses to reload.¹⁶ In recent history, there have
4 been numerous instances of active shooters being physically confronted by
5 unarmed civilians while reloading, bringing their gun attacks to an abrupt end. The
6 following list is just a sampling of examples.¹⁷

7
8 ¹⁵ See Klarevas, *Rampage Nation*, *supra* note 2, at 22.

9 ¹⁶ The longer a shooter can fire without interruption, the longer he can keep
10 potential defenders at bay. The longer potential defenders are kept from physically
11 confronting a gunman, the more opportunity there is for the shooter to inflict
12 damage.

13 ¹⁷ See Rich Schapiro, "LIRR Massacre 20 Years Ago: 'I Was Lucky,' Says Hero
14 Who Stopped Murderer," *New York Daily News*, December 7, 2013, *available at*
15 [http://www.nydailynews.com/new-york/nyc-crime/lirr-massacre-20-years-lucky-](http://www.nydailynews.com/new-york/nyc-crime/lirr-massacre-20-years-lucky-hero-stopped-murderer-article-1.1540846)
16 [hero-stopped-murderer-article-1.1540846](http://www.nydailynews.com/new-york/nyc-crime/lirr-massacre-20-years-lucky-hero-stopped-murderer-article-1.1540846) (last accessed October 4, 2017); *see also*
17 Eric Schmitt, "Gunman Shoots at White House from Sidewalk," *New York Times*,
18 October 30, 1994, *available at* [http://www.nytimes.com/1994/10/30/us/gunman-](http://www.nytimes.com/1994/10/30/us/gunman-shoots-at-white-house-from-sidewalk.html)
19 [shoots-at-white-house-from-sidewalk.html](http://www.nytimes.com/1994/10/30/us/gunman-shoots-at-white-house-from-sidewalk.html) (last accessed October 4, 2017); *see also*
20 Timothy Egan, "Oregon Student Held in 3 Killings; One Dead, 23 Hurt at His
21 School," *New York Times*, May 22, 1998, *available at* [http://www.nytimes.com/](http://www.nytimes.com/1998/05/22/us/shootings-school-overview-oregon-student-held-3-killings-one-dead-23-hurt-his.html)
22 [1998/05/22/us/shootings-school-overview-oregon-student-held-3-killings-one-](http://www.nytimes.com/1998/05/22/us/shootings-school-overview-oregon-student-held-3-killings-one-dead-23-hurt-his.html)
23 [dead-23-hurt-his.html](http://www.nytimes.com/1998/05/22/us/shootings-school-overview-oregon-student-held-3-killings-one-dead-23-hurt-his.html) (last accessed October 4, 2017); *see also* Ken Ritter, "Trial
24 Begins in Las Vegas Casino Gunfire Case," *San Diego Union-Tribune*, July 7, 2009,
25 *available at* [http://www.sandiegouniontribune.com/sdut-us-casino-shooting-trial-](http://www.sandiegouniontribune.com/sdut-us-casino-shooting-trial-070709-2009jul07-story.html)
26 [070709-2009jul07-story.html](http://www.sandiegouniontribune.com/sdut-us-casino-shooting-trial-070709-2009jul07-story.html) (last accessed October 4, 2017); *see also* "Capitol
27 Gunfire Suspect Tried Reloading," *Huntsville Item*, January 22, 2010, *available at*
28 [http://www.itemonline.com/news/local_news/report-capitol-gunfire-suspect-tried-](http://www.itemonline.com/news/local_news/report-capitol-gunfire-suspect-tried-reloading/article_7f321cc6-170e-578c-928f-fbc702f1228a.html)
[reloading/article_7f321cc6-170e-578c-928f-fbc702f1228a.html](http://www.itemonline.com/news/local_news/report-capitol-gunfire-suspect-tried-reloading/article_7f321cc6-170e-578c-928f-fbc702f1228a.html) (last accessed
October 4, 2017); *see also* Adam Nagourney, "A Single, Terrifying Moment: Shots
Fired, a Scuffle and Some Luck," *New York Times*, January 9, 2011, *available at*
<http://www.nytimes.com/2011/01/10/us/10reconstruct.html> (last accessed October
4, 2017); *see also* Joe Kemp, "Student Hailed Hero for Tackling Gunman Who
Opened Fire in Seattle Pacific University, Killing One," *New York Daily News*,
June 6, 2014, *available at* [http://www.nydailynews.com/news/crime/student-hailed-](http://www.nydailynews.com/news/crime/student-hailed-hero-tackling-gunman-opened-fire-seattle-pacific-university-killing-article-1.1819485)
[hero-tackling-gunman-opened-fire-seattle-pacific-university-killing-article-](http://www.nydailynews.com/news/crime/student-hailed-hero-tackling-gunman-opened-fire-seattle-pacific-university-killing-article-1.1819485)
[1.1819485](http://www.nydailynews.com/news/crime/student-hailed-hero-tackling-gunman-opened-fire-seattle-pacific-university-killing-article-1.1819485) (last accessed October 4, 2017).

**Examples of Active Shooters Who Were Physically
Confronted While Reloading**

Date	Perpetrator	Target	Location
December 7, 1993	Colin Ferguson	Long Island Rail Road	Garden City, NY
October 29, 1994	Francisco Duran	White House	Washington, DC
May 21, 1998	Kipland Kinkel	Thurston High School	Springfield, OR
July 6, 2007	Steven Zegrean	New York-New York Casino	Las Vegas, NV
January 21, 2010	Fausto Cardenas	Texas State Capitol	Austin, TX
January 8, 2011	Jared Loughner	Rep. Gabrielle Giffords Event	Tucson, AZ
June 5, 2014	Aaron Ybarra	Seattle Pacific University	Seattle, WA

C. Restrictions on LCMs Result in Fewer Gun Massacres

In light of the growing threat posed by rampage violence, legislatures have enacted measures in an effort to reduce the carnage of mass shootings. Prominent among these measures are restrictions on LCMs. There are at least two rationales for restricting magazine capacity. First, because LCMs, on average, produce higher death tolls in gun massacres, limiting magazine capacity aims to reduce the loss of life attributable to the increased kill potential of LCMs. Second, because LCMs allow rampage gunmen to fire more bullets without interruption, resulting in fewer opportunities for potential victims to take life-saving measures, limiting magazine capacity aims to create conditions which force mass shooters to pause in order to reload fresh magazines. This, in turn, provides authorities and civilians with precious seconds that can be exploited to escape, seek cover, or take other defensive measures, including attacking the gunmen.

In 1994, the United States enacted the Federal Assault Weapons Ban (AWB). Pub. L. No. 103-322, tit. XI, subtit. A, 108 Stat. 1796, 1996-2010 (codified as

1 former 18 U.S.C. § 922(v), (w)(1) (1994)). The law, which was in effect for only a
2 ten-year period before sun-setting, regulated certain firearms and their components.
3 Among its provisions, the AWB prohibited the manufacture, sale, transfer, or
4 possession of *new* magazines with a capacity greater than 10 rounds. *Id.*¹⁸ With
5 regard to the frequency and lethality of gun massacres, the AWB clearly had a
6 positive impact in reducing the number and carnage of such shootings.

7 In the 10-year period prior to the AWB (September 13, 1984-September 12,
8 1994), there were a total of eight gun massacres involving magazines with a
9 capacity greater than 10 rounds. *See* App. B, tbl. 2 & fig. 6. These eight gun
10 massacres claimed a combined 73 lives. During the 10-year period the AWB was
11 in effect (September 13, 1994-September 12, 2004), there were six gun massacres
12 involving magazines with a capacity greater than 10 rounds. These six gun
13 massacres claimed a combined 50 lives. In the ten-year period immediately
14 following the expiration of the AWB (September 13, 2004-September 12, 2014),
15 there were 24 gun massacres involving magazines with a capacity greater than 10
16 rounds. These 24 gun massacres claimed a combined 230 lives.¹⁹

17 In terms of incidents, the AWB ushered in a period marked by a 25-percent
18 decrease in the number of gun massacres involving magazines with a capacity
19 greater than 10 rounds. In contrast, the decade following the ban was marked by a
20 300-percent increase in the number of gun massacres involving magazines with a
21 capacity greater than 10 rounds. In terms of fatalities, the AWB ushered in a period
22 marked by a 32 percent decrease in the cumulative number of lives lost in gun
23 massacres involving magazines with a capacity greater than 10 rounds. In contrast,

24
25 ¹⁸ Magazines lawfully in circulation prior to the AWB's date of effect (September
26 13, 1994) were exempted (i.e., grandfathered) from the ban. Former 18 U.S.C.
27 § 922 (v)(2) (1994).

28 ¹⁹ App. B, tbl. 2 & fig. 6.

1 the decade following the ban was marked by a 360 percent increase in the
2 cumulative number of lives lost in gun massacres involving magazines with a
3 capacity greater than 10 rounds.²⁰

4 Since 1990, several states have also enacted restrictions on LCMs,
5 predominantly in an effort to reduce the loss of life in mass shootings.²¹ On March
6 30, 1990, New Jersey became the first state to regulate LCMs. Seven states and the
7 District of Columbia have since followed suit: Hawaii (July 1, 1992), Maryland
8 (June 1, 1994), Massachusetts (July 23, 1998), California (January 1, 2000), New
9 York (November 1, 2000), Washington, D.C. (March 31, 2009), Connecticut (April
10 4, 2013), and Colorado (July 1, 2013).²²

11
12 ²⁰ *Id.* In terms of all gun massacres, regardless of whether or not the shootings
13 involved LCMs, patterns in the same directions were noted. For instance, the period
14 of the AWB was marked by a 37 percent decrease in gun massacre incidents and a
15 43 percent decrease in gun massacre deaths, when compared to the 10-year period
16 immediately preceding the AWB. By contrast, the 10-year period immediately
17 following the AWB was marked by a 183 percent increase in gun massacre
18 incidents and a 239 percent increase in gun massacre deaths, when compared to the
19 decade of the AWB. *See Klarevas, Rampage Nation, supra* note 2, at 242.

20 ²¹ For a review of state laws that regulate LCMs, *see* Law Center to Prevent Gun
21 Violence, Large Capacity Magazines, *supra* note 1. States differ on the
22 ammunition-capacity threshold of LCMs. California, Connecticut, Hawaii,
23 Maryland, Massachusetts, New York, and Washington, D.C., define LCMs as
24 ammunition feeding devices holding more than 10 bullets, whereas Colorado and
25 New Jersey define LCMs as ammunition feeding devices holding more than 15
26 bullets. States also differ on whether to exempt LCMs that were in circulation or
27 owned prior to their respective bans going into effect—a practice known as
28 “grandfathering.” Colorado, Connecticut, Maryland Massachusetts grandfather
pre-ban LCMs. Hawaii, New Jersey, New York, and Washington, D.C., do not
grandfather pre-ban LCMs. Pursuant to a preliminary injunction issued by the
court in the current matter, California is prohibited from enforcing a law that would
prohibit LCMs that were legally possessed prior to January 1, 2000. If the
injunction is lifted, California would join Hawaii, New Jersey, New York, and
Washington, D.C. in not grandfathering previously-owned LCMs. *Id.*

²² Through a referendum on Proposition 63 (November 8, 2016), California voters

1 In the field of epidemiology, a common method for assessing the impact of
2 laws and policies is to measure the rate of onset of new cases of a problem,
3 comparing the rate when and where the laws and policies were in effect against the
4 rate when and where the laws and policies were not in effect. This measure, known
5 as the incidence rate, allows public health experts and criminologists to identify
6 discernable differences, per capita, over a period of time. Relevant to the present
7 case, calculating incidence rates across jurisdictions, in a manner that accounts for
8 whether or not LCM bans were in effect during the period of observation, allows
9 for the assessment of the effectiveness of such bans. In addition, fatality rates—the
10 number of deaths, per capita, that result from particular activities across different
11 jurisdictions—also provide insights into the impact of LCM bans on gun
12 massacres.²³

13 Since 1990, when the first LCM ban took effect in New Jersey, there have
14 been 69 gun massacres in the United States.²⁴ Calculating gun massacre incidence
15 rates for the time-period 1990-2017, across jurisdictions with and without bans on
16 the possession of LCMs, reveals that the enactment of an LCM ban resulted in an

17
18 decided to enhance their existing regulations on LCMs by prohibiting the
19 ownership of all ammunition magazines with a capacity greater than 10 bullets,
20 including any previously “grandfathered” LCMs. The relevant California statutes
21 can be found at Cal. Penal Code §§ 16740, 32310-32450. The particular provisions
22 that are the subject of the current litigation are codified at Cal. Penal Code §§
23 32310, 32390. California’s new LCM ban was set to take effect on July 1, 2017,
24 although the State is temporarily enjoined from enforcing it pursuant to a ruling in
25 the current case.

26 ²³ For purposes of this report, incidence and fatality (i.e., mortality) rates are
27 calculated in accordance with the methodological principles established by the
28 Centers for Disease Control and Prevention. See Centers for Disease Control and
Prevention, *An Introduction to Applied Epidemiology and Biostatistics* (2012).

²⁴ App. B, tbl. 2. There were no LCM bans in effect prior to 1990. Therefore, a
priori, 1990 is the logical starting point for an analysis of the impact of LCM bans.

1 79 percent difference, with ban states experiencing a far lower rate of incidence.
2 *See* App. B, tbl. 3.²⁵ Even if the examination is limited to the last 13 years (2005-
3 2017), which covers the years when the nationwide AWB was no longer in effect,
4 the difference in incidence rates is still 56 percent, with LCM-ban states again
5 experiencing far fewer gun massacres per capita.²⁶

6 It should be noted that the aforementioned incidence rates pertain to all gun
7 massacres, regardless of the weaponry they involved. When calculations go a step
8 further and are limited to gun massacres involving LCMs, the difference is even
9 more pronounced. *See* App. B, tbl. 3. In terms of incidence rates, for the time-
10 period since 1990, the benefit for jurisdictions that regulated LCMs was a 105
11 percent difference, when compared to jurisdictions that did not regulate LCMs.²⁷
12 Again, even if the examination is limited to post-federal AWB era, the difference in
13 incidence rates for LCM-involving gun massacres was 88 percent, again with
14 LCM-ban states experiencing far fewer attacks involving LCMs.²⁸

15 In terms of fatality rates, the patterns are similar. *See* App. B, tbl. 4. From
16 1990-2017, the difference in rates was 101 percent, with jurisdictions that had LCM
17 bans in effect experiencing drastically fewer deaths per capita than those areas
18 which did not regulate LCMs. Even after the federal AWB expired, drastically
19 cutting the number of areas restricting LCMs, states with LCM bans experienced
20 fewer gun massacre deaths per capita, marked by a 74 percent difference in fatality

21
22 ²⁵ For purposes of coding, between September 13, 1994, and September 12, 2004,
23 the federal AWB was in effect. During that ten-year period, all 50 states and the
24 District of Columbia were under legal conditions that banned the possession of
25 certain prohibited LCMs. As such, the entire country is coded as being under a
26 LCM ban during the decade the AWB was in effect.

27 ²⁶ App. B, tbl. 3.

28 ²⁷ *Id.*

²⁸ *Id.*

1 rates. Limiting analysis to only those gun massacres that involved LCMs indicates
2 that the difference in gun massacre fatality rates for LCM-ban jurisdictions was
3 even greater when compared to the fatality rates for jurisdictions that opted not to
4 regulate LCMs. In terms of LCM-involving gun massacres, the differences in
5 fatality rates between the two categories of jurisdictions were 126 percent and 106
6 percent for the time-periods 1990-2017 and 2005-2017, respectively, in both
7 instances to the benefit of states that regulated LCMs.²⁹

8 Basically, all of the above epidemiological calculations lead to the same
9 conclusion: when LCM bans are in effect, per capita, fewer gun massacres occur
10 and fewer people die in such high-fatality mass shootings.

11 The intent underlying most LCM bans is to restrict the circulation of LCMs.
12 The reasoning is that, if there are fewer LCMs in circulation within their
13 jurisdictions, then gunmen will be forced to use firearms with lower ammunition-
14 capacities, resulting in attacks that do not kill enough victims to rise to the level of
15 a gun massacre (six or more victims being shot to death in a mass shooting).³⁰
16 Moreover, even if gunmen opt to use semiautomatic firearms equipped with
17 magazines, bans should still result in fewer opportunities to acquire and utilize
18 LCMs prohibited by law to perpetrate gun massacres. The epidemiological data
19 clearly lend support to both of these premises, in turn furthering the argument that
20 bans on the possession of LCMs enhance public safety.

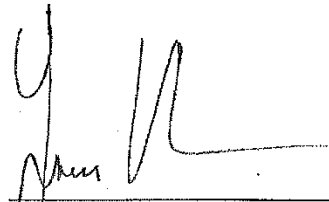
21
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23 _____
24 ²⁹ App. B, tbl. 4.

25 ³⁰ For instance, a gunman armed with a six-shot revolver can, in theory, kill six
26 people without having to reload. However, to kill more people, that same gunman
27 would require a way to fire additional ammunition, and the most efficient way to do
28 so is to utilize a firearm armed with a LCM. Restricting the ability of gunmen to
deliver large capacities of ammunition without interruption can result in fewer lives
lost in shootings.

1 While imposing constraints on LCMs will not result in the prevention of all
2 future mass shootings, the data suggest that denying rampage gunmen access to
3 LCMs will result in a significant number of lives being saved.

4
5 Respectfully Submitted,

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Louis Klarevas, Ph.D.
January 5, 2018
Queens, NY

Appendix A

Curriculum Vitae of Dr. Louis Klarevas

Louis J. Klarevas

Education

Ph.D. International Relations, 1999
School of International Service
American University

B.A. Political Science, *Cum Laude*, 1989
School of Arts and Sciences
University of Pennsylvania

Current Position

Associate Lecturer, Department of Global Affairs, University of Massachusetts -- Boston, 2015-

Representation

Trident Media Group
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Professional Experience

Expert Witness for State of California, *Duncan v. Becerra*, United States District Court for Southern District of California, Case Number 3:17-cv-1017-BEN, 2017

Expert Witness for State of California, *Wiese v. Becerra*, United States District Court for Eastern District of California, Case Number 2:17-cv-00903-WBS-KJN, 2017

Expert Witness for State of Colorado, *Rocky Mountain Gun Owners v. Hickenlooper*, District Court for County and City of Denver, Colorado, Case Number 2013CV33879, 2016-2017

Member, Guns on Campus Assessment Group, Johns Hopkins University Center for Gun Policy and Research, 2016

Consultant, National Joint Terrorism Task Force, Federal Bureau of Investigation, 2015

Senior Fulbright Scholar (Security Studies), Department of European and International Studies, University of Macedonia, Thessaloniki, Greece, 2012

Clinical Assistant Professor, Center for Global Affairs, New York University, 2006-2011

Founder and Coordinator, Graduate Transnational Security Program, Center for Global Affairs, New York University, 2009-2011

Faculty Affiliate, A. S. Onassis Program in Hellenic Studies, New York University, 2007-2011

Consultant, Academy for International Conflict Management and Peacebuilding, United States Institute of Peace, Washington, D.C., 2008-2009

Assistant Professor of Political Science, City University of New York – College of Staten Island, 2003-2006

Adjunct Professor, Center for Global Affairs, New York University, 2004-2006

Consultant, United States Institute of Peace, Washington, DC, 2005

Associate Fellow, European Institute, London School of Economics and Political Science, 2003-2004

Defense Analysis Research Fellow, London School of Economics and Political Science, 2002-2003

Visiting Assistant Professor of Political Science and International Affairs, George Washington University, Washington, D.C., 1999-2002

Adjunct Professor of Political Science, George Washington University, Washington, D.C., 1998-1999

Research Associate, United States Institute of Peace, Washington, D.C., 1992-1998

Adjunct Professor of International Relations, School of International Service, American University, Washington, D.C., 1994

Faculty Advisor, National Youth Leadership Forum, Washington, D.C., 1992

Dean's Scholar, School of International Service, American University, Washington, D.C., 1989-1992

Courses Taught

American Government and Politics (undergraduate)

Counter-Terrorism and Homeland Security (graduate)

European-Atlantic Relations (undergraduate)

International Political Economy (graduate and undergraduate)

International Politics in a Post-Cold War Era (graduate)

International Relations (undergraduate)

International Security (graduate)

Machinery and Politics of American Foreign Policy (graduate)

Role of the United States in World Affairs (graduate)

Security Policy (graduate)

Theories of International Politics (graduate)

Transnational Security (graduate)

Transnational Terrorism (graduate, undergraduate, and senior seminar)

United States Foreign Policy (graduate and undergraduate)

Books

Rampage Nation: Securing America from Mass Shootings (2016)
<http://www.penguinrandomhouse.com/books/252353/rampage-nation-by-louis-klarevas>

Scholarship

Firearms on College Campuses: Research Evidence and Policy Implications, report prepared by the Johns Hopkins University Center for Gun Policy and Research for the Association of American Universities, October 2016 (co-authored with Daniel W. Webster, John J. Donohue, et al.)

"No Relief in Sight: Barring *Bivens* Suits in Torture Cases," *Presidential Studies Quarterly*, June 2013

"Trends in Terrorism Since 9/11," *Georgetown Journal of International Affairs*, Winter/Spring 2011

"The Death Penalty Should Be Decided Only Under a Specific Guideline," in Christine Watkins, ed., *The Ethics of Capital Punishment* (Cengage/Gale Publishers, 2011)

Saving Lives in the 'Convoy of Joy': Lessons for Peace-Keeping from UNPROFOR, United States Institute of Peace Case Study, 2009

"Casualties, Polls and the Iraq War," *International Security*, Fall 2006

"The CIA Leak Case Indicting Vice President Cheney's Chief of Staff," *Presidential Studies Quarterly*, June 2006

"Were the Eagle and the Phoenix Birds of a Feather? The United States and the 1967 Greek Coup," *Diplomatic History*, June 2006

"Greeks Bearing Consensus: An Outline for Increasing Greece's Soft Power in the West," *Mediterranean Quarterly*, Summer 2005

"W Version 2.0: Foreign Policy in the Second Bush Term," *The Fletcher Forum of World Affairs*, Summer 2005

"Can You Sue the White House? Opening the Door for Separation of Powers Immunity in *Cheney v. District Court*," *Presidential Studies Quarterly*, December 2004

"Political Realism: A Culprit for the 9/11 Attacks," *Harvard International Review*, Fall 2004

Greeks Bearing Consensus: An Outline for Increasing Greece's Soft Power in the West, Hellenic Observatory Discussion Paper 18, London School of Economics, November 2004

Were the Eagle and the Phoenix Birds of a Feather? The United States and the 1967 Greek Coup, Hellenic Observatory Discussion Paper 15, London School of Economics, February 2004

"Media Impact," in Mark Rozell, ed., *The Media and American Politics: An Introduction* (Lanham, MD: Rowman & Littlefield, 2003)

"The Surrender of Alleged War Criminals to International Tribunals: Examining the Constitutionality of Extradition via Congressional-Executive Agreement," *UCLA Journal of International Law and Foreign Affairs*, Fall/Winter 2003

"The Constitutionality of Congressional-Executive Agreements: Insights from Two Recent Cases," *Presidential Studies Quarterly*, June 2003

"The 'Essential Domino' of Military Operations: American Public Opinion and the Use of Force," *International Studies Perspectives*, November 2002

"The Polls-Trends: The United States Peace Operation in Somalia," *Public Opinion Quarterly*, Winter 2001

American Public Opinion on Peace Operations: The Cases of Somalia, Rwanda, and Haiti, University of Michigan Dissertation Services, 1999

"Turkey's Right v. Might Dilemma in Cyprus: Reviewing the Implications of *Loizidou v. Turkey*," *Mediterranean Quarterly*, Spring 1999

"An Outline of a Plan Toward a Comprehensive Settlement of the Greek-Turkish Dispute," in Vangelis Calotychos, ed., *Cyprus and Its People: Nation, Identity, and Experience in an Unimaginable Community, 1955-1997*, Boulder, CO: Westview Press, 1998 (co-authored with Theodore A. Couloumbis)

"Prospects for Greek-Turkish Reconciliation in a Changing International Setting," in Robert L. Pfaltzgraff and Dimitris Keridis, eds., *Security in Southeastern Europe and the U.S.-Greek-Relationship*, London: Brassey's, 1997 (co-authored with Theodore A. Couloumbis)

"Prospects for Greek-Turkish Reconciliation in a Changing International Setting," in Tozun Bahcheli, Theodore A. Couloumbis, and Patricia Carley, eds., *Greek-Turkish Relations and U.S. Foreign Policy: Cyprus, the Aegean, and Regional Stability*, Washington, D.C.: U.S. Institute of Peace, 1997 (co-authored with Theodore A. Couloumbis)

"Structuration Theory in International Relations," *Swords & Ploughshares*, Spring 1992

Book Reviews

Review of James Edward Miller's *The United States and the Making of Modern Greece: History and Power, 1950-1974*, *Presidential Studies Quarterly*, June 2012

"The Life-Cycle of Regimes: Oran Young's *International Cooperation*," *Millennium*, Winter 1990 (co-authored with Nanette S. Levinson)

Commentaries and Correspondence

"The Texas Shooting Again Reveals Inadequate Mental-Health Help in the U.S. Military," *New York Daily News*, November 7, 2017

"Why Mass Shootings Are Getting Worse," *New York Daily News*, October 2, 2017

"London and the Mainstreaming of Vehicular Terrorism," *The Atlantic*, June 4, 2017 (co-authored with Colin P. Clarke)

"Almost Every Fatal Terrorist Attack in America since 9/11 Has Involved Guns," *Vice*, December 4, 2015

"Firearms Have Killed 82 of the 86 Victims of Post-9/11 Domestic Terrorism," *The Trace*, June 30, 2015

"International Law and the 2012 Presidential Elections," Vitoria Institute Website, March 24, 2012

"Al Qaeda Without Bin Laden," CBS News *Opinion*, May 2, 2011

"Fuel, But Not the Spark," *Zocalo Public Square*, February 16, 2011

"After Tucson, Emotions Run High," *New York Times*, January 12, 2011 (correspondence)

"WikiLeaks, the Web, and the Need to Rethink the Espionage Act," *The Atlantic*, November 9, 2010

"N.Y. Can Lead the Nation in Fighting Child Sex Trafficking," *New York Daily News*, April 21, 2009 (co-authored with Ana Burdsall-Morse)

"Deprogramming Jihadis," *New York Times Magazine*, November 23, 2008 (correspondence)

"Food: An Issue of National Security," *Forbes* (Forbes.com), October 25, 2008

"Crack Down on Handguns – They're a Tool of Terror, Too," *New York Daily News*, October 25, 2007

"An Invaluable Opportunity for Greece To Increase Its Standing and Influence on the World Stage," *Kathimerini* (Greece), January 13, 2005

"Not a Divorce," *Survival*, Winter 2003-2004

"How Many War Deaths Can We Take?" *Newsday*, November 7, 2003

"Death Be Not Proud," *The New Republic*, October 27, 2003 (correspondence)

"Down But Not Out," London School of Economics Iraq War Website, April 2003

"Four Half-Truths and a War," *American Reporter*, April 6, 2003

"The Greek Bridge between Old and New Europe," *National Herald*, February 15-16, 2003

"Debunking a Widely-Believed Greek Conspiracy Theory," *National Herald*, September 21-22, 2002

"Debunking of Elaborate Media Conspiracies an Important Trend," *Kathimerini* (Greece), September 21, 2002 [Not Related to September 21-22, 2002, *National Herald* Piece with Similar Title]

"Cold Turkey," *Washington Times*, March 16, 1998

"Make Greece and Turkey Behave," *International Herald Tribune*, January 3, 1998

"If This Alliance Is to Survive . . .," *Washington Post*, January 2, 1998

"Defuse Standoff on Cyprus," *Defense News*, January 27-February 2, 1997

"Ukraine Holds Nuclear Edge," *Defense News*, August 2-8, 1993

Commentaries for *Foreign Policy* – <http://www.foreignpolicy.com>

"The White House's Benghazi Problem," September 20, 2012

"Greeks Don't Want a Grexit," June 14, 2012

"The Earthquake in Greece," May 7, 2012

"The Idiot Jihadist Next Door," December 1, 2011

"Locked Up Abroad," October 4, 2011

Commentaries for *The New Republic* – <http://www.tnr.com/users/louis-klarevas>

"What the U.N. Can Do To Stop Getting Attacked by Terrorists," September 2, 2011

"Is It Completely Nuts That the British Police Don't Carry Guns? Maybe Not," August 13, 2011

"How Obama Could Have Stayed the Execution of Humberto Leal Garcia," July 13, 2011

"After Osama bin Laden: Will His Death Hasten Al Qaeda's Demise?" May 2, 2011

"Libya's Stranger Soldiers: How To Go After Qaddafi's Mercenaries," February 28, 2011

"Closing the Gap: How To Reform U.S. Gun Laws To Prevent Another Tucson," January 13, 2011

"Easy Target," June 13, 2010

Commentaries Written for *The Huffington Post* – <http://www.huffingtonpost.com/louis-klarevas>

“Improving the Justice System Following the Deaths of Michael Brown and Eric Garner,” December 4, 2014

“American Greengemony: How the U.S. Can Help Ukraine and the E.U. Break Free from Russia’s Energy Stranglehold,” March 6, 2014

“Guns Don’t Kill People, Dogs Kill People,” October 17, 2013

“Romney the Liberal Internationalist?” October 23, 2012

“Romney’s Unrealistic Foreign Policy Vision: National Security Funded by Money Growing Trees,” October 10, 2012

“Do the Wrong Thing: Why Penn State Failed as an Institution,” November 14, 2011

“Holding Egypt’s Military to Its Pledge of Democratic Reform,” February 11, 2011

“The Coming Twivolutions? Social Media in the Recent Uprisings in Tunisia and Egypt,” January 31, 2011

“Scholarship Slavery: Does St. John’s ‘Dean of Mean’ Represent a New Face of Human Trafficking?” October 6, 2010

“Misunderstanding Terrorism, Misrepresenting Islam,” September 21, 2010

“Bombing on the Analysis of the Times Square Bomb Plot,” May 5, 2010

“Do the Hutaree Militia Members Pose a Terrorist Threat?” May 4, 2010

“Addressing Mexico’s Gun Violence One Extradition at a Time,” March 29, 2010

“Terrorism in Texas: Why the Austin Plane Crash Is an Act of Terror,” February 19, 2010

“Securing American Primacy by Tackling Climate Change: Toward a National Strategy of Greengemony,” December 15, 2009

“Traffickers Without Borders: A ‘Journey’ into the Life of a Child Victimized by Sex Trafficking,” November 17, 2009

“Beyond a Lingering Doubt: It’s Time for a New Standard on Capital Punishment,” November 9, 2009

“It’s the Guns Stupid: Why Handguns Remain One of the Biggest Threats to Homeland Security,” November 7, 2009

“Obama Wins the 2009 Nobel Promise Prize,” October 9, 2009

Legal Analyses Written for *Writ* – <http://writ.news.findlaw.com/contributors.html#klarevas>

“Human Trafficking and the Child Protection Compact Act of 2009,” *Writ* (FindLaw.com), July 15, 2009 (co-authored with Christine Buckley)

“Can the Justice Department Prosecute Reporters Who Publish Leaked Classified Information? Interpreting the Espionage Act,” *Writ* (FindLaw.com), June 9, 2006

“Will the Precedent Set by the Indictment in a Pentagon Leak Case Spell Trouble for Those Who Leaked Valerie Plame's Identity to the Press?” *Writ* (FindLaw.com), August 15, 2005

“Jailing Judith Miller: Why the Media Shouldn’t Be So Quick to Defend Her, and Why a Number of These Defenses Are Troubling,” *Writ* (FindLaw.com), July 8, 2005

“The Supreme Court Dismisses the Controversial Consular Rights Case: A Blessing in Disguise for International Law Advocates?” *Writ* (FindLaw.com), June 6, 2005 (co-authored with Howard S. Schiffman)

“The Decision Dismissing the Lawsuit against Vice President Dick Cheney,” *Writ* (FindLaw.com), May 17, 2005

“The Supreme Court Considers the Rights of Foreign Citizens Arrested in the United States,” *Writ* (FindLaw.com), March 21, 2005 (co-authored with Howard S. Schiffman)

Columns Written (in Greek) for *To Vima* Newspaper (Athens)

“Time to Pay,” August 2003

“Does Turkey Have an Ulterior Motive?” July 2003

“Will They Make Up?” June 2003

“Don’t Take the Bait,” May 2003

“If the Cheers Turn to Jeers,” April 2003

“The Power of a Niche Identity,” April 2003

“If You Can’t Beat Them, Join Them,” April 2003

“Show Me the Euros,” March 2003

Presentations and Addresses

In addition to the presentations listed below, I have made close to one hundred media appearances, book events, and educational presentations (beyond lectures for my own classes)

“Protecting the Homeland: Tracking Patterns and Trends in Domestic Terrorism,” address delivered to the annual meeting of the National Joint Terrorism Task Force, June 2015

“Sovereign Accountability: Creating a Better World by Going after Bad Political Leaders,” address delivered to the Daniel H. Inouye Asia-Pacific Center for Security Studies, November 2013

“Game Theory and Political Theater,” address delivered at the School of Drama, State Theater of Northern Greece, May 2012

“Holding Heads of State Accountable for Gross Human Rights Abuses and Acts of Aggression,” presentation delivered at the Michael and Kitty Dukakis Center for Public and Humanitarian Service, American College of Thessaloniki, May 2012

Chairperson, Cultural Enrichment Seminar, Fulbright Foundation – Southern Europe, April 2012

Participant, Roundtable on “Did the Intertubes Topple Hosni?” Zócalo Public Square, February 2011

Chairperson, Panel on Democracy and Terrorism, annual meeting of the International Security Studies Section of the International Studies Association, October 2010

“Trends in Terrorism Within the American Homeland Since 9/11,” paper to be presented at the annual meeting of the International Security Studies Section of the International Studies Association, October 2010

Panelist, “In and Of the World,” Panel on Global Affairs in the 21st Century, Center for Global Affairs, New York University, March 2010

Moderator, “Primacy, Perils, and Players: What Does the Future Hold for American Security?” Panel of Faculty Symposium on Global Challenges Facing the Obama Administration, Center for Global Affairs, New York University, March 2009

“Europe’s Broken Border: The Problem of Illegal Immigration, Smuggling and Trafficking via Greece and the Implications for Western Security,” presentation delivered at the Center for Global Affairs, New York University, February 2009

“The Dangers of Democratization: Implications for Southeast Europe,” address delivered at the University of Athens, Athens, Greece, May 2008

Participant, “U.S. National Intelligence: The Iran National Intelligence Estimate,” Council on Foreign Relations, New York, April 2008

Moderator, First Friday Lunch Series, “Intelligence in the Post-9/11 World: An Off-the-Record Conversation with Dr. Joseph Helman (U.S. Senior National Intelligence Service),” Center for Global Affairs, New York University, March 2008

Participant, "U.S. National Intelligence: Progress and Challenges," Council on Foreign Relations, New York, March 2008

Moderator, First Friday Lunch Series, "Public Diplomacy: The Steel Backbone of America's Soft Power: An Off-the-Record Conversation with Dr. Judith Baroody (U.S. Department of State)," Center for Global Affairs, New York University, October 2007

"The Problems and Challenges of Democratization: Implications for Latin America," presentation delivered at the Argentinean Center for the Study of Strategic and International Relations Third Conference on the International Relations of South America (IBERAM III), Buenos Aires, Argentina, September 2007

"The Importance of Higher Education to the Hellenic-American Community," keynote address to the annual Pan-Icarian Youth Convention, New York, May 2007

Moderator, First Friday Lunch Series, Panel Spotlighting Graduate Theses and Capstone Projects, Center for Global Affairs, New York University, April 2007

Convener, U.S. Department of State Foreign Officials Delegation Working Group on the Kurds and Turkey, March 2007

"Soft Power and International Law in a Globalizing Latin America," round-table presentation delivered at the Argentinean Center for the Study of Strategic and International Relations Twelfth Conference of Students and Graduates of International Relations in the Southern Cone (CONOSUR XII), Buenos Aires, Argentina, November 2006

Moderator, First Friday Lunch Series, "From Berkeley to Baghdad to the Beltway: An Off-the-Record Conversation with Dr. Catherine Dale (U.S. Department of Defense)," Center for Global Affairs, New York University, November 2006

Chairperson, Roundtable on Presidential Privilege and Power Reconsidered in a Post-9/11 Era, American Political Science Association Annual Meeting, September 2006

"Constitutional Controversies," round-table presentation delivered at City University of New York-College of Staten Island, September 2005

"The Future of the Cyprus Conflict," address to be delivered at City University of New York College of Staten Island, April 2005

"The 2004 Election and the Future of American Foreign Policy," address delivered at City University of New York College of Staten Island, December 2004

"One Culprit for the 9/11 Attacks: Political Realism," address delivered at City University of New York-College of Staten Island, September 2004

"Were the Eagle and the Phoenix Birds of a Feather? The United States and the 1967 Greek Coup," address delivered at London School of Economics, November 2003

"Beware of Europeans Bearing Gifts? Cypriot Accession to the EU and the Prospects for Peace," address delivered at Conference on Mediterranean Stability, Security, and Cooperation, Austrian Defense Ministry, Vienna, Austria, October 2003

Co-Chair, Panel on Ideational and Strategic Aspects of Greek International Relations, London School of Economics Symposium on Modern Greece, London, June 2003

"Greece between Old and New Europe," address delivered at London School of Economics, June 2003

Co-Chair, Panel on International Regimes and Genocide, International Association of Genocide Scholars Annual Meeting, Galway, Ireland, June 2003

"American Cooperation with International Tribunals," paper presented at the International Association of Genocide Scholars Annual Meeting, Galway, Ireland, June 2003

"Is the Unipolar Moment Fading?" address delivered at London School of Economics, May 2003

"Cyprus, Turkey, and the European Union," address delivered at London School of Economics, February 2003

"Bridging the Greek-Turkish Divide," address delivered at Northwestern University, May 1998

"The CNN Effect: Fact or Fiction?" address delivered at Catholic University, April 1998

"The Current Political Situation in Cyprus," address delivered at AMIDEAST, July 1997

"Making the Peace Happen in Cyprus," presentation delivered at the U.S. Institute of Peace in July 1997

"The CNN Effect: The Impact of the Media during Diplomatic Crises and Complex Emergencies," a series of presentations delivered in Cyprus (including at Ledra Palace), May 1997

"Are Policy-Makers Misreading the Public? American Public Opinion on the United Nations," paper presented at the International Studies Association Annual Meeting, Toronto, Canada, March 1997 (with Shoon Murray)

"The Political and Diplomatic Consequences of Greece's Recent National Elections," presentation delivered at the National Foreign Affairs Training Center, Arlington, VA, September 1996

"Prospects for Greek-Turkish Reconciliation," presentation delivered at the U.S. Institute of Peace Conference on Greek-Turkish Relations, Washington, D.C., June, 1996 (with Theodore A. Couloumbis)

"Greek-Turkish Reconciliation," paper presented at the Karamanlis Foundation and Fletcher School of Diplomacy Joint Conference on The Greek-U.S. Relationship and the Future of Southeastern Europe, Washington, D.C., May, 1996 (with Theodore A. Couloumbis)

"The Path toward Peace in the Eastern Mediterranean and the Balkans in the Post-Cold War Era," paper presented at the International Studies Association Annual Meeting, San Diego, CA, March, 1996 (with Theodore A. Couloubis)

"Peace Operations: The View from the Public," paper presented at the International Studies Association Annual Meeting, San Diego, CA, March, 1996

Chairperson, Roundtable on Peace Operations, International Security Section of the International Studies Association Annual Meeting, Rosslyn, VA, October, 1995

"Chaos and Complexity in International Politics: Epistemological Implications," paper presented at the International Studies Association Annual Meeting, Washington, D.C., March, 1994

"At What Cost? American Mass Public Opinion and the Use of Force Abroad," paper presented at the International Studies Association Annual Meeting, Washington, D.C., March, 1994 (with Daniel B. O'Connor)

"American Mass Public Opinion and the Use of Force Abroad," presentation delivered at the United States Institute of Peace, Washington, D.C., February, 1994 (with Daniel B. O'Connor)

"For a Good Cause: American Mass Public Opinion and the Use of Force Abroad," paper presented at the Annual Meeting of the Foreign Policy Analysis/Midwest Section of the International Studies Association, Chicago, IL, October, 1993 (with Daniel B. O'Connor)

"American International Narcotics Control Policy: A Critical Evaluation," presentation delivered at the American University Drug Policy Forum, Washington, D.C., November, 1991

"American National Security in the Post-Cold War Era: Social Defense, the War on Drugs, and the Department of Justice," paper presented at the Association of Professional Schools of International Affairs Conference, Denver, CO, February, 1991

Referee for Grant Organizations, Peer-Reviewed Journals, and Book Publishers

National Science Foundation, Division of Social and Economic Sciences

American Political Science Review

Comparative Political Studies

Journal of Public and International Affairs

Millennium

Political Behavior

Presidential Studies Quarterly

Brill Publishers

Service to University, Profession, and Community

Expert Witness for State of California, 2017

Expert Witness for State of Colorado, 2016-2017

Member, Guns on Campus Assessment Group, Johns Hopkins University and Association of American Universities, 2016

Member, Fulbright Selection Committee, Fulbright Foundation, Athens, Greece, 2012

Founder and Coordinator, Graduate Transnational Security Studies, Center for Global Affairs, New York University, 2009-2011

Faculty Advisor, Global Affairs Graduate Society, New York University, 2009-2011

Organizer, Annual Faculty Symposium, Center for Global Affairs, New York University, 2009

Member, Faculty Search Committees, Center for Global Affairs, New York University, 2007-2009

Member, Graduate Program Director Search Committee, Center for Global Affairs, New York University, 2008-2009

Developer, Transnational Security Studies, Center for Global Affairs, New York University, 2007-2009

Participant, Council on Foreign Relations Special Series on National Intelligence, New York, 2008

Member, Graduate Certificate Curriculum Committee, Center for Global Affairs, New York University, 2008

Member, Faculty Affairs Committee, New York University, 2006-2008

Member, Curriculum Review Committee, Center for Global Affairs, New York University, 2006-2008

Member, Overseas Study Committee, Center for Global Affairs, New York University, 2006-2007

Participant, New York Academic Delegation to Israel, Sponsored by American-Israel Friendship League, 2006

Member, Science, Letters, and Society Curriculum Committee, City University of New York-College of Staten Island, 2006

Member, Graduate Studies Committee, City University of New York-College of Staten Island, 2005-2006

Member, Summer Research Grant Selection Committee, City University of New York-College of Staten Island, 2005

Director, College of Staten Island Association, 2004-2005

Member of Investment Committee, College of Staten Island Association, 2004-2005

Member of Insurance Committee, College of Staten Island Association, 2004-2005

Member, International Studies Advisory Committee, City University of New York-College of Staten Island, 2004-2006

Faculty Advisor, Pi Sigma Alpha National Political Science Honor Society, City University of New York-College of Staten Island, 2004-2006

Participant, World on Wednesday Seminar Series, City University of New York-College of Staten Island, 2004-2005

Participant, American Democracy Project, City University of New York-College of Staten Island, 2004

Participant, Philosophy Forum, City University of New York-College of Staten Island, 2004

Department Liaison, Commencement, City University of New York-College of Staten Island, 2004

Member of Scholarship Committee, Foundation of Pan-Icarian Brotherhood, 2003-2005, 2009

Scholarship Chairman, Foundation of Pan-Icarian Brotherhood, 2001-2003

Faculty Advisor to the Kosmos Hellenic Society of the George Washington University, 2001-2002

Member of University of Pennsylvania's Alumni Application Screening Committee, 2000-2002

Participant in U.S. Department of State's International Speakers Program, 1997

Participant in Yale University's United Nations Project, 1996-1997

Member of Editorial Advisory Board, *Journal of Public and International Affairs*, Woodrow Wilson School of Public and International Affairs, Princeton University, 1991-1993

Voting Graduate Student Member, School of International Service Rank and Tenure Committee, American University, 1990-1992

Member of School of International Service Graduate Student Council, American University, 1990-1992

Teaching Assistant for the Several Courses (World Politics, Beyond Sovereignty, Between Peace and War, Soviet-American Security Relations, and Organizational Theory) at School of International Service Graduate Student Council, American University, 1989-1992

Representative for American University at the Annual Meeting of the Association of Professional Schools of International Affairs, Denver, Colorado, 1991

Associations and Organizations (Past and Present)

Academy of Political Science

American Political Science Association

Anderson Society of American University

Carnegie Council Global Ethics Network

International Political Science Association

International Studies Association

Museum of Modern Art

New York Screenwriters Collective

Pan-Icarian Brotherhood

Pi Sigma Alpha

Sigma Nu Fraternity

Social Science Research Network

United States Department of State Alumni Network

United States Institute of Peace Alumni Association

University of Pennsylvania Alumni Association

Honors and Awards

Senior Fulbright Fellowship, 2012

Professional Staff Congress Research Grantee, City University of New York, 2004-2005

Research Assistance Award (Two Times), City University of New York-College of Staten Island, 2004

Summer Research Fellowship, City University of New York-College of Staten Island, 2004

European Institute Associate Fellowship, London School of Economics, 2003-2004

Hellenic Observatory Defense Analysis Research Fellowship, London School of Economics, 2003

United States Institute of Peace Certificate of Meritorious Service, 1996

National Science Foundation Dissertation Research Grant, 1995 (declined)

Alexander George Award for Best Graduate Student Paper, Runner-Up, Foreign Policy Analysis Section, International Studies Association, 1994

Dean's Scholar Fellowship, School of International Service, American University, 1989-1992

Graduate Research and Teaching Assistantship, School of International Service, American University, 1989-1992

American Hellenic Educational Progressive Association (AHEPA) College Scholarship, 1986

Political Science Student of the Year, Wilkes-Barre Area School District, 1986

Appendix B

Tables and Figures in Support of Expert Report Submitted by Dr. Louis Klarevas

Appendix B – Table 1**The 10 Deadliest Intentional Acts of Violence of the Past Decade, 2008-2017**

	Deaths	Incident Type	Date	Perpetrator	City	State
1	58	Mass Shooting	10/1/2017	Stephen Paddock	Las Vegas	NV
2	49	Mass Shooting	6/12/2016	Onar Mateen	Orlando	FL
3	27	Mass Shooting	12/14/2012	Adam Lanza	Newtown	CT
4	26	Mass Shooting	11/5/2017	Devin Kelley	Sutherland Springs	TX
5	14	Mass Shooting	12/2/2015	Syed Rizwan Farook and Tashfeen Malik	San Bernardino	CA
6	13	Mass Shooting	4/3/2009	Jiverly Wong	Binghamton	NY
7	13	Mass Shooting	11/5/2009	Nidal Hasan	Fort Hood	TX
8	12	Mass Shooting	7/20/2012	James Holmes	Aurora	CO
9	12	Mass Shooting	9/16/2013	Aaron Alexis	Washington	DC
10	10	Mass Shooting	3/10/2009	Michael McLendon	Kinston, Samson, and Geneva	AL

Appendix B – Table 2

Gun Massacres in the United States, 1968-2017

	Date	City	State	Perpetrator(s)	LCM	Deaths
1	3/16/1968	Ironwood	MI	Eric Pearson	N	7
2	6/25/1968	Good Hart	MI	Undetermined	N	6
3	12/19/1968	Napa	CA	Charles Bray	N	6
4	9/3/1971	Phoenix	AZ	John Freeman	N	7
5	6/21/1972	Cherry Hill	NJ	Edwin Grace	Y	6
6	1/7/1973	New Orleans	LA	Mark Essex	N	7
7	6/21/1973	Palos Hills	IL	William Workman	N	7
8	4/22/1973	Los Angeles	CA	William Bonner	N	7
9	6/9/1973	Boston	MA	George O'Leary	N	6
10	11/4/1973	Cleveland	OH	Cyril Rovansk	N	7
11	2/18/1974	Fayette	MS	Frankie Lias	N	7
12	11/13/1974	Amityville	NY	Ronald DeFeo	N	6
13	3/30/1975	Hamilton	OH	James Ruppert	N	11
14	10/19/1975	Sutherland	NE	Erwin Simants	N	6
15	3/12/1976	Treviso	PA	George Geschwendt	N	6
16	7/12/1976	Fullerton	CA	Edward Alloway	Y	7
17	7/23/1977	Klamath Falls	OR	DeWitt Henry	Y	6
18	8/26/1977	Hackettstown	NJ	Emile Benoist	N	6
19	7/16/1978	Oklahoma City	OK	Harold Stafford, Roger Stafford, and Verna Stafford	N	6
20	1/3/1981	Delmar	IA	Gene Gilbert	N	6
21	1/7/1981	Richmond	VA	Artie Ray Cherry, Michael Finazzo, and Tyler Findak	N	6
22	5/2/1981	Clinton	MD	Ronald Ellis	N	6
23	8/21/1981	Indianapolis	IN	King Bell	N	6
24	2/17/1982	Farwell	MI	Robert Haggart	N	7
25	8/9/1982	Grand Prairie	TX	John Parish	N	6
26	8/20/1982	Miami	FL	Carl Brown	N	8
27	9/7/1982	Craig	AK	Undetermined	N	8
28	9/25/1982	Wilkes-Barre	PA	George Banks	Y	13
29	2/18/1983	Seattle	WA	Kwan Fai Mak and Benjamin Ng	N	13
30	3/3/1983	McCarthy	AK	Louis Hastings	N	6
31	10/11/1983	College Station and Hempstead	TX	Eliseo Morono	N	6
32	4/15/1984	Brooklyn	NY	Christopher Thomas	N	10
33	5/19/1984	Manley Hot Springs	AK	Michael Silka	N	8
34	6/29/1984	Dallas	TX	Abdelkrim Belachheb	Y	6
35	7/18/1984	San Ysidro	CA	James Huberty	Y	21
36	10/18/1984	Evansville	IN	James Day	N	6
37	8/20/1986	Edmond	OK	Patrick Sherrill	N	14
38	12/8/1986	Oakland	CA	Rita Lewis and David Welch	Y	6
39	2/5/1987	Flint	MI	Terry Morris	N	6
40	4/23/1987	Palm Bay	FL	William Cruse	Y	6
41	7/12/1987	Tacoma	WA	Daniel Lynam	N	7
42	9/25/1987	Elkland	MO	James Schnick	N	7
43	12/30/1987	Algona	IA	Robert Dreesman	N	6
44	2/16/1988	Sunnyvale	CA	Richard Farley	N	7
45	9/14/1989	Louisville	KY	Joseph Wesbecker	Y	8
46	6/18/1990	Jacksonville	FL	James Pough	Y	9
47	1/26/1991	Chimayo	NM	Ricky Abeyta	N	7
48	8/9/1991	Waddell	AZ	Jonathan Doody and Alessandro Garcia	N	9
49	10/16/1991	Killeen	TX	George Hennard	Y	23
50	11/7/1992	Morro Bay and Paso Robles	CA	Lynwood Drake	N	6
51	1/8/1993	Palatine	IL	James Degorski and Juan Luna	N	7
52	5/16/1993	Fresno	CA	Allen Heflin and Johnnie Malarkey	Y	7
53	7/1/1993	San Francisco	CA	Gian Luigi Perri	Y	8
54	12/7/1993	Garden City	NY	Colin Ferguson	Y	6
55	4/20/1999	Littleton	CO	Eric Harris and Dylan Klebold	Y	13
56	7/12/1999	Atlanta	GA	Cyrano Marks	U	6
57	7/29/1999	Atlanta	GA	Mark Barton	Y	9
58	9/15/1999	Fort Worth	TX	Larry Ashbrook	Y	7
59	11/2/1999	Honolulu	HI	Byran Koji Uyesugi	Y	7
60	12/26/2000	Wakefield	MA	Michael McDermott	Y	7

Appendix B – Table 2 (Cont.)

Gun Massacres in the United States, 1968-2017

	Date	City	State	Perpetrator(s)	LCM	Deaths
61	12/28/2000	Philadelphia	PA	Shihean Black, Dawud Faruqi, Khalid Faruqi, and Bruce Veney	Y	7
62	8/26/2002	Rutledge	AL	Westley Harris	N	6
63	1/15/2003	Edinburg	TX	Humberto Garza, Robert Garza, Rodolfo Medrano, and Juan Ramirez	U	6
64	7/8/2003	Meridian	MS	Douglas Williams	N	6
65	8/27/2003	Chicago	IL	Salvador Tapia	N	6
66	3/12/2004	Fresno	CA	Marcus Wesson and Sebhrenah Wesson	N	9
67	11/21/2004	Birchwood	WI	Chai Soua Vang	Y	6
68	3/12/2005	Brookfield	WI	Terry Ratzmann	Y	7
69	3/21/2005	Red Lake	MN	Jeffrey Weise	Y	9
70	1/30/2006	Goleta	CA	Jennifer San Marco	Y	7
71	3/25/2006	Seattle	WA	Kyle Huff	Y	6
72	6/1/2006	Indianapolis	IN	James Stewart and Desmond Turner	Y	7
73	12/16/2006	Kansas City	KS	Hersel Isadore	N	6
74	4/16/2007	Blacksburg	VA	Seung Hui Cho	Y	32
75	10/7/2007	Crandon	WI	Tyler Peterson	Y	6
76	12/5/2007	Omaha	NE	Robert Hawkins	Y	8
77	12/24/2007	Carnation	WA	Michele Anderson and Joseph McEnroe	U	6
78	2/7/2008	Kirkwood	MO	Charles Lee Thornton	Y	6
79	9/2/2008	Alger	WA	Isaac Zamora	U	6
80	12/24/2008	Covina	CA	Bruce Pardo	Y	8
81	1/27/2009	Los Angeles	CA	Ervin Lupoe	N	6
82	3/10/2009	Kinston, Samsom, and Geneva	AL	Michael McLendon	Y	10
83	3/29/2009	Carthage	NC	Robert Stewart	N	8
84	4/3/2009	Binghamton	NY	Jiverly Wong	Y	13
85	11/5/2009	Fort Hood	TX	Nidal Hasan	Y	13
86	1/19/2010	Appomattox	VA	Christopher Speight	Y	8
87	8/3/2010	Manchester	CT	Omar Thornton	Y	8
88	1/8/2011	Tucson	AZ	Jared Loughner	Y	6
89	7/7/2011	Grand Rapids	MI	Rodrick Dantzler	Y	7
90	8/7/2011	Copley Township	OH	Michael Hance	N	7
91	10/12/2011	Seal Beach	CA	Scott Dekraai	N	8
92	12/25/2011	Grapevine	TX	Aziz Yazdanpanah	N	6
93	4/2/2012	Oakland	CA	One Goh	N	7
94	7/20/2012	Aurora	CO	James Holmes	Y	12
95	8/5/2012	Oak Creek	WI	Wade Page	Y	6
96	9/27/2012	Minneapolis	MN	Andrew Engeldinger	Y	6
97	12/14/2012	Newtown	CT	Adam Lanza	Y	27
98	7/26/2013	Hialeah	FL	Pedro Vargas	Y	6
99	9/16/2013	Washington	DC	Aaron Alexis	N	12
100	7/9/2014	Spring	TX	Ronald Lee Haskell	Y	6
101	9/18/2014	Bell	FL	Don Spirit	U	7
102	2/26/2015	Tyrone	MO	Joseph Jesse Aldridge	U	7
103	5/17/2015	Waco	TX	Unidentified	Y	9
104	6/17/2015	Charleston	SC	Dylann Storm Roof	Y	9
105	8/8/2015	Houston	TX	David Conley	U	8
106	10/1/2015	Roseburg	OR	Christopher Harper-Mercer	Y	9
107	12/2/2015	San Bernardino	CA	Syed Rizwan Farook and Tashfeen Malik	Y	14
108	2/21/2016	Kalamazoo	MI	Jason Dalton	Y	6
109	4/22/2016	Piketon	OH	Undetermined	U	8
110	6/12/2016	Orlando	FL	Omar Mateen	Y	49
111	5/27/2017	Brookhaven	MS	Corey Godbolt	U	8
112	9/10/2017	Plano	TX	Spencer Hight	Y	8
113	10/1/2017	Las Vegas	NV	Stephen Paddock	Y	58
114	11/5/2017	Sutherland Springs	TX	Devlin Kelley	Y	26

Note: The incidents highlighted in gray represent the 20 gun massacres that occurred at a time when and place where a ban on certain LCMs was in effect. Incidents marked as LCM-positive involved fatalities resulting from a firearm armed with least one magazine capable of holding more than 10 bullets.
Y=Yes / N=No / U=Undetermined.

Appendix B – Table 3**Gun Massacre Incidence Rates by Whether or Not LCM Bans Were in Effect**

1990-2017 (All Incidents N=69)			
	No LCM Ban in Effect	LCM Ban in Effect	Percentage Difference
Incidence Rate	.327	.142	79%
Number of Incidents	49	20	
2005-2017 (All Incidents N=47)			
	No LCM Ban in Effect	LCM Ban in Effect	Percentage Difference
Incidence Rate	.171	.096	56%
Number of Incidents	39	8	
1990-2017 (Incidents Only Involving LCMs N=44)			
	No LCM Ban in Effect	LCM Ban in Effect	Percentage Difference
Incidence Rate	.227	.071	105%
Number of Incidents	34	10	
2005-2017 (Incidents Only Involving LCMs N=32)			
	No LCM Ban in Effect	LCM Ban in Effect	Percentage Difference
Incidence Rate	.123	.048	88%
Number of Incidents	28	4	

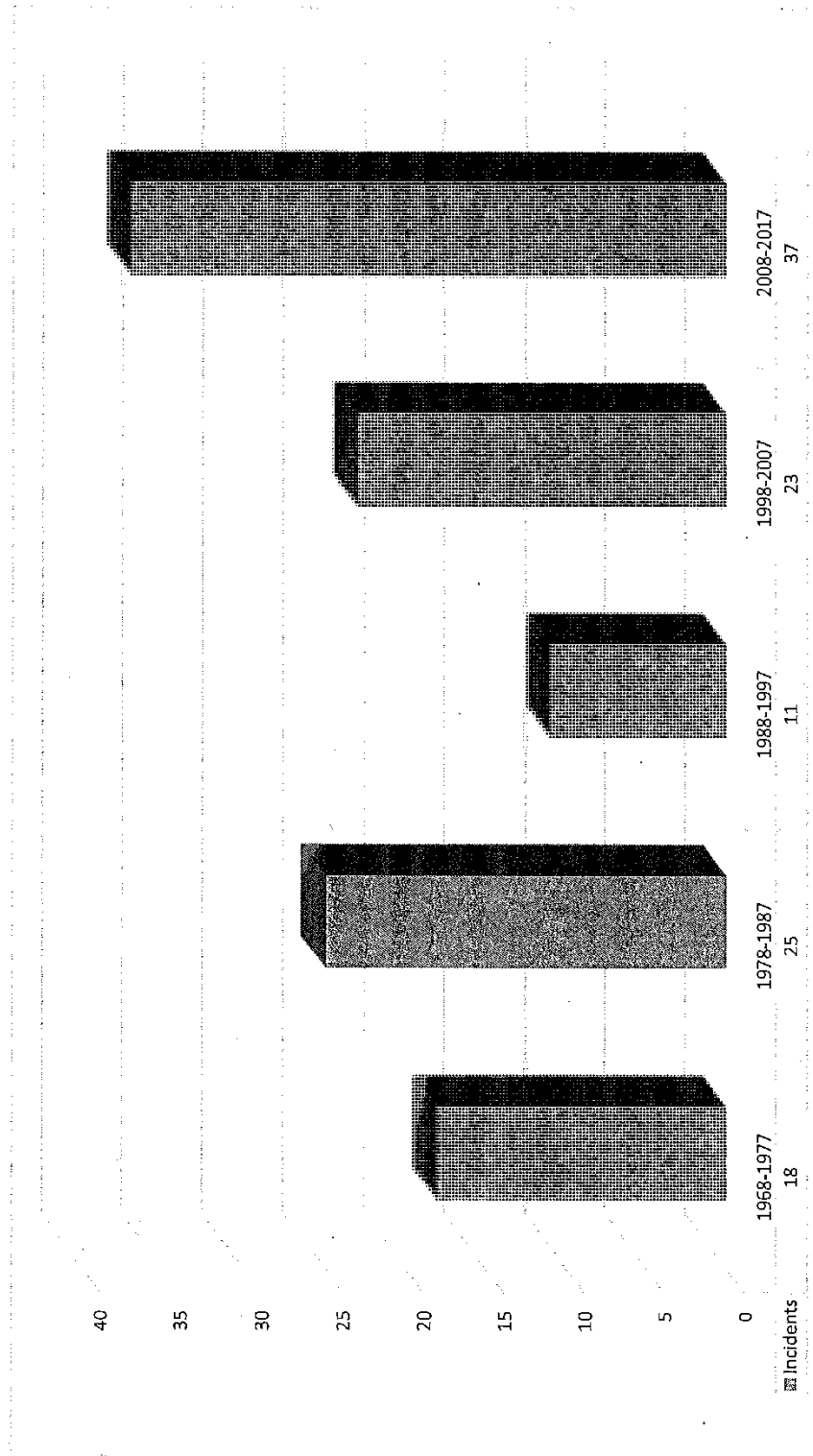
Note: Incidence rates are calculated per one million people. All population data used to calculate incidence rates in this table are drawn from United States Census Bureau, "Population and Housing Unit Estimates Tables," <https://www.census.gov/programs-surveys/popest/data/tables.html> (last accessed January 4, 2018). The percentage difference refers to percentage difference between the two incidence rates—the rate for the jurisdictions where an LCM ban was in effect and the rate for the jurisdictions where an LCM ban was not in effect. All percentage differences were calculated using the Calculator Soup online percentage difference calculator. As the Calculator Soup website states, "Percentage difference equals the absolute value of the change in value, divided by the average of the 2 numbers, all multiplied by 100." The calculator and formula are available at the following website: <https://www.calculatorsoup.com/calculators/algebra/percent-difference-calculator.php> (last accessed January 4, 2018).

Appendix B – Table 4**Gun Massacre Fatality Rates by Whether or Not LCM Bans Were in Effect**

1990-2017 (Fatalities in All Incidents N=699)			
	No LCM Ban in Effect	LCM Ban in Effect	Percentage Difference
Fatality Rate	3.58	1.17	101%
Number of Fatalities	535	164	
2005-2017 (Fatalities in All Incidents N=522)			
	No LCM Ban in Effect	LCM Ban in Effect	Percentage Difference
Fatality Rate	1.96	0.90	74%
Number of Fatalities	447	75	
1990-2017 (Fatalities in Incidents Only Involving LCMs N=521)			
	No LCM Ban in Effect	LCM Ban in Effect	Percentage Difference
Fatality Rate	2.87	0.65	126%
Number of Fatalities	429	92	
2005-2017 (Fatalities in Incidents Only Involving LCMs N=412)			
	No LCM Ban in Effect	LCM Ban in Effect	Percentage Difference
Fatality Rate	1.62	0.50	106%
Number of Fatalities	370	42	

Note: Fatality rates are calculated per one million people. All population data used to calculate fatality rates in this table are drawn from United States Census Bureau, "Population and Housing Unit Estimates Tables," <https://www.census.gov/programs-surveys/popest/data/tables.html> (last accessed January 4, 2018). The percentage difference refers to percentage difference between the two fatality rates—the rate for the jurisdictions where an LCM ban was in effect and the rate for the jurisdictions where an LCM ban was not in effect. All percentage differences were calculated using the Calculator Soup online percentage difference calculator. As the Calculator Soup website states, "Percentage difference equals the absolute value of the change in value, divided by the average of the 2 numbers, all multiplied by 100." The calculator and formula are available at the following website: <https://www.calculatorsoup.com/calculators/algebra/percent-difference-calculator.php> (last accessed January 4, 2018).

Appendix B – Figure 1
Gun Massacre Incidents by Decade, 1968-2017



Appendix B – Figure 2
Gun Massacre Deaths by Decade, 1968-2017

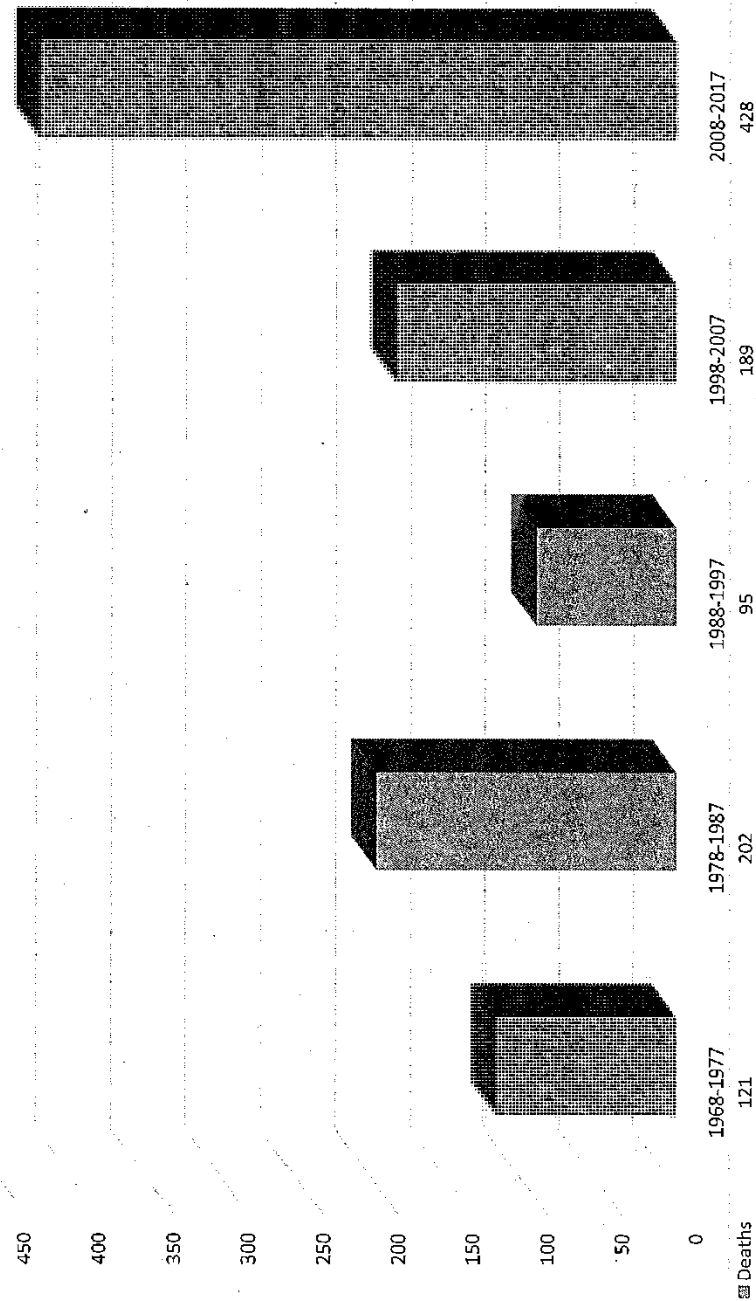
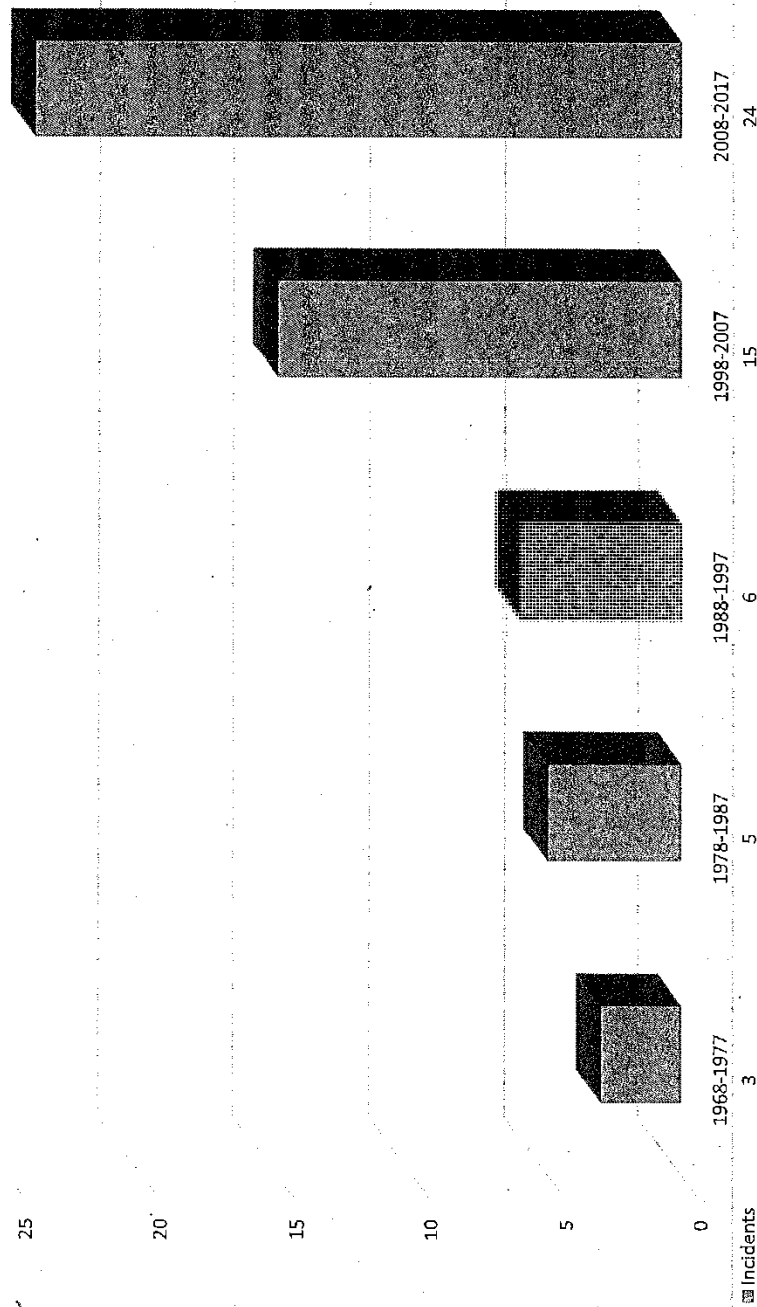


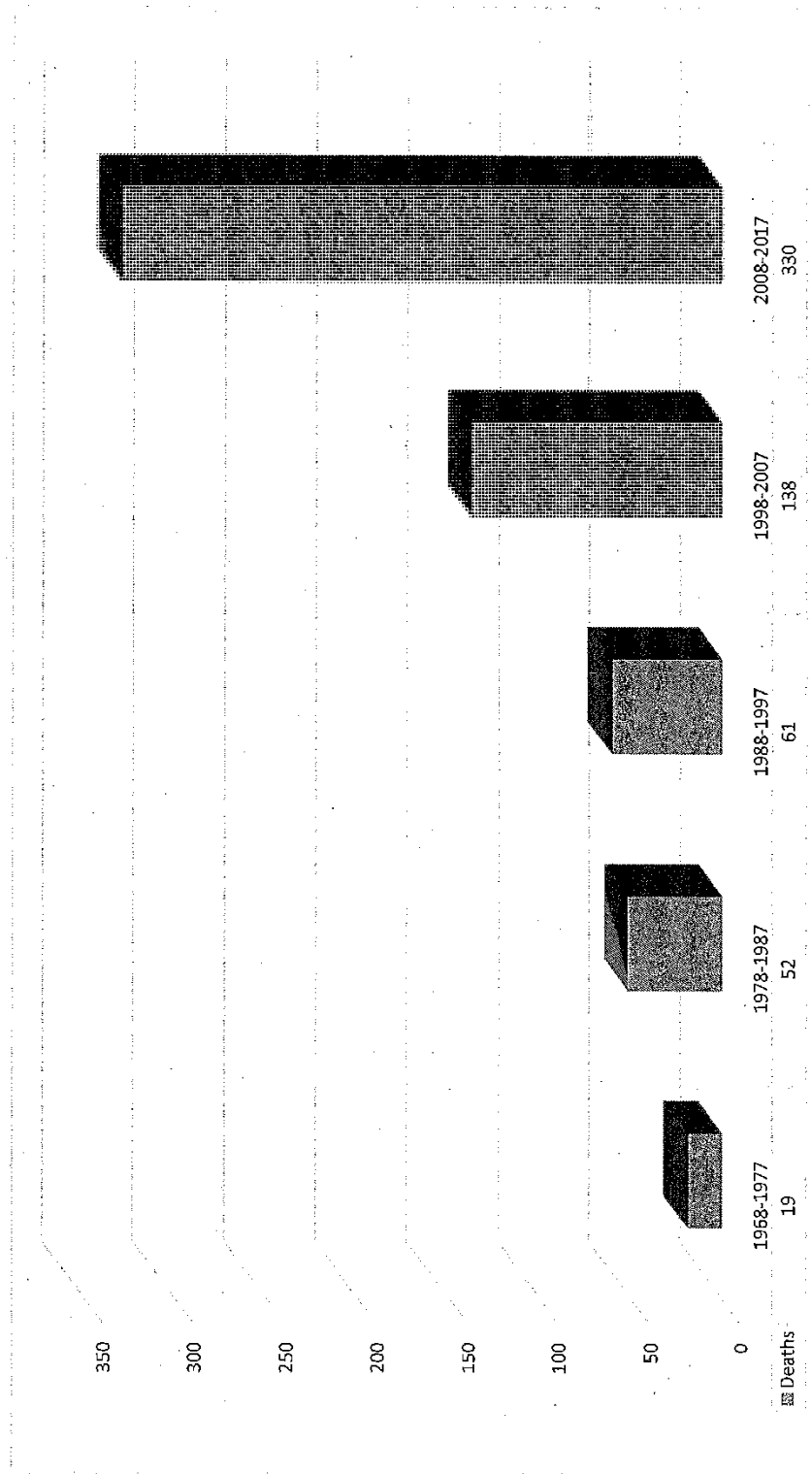
Exhibit 3
Page 00115

Appendix B – Figure 3
Gun Massacre Incidents Involving LCMs by Decade, 1968-2017

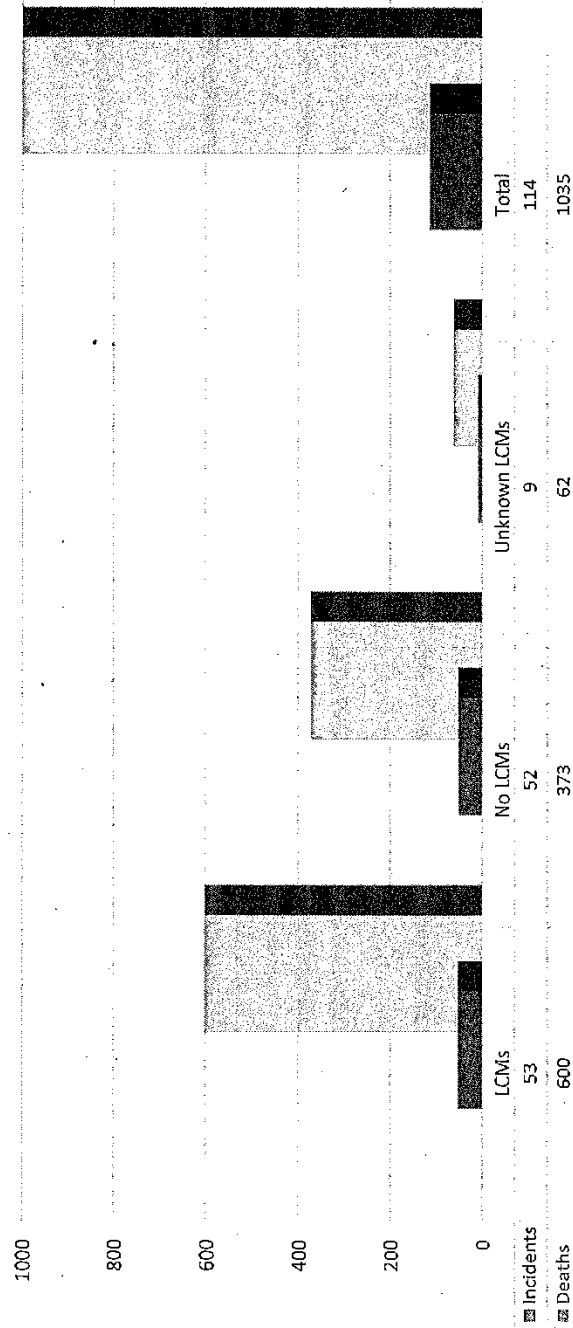


Appendix B – Figure 4

Gun Massacre Deaths from Incidents Involving LCMs by Decade, 1968-2017

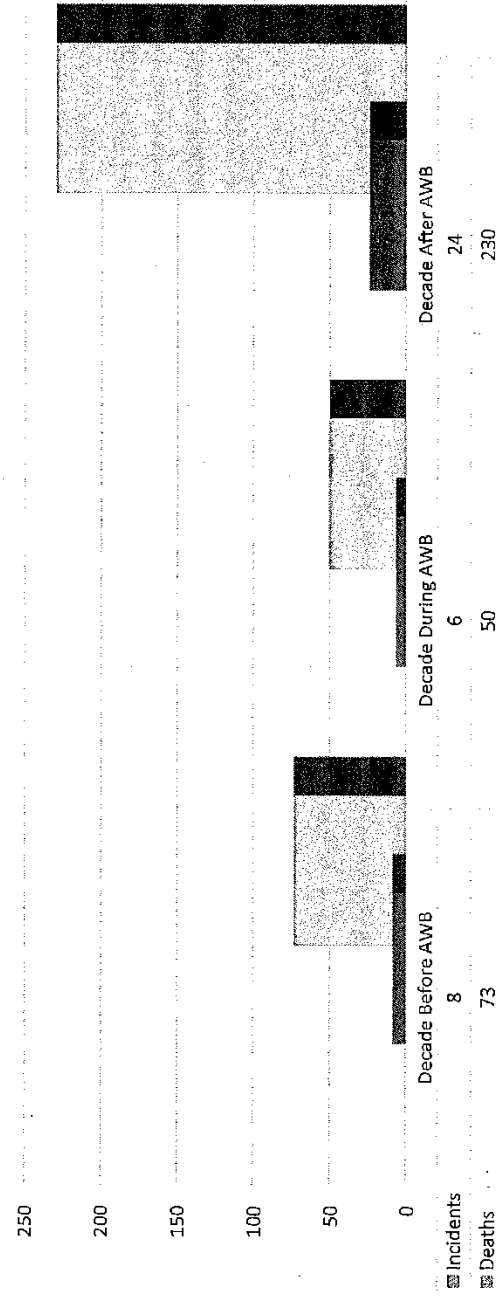


Appendix B – Figure 5
Gun Massacre Incidents and Deaths by Magazine Capacity, 1968-2017



Appendix B – Figure 6

LCM-Involving Gun Massacre Incidents and Deaths by Decade Before, During, and After the Federal Assault Weapons Ban



Note: The Federal Assault Weapons Ban was in effect from September 13, 1994, through September 12, 2004.

Exhibit 3
Page 00119

DECLARATION OF SERVICE BY E-MAIL and U.S. Mail

Case Name: **Duncan, Virginia et al v. Xavier Becerra**
No.: **17-cv-1017-BEN-JLB**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service with postage thereon fully prepaid that same day in the ordinary course of business.

On January 9, 2018, I served the attached

REVISED EXPERT REPORT OF DR. LOUIS KLAREVAS

by transmitting a true copy via electronic mail. In addition, I placed a true copy thereof enclosed in a sealed envelope, in the internal mail system of the Office of the Attorney General, addressed as follows:

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I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on January 9, 2018, at San Francisco, California.

N. Newlin
Declarant

/s/ N. Newlin
Signature

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21065538.docx

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11 IN THE UNITED STATES DISTRICT COURT
12 FOR THE SOUTHERN DISTRICT OF CALIFORNIA
13
14

15 **VIRGINIA DUNCAN, et al.,**

16 Plaintiffs,
17

18 v.

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

21 Defendants.
22
23
24
25
26
27
28

17-cv-1017-BEN-JLB

EXPERT REPORT OF
DR. CHRISTOPHER S. KOPER

Judge: Hon. Roger T. Benitez
Action Filed: May 17, 2017

EXPERT REPORT OF DR. CHRISTOPHER S. KOPER (17-cv-1017-BEN-JLB)

Exhibit 4
Page 00122

1 **EXPERT REPORT OF DR. CHRISTOPHER S. KOPER**

2 **I. ASSIGNMENT**

3 I was retained by counsel for Defendant California Attorney General Xavier
4 Becerra for the purpose of preparing an expert report on the potential efficacy of
5 California's new ban on possession of large capacity ammunition magazines.

6 **II. QUALIFICATIONS AND BACKGROUND**

7 I am an Associate Professor for the Department of Criminology, Law and
8 Society at George Mason University, in Fairfax, Virginia and the principal fellow
9 of George Mason's Center for Evidence-Based Crime Policy. I have been studying
10 firearms issues since 1994. My primary areas of focus are firearms policy and
11 policing issues. My credentials, experience, and background are stated in my
12 curriculum vitae, a true and correct copy of which is attached as Exhibit A.

13 In 1997, my colleague Jeffrey Roth and I conducted a study on the impact of
14 Title XI, Subtitle A of the Violent Crime Control and Law Enforcement Act of
15 1994 (hereinafter the "federal assault weapons ban" or the "federal ban"), for the
16 United States Department of Justice and the United States Congress.¹ I updated the
17 original 1997 study in 2004² and briefly revisited the issue again by re-examining
18 my 2004 report in 2013.³ To my knowledge, these are the most comprehensive
19 studies to have examined the efficacy of the federal ban on assault weapons and
20 ammunition feeding devices holding more than ten rounds of ammunition

21 ¹ Jeffrey A. Roth & Christopher S. Koper, *Impact Evaluation of the Public Safety*
22 *and Recreational Firearms Use Protection Act of 1994: Final Report* (1997),
23 attached hereto as Exhibit B (hereinafter, "*Impact Evaluation*").

24 ² Christopher S. Koper, *An Updated Assessment of the Federal Assault Weapons*
25 *Ban: Impacts on Gun Markets and Gun Violence, 1994-2003* (2004), attached
26 hereto as Exhibit C (hereinafter, "*Updated Assessment of the Federal Assault*
27 *Weapons Ban*").

28 ³ Christopher S. Koper, *America's Experience with the Federal Assault Weapons*
Ban, 1994- 2004: Key Findings and Implications, ch. 12, 157-171, in *Reducing*
Gun Violence in America: Informing Policy with Evidence (Daniel S. Webster &
Jon S. Vernick eds. 2013), attached hereto as Exhibit D (hereinafter "*America's*
Experience with the Federal Assault Weapons Ban").

(hereinafter referred to as “large-capacity magazines” or “LCMs”).⁴ My 1997 study was based on limited data, especially with regard to the criminal use of large-capacity magazines. As a result, my conclusions on the impact of the federal ban are most accurately and completely set forth in my 2004 and 2013 reports.

This report summarizes some of the key findings of those studies regarding the federal ban and its impact on crime prevention and public safety. I also discuss the results of a new research study I directed that investigated current levels of criminal activity with high capacity semiautomatic weapons as measured in several local and national data sources.⁵ Based upon my findings, I then provide some opinions on the potential impact and efficacy of prohibitions and restrictions on large-capacity magazines, like those contained in California Penal Code section 32310 (hereinafter, “Section 32310”).

As discussed below, it is my considered opinion that California’s LCM ban has the potential to prevent and limit shootings, particularly those involving high numbers of shots and victims, and thus is likely to advance California’s interests in protecting its populace from the dangers of such shootings.

III. RETENTION AND COMPENSATION

I am being compensated for my time on this case on an hourly basis at a rate of \$150 per hour. My compensation is not contingent on the results of my analysis or the substance of my testimony.

⁴ As discussed below, there have been some additional academic and non-academic studies that have examined more limited aspects of the ban’s effects.

⁵ Christopher S. Koper et al., *Criminal Use of Assault Weapons and High Capacity Semiautomatic Firearms: An Updated Examination of Local and National Sources*, Journal of Urban Health (October 2, 2017) DOI 10.1007/s11524-017-0205-7, available at http://em.rdcu.be/wf/click?upn=KP7O1RED-2BID0F9LDqGVEŠCtPCwMbqH-2BMWBUHgPpsN5I-3D_aLASUIDI3T0TZ55mA5wcKyxIF1pNAQ-2FS0QcxHHbBP65v2wnicdu8DEAbXOHNYJipa4WGEYqVQvkFcdtrFEsYjZAuWYuv7oZRi5azzY-2B5kRSTavg1BTwrdrnUNdQZVTcHVKQjHpPzJRCNjuQtSjVJuN-2F-2BNTasWPxOOVBf1pq1NLGA3TvS1NOWbCbQHSILbi3GAhoVkr0iwOIrRLgL8INPZXWLjKU6PJ-2F84jalWCxLaJiY74BdpLrwOkfJQ3Cvy-2F04YQt1UhlstJNdtP7DBeGw-3D-3D (last visited Oct. 5, 2017).

1 **IV. BASES FOR OPINION AND MATERIAL COVERED**

2 The opinions I provide in this expert report are based solely on the findings of
3 the materials cited in the footnotes and text, as well as the materials attached as
4 exhibits to this report.

5 **V. OPINION**

6 **A. Summary of Findings**

7 Based on my research, I found, among other things, that assault pistols are
8 used disproportionately in crime in general, and that assault weapons more broadly
9 were disproportionately used in murder and other serious crimes in some
10 jurisdictions for which there was data. I also found that assault weapons and other
11 firearms with large capacity magazines are used in a higher share of mass public
12 shootings and killings of law enforcement officers.

13 The evidence also suggests that gun attacks with semiautomatics—especially
14 assault weapons and other guns equipped with large capacity magazines—tend to
15 result in more shots fired, more persons wounded, and more wounds per victim,
16 than do gun attacks with other firearms. There is evidence that victims who receive
17 more than one gunshot wound are substantially more likely to die than victims who
18 receive only one wound. Thus, it appears that crimes committed with these
19 weapons are likely to result in more injuries, and more lethal injuries, than crimes
20 committed with other firearms.

21 In addition, there is some evidence to suggest that assault weapons are more
22 attractive to criminals, due to the weapons' military-style features and particularly
23 large magazines. Based on these and other findings in my studies discussed below,
24 it is my considered opinion that California's recently enacted ban on large capacity
25 magazines, which is in some ways stronger than the federal ban that I studied, is
26 likely to advance California's interest in protecting public safety. Specifically, it
27 has the potential to: (1) reduce the number of crimes committed with firearms with
28 large capacity magazines; (2) reduce the number of shots fired in gun crimes; (3)

1 reduce the number of gunshot victims in such crimes; (4) reduce the number of
2 wounds per gunshot victim; (5) reduce the lethality of gunshot injuries when they
3 do occur; and (6) reduce the substantial societal costs that flow from shootings.

4 **B. Criminal Uses and Dangers of Large-Capacity Magazines**

5 Large-capacity magazines allow semiautomatic weapons to fire more than 10
6 rounds without the need for a shooter to reload the weapon.⁶ Large-capacity
7 magazines come in a variety of sizes, including but not limited to 17-round
8 magazines, 25- or 30-round magazines, and drums with the capacity to accept up to
9 100 rounds.

10 The ability to accept a detachable magazine, including a large-capacity
11 magazine, is a common feature of guns typically defined as assault weapons.⁷ In
12 addition, LCMs are frequently used with guns that fall outside of the definition of
13 an assault weapon.

14 LCMs are particularly dangerous because they facilitate the rapid firing of
15 high numbers of rounds. This increased firing capacity thereby potentially
16 increases injuries and deaths from gun violence. *See Updated Assessment of the*
17 *Federal Assault Weapons Ban* at 97 (noting that “studies ... suggest that attacks
18 with semiautomatics—including [assault weapons] and other semiautomatics with
19 LCMs—result in more shots fired, persons wounded, and wounds per victim than
20 do other gun attacks”).

21
22 ⁶ A semiautomatic weapon is a gun that fires one bullet for each pull of the trigger
23 and, after each round of ammunition is fired, automatically loads the next round and
24 cocks itself for the next shot, thereby permitting a faster rate of fire relative to non-
25 automatic firearms. Semiautomatics are not to be confused with fully automatic
26 weapons (*i.e.*, machine guns), which fire continuously so long as the trigger is
27 depressed. Fully automatic weapons have been illegal to own in the United States
28 without a federal permit since 1934. *See Updated Assessment of the Federal*
Assault Weapons Ban, at 4 n.1.

⁷ Although the precise definition used by various federal, state, and local statutes
has varied, the term “assault weapons” generally includes semiautomatic pistols,
rifles, and shotguns with military features conducive to military and potential
criminal applications but unnecessary in shooting sports or for self-defense.

1 As such, semiautomatics equipped with LCMs have frequently been employed
2 in highly publicized mass shootings, and are disproportionately used in the murders
3 of law enforcement officers, crimes for which weapons with greater firepower
4 would seem particularly useful. *See Updated Assessment of the Federal Assault*
5 *Weapons Ban* at 14-19, 87.

6 During the 1980s and early 1990s, semiautomatic firearms equipped with
7 LCMs were involved in a number of highly publicized mass murder incidents that
8 first raised public concerns and fears about the accessibility of high powered,
9 military-style weaponry and other guns capable of discharging high numbers of
10 rounds in a short period of time. For example:

- 11 • On July 18, 1984, James Huberty killed 21 persons and wounded 19 others in
12 a San Ysidro, California McDonald's restaurant, using an Uzi carbine, a
13 shotgun, and another semiautomatic handgun, and equipped with a 25-round
14 LCM;
- 15 • On January 17, 1989, Patrick Purdy used a civilian version of the AK-47
16 military rifle and a 75-round LCM to open fire in a Stockton, California
17 schoolyard, killing five children and wounding 29 other persons;
- 18 • On September 14, 1989, Joseph Wesbecker, armed with an AK-47 rifle, two
19 MAC-11 handguns, a number of other firearms, and multiple 30-round
20 magazines, killed seven and wounded 15 people at his former workplace in
21 Louisville, Kentucky;
- 22 • On October 16, 1991, George Hennard, armed with two semiautomatic
23 handguns with LCMs (and reportedly a supply of extra LCMs), killed 22
24 people and wounded another 23 in Killeen, Texas;
- 25 • On July 1, 1993, Gian Luigi Ferri, armed with two Intratec TEC-DC9 assault
26 pistols and 40- to 50-round magazines, killed nine and wounded six at the
27 law offices of Pettit & Martin in San Francisco, California; and
- 28 • On December 7, 1993, Colin Ferguson, armed with a handgun and multiple
LCMs, opened fire on commuters on a Long Island Rail Road train, killing 6
and wounding 19.

1 *See Updated Assessment of the Federal Assault Weapons Ban* at 14.⁸

2 More recently, in the years since the expiration of the federal ban in 2004,
3 there has been another well-publicized series of mass shooting incidents involving
4 previously banned assault weapons and/or LCMs. Some of the more notorious of
5 these incidents include:

- 6 • On April 16, 2007, Seung-Hui Cho, armed with a handgun and multiple
7 LCMs, killed 33 (including himself) and wounded 23 on the campus of
8 Virginia Tech in Blacksburg, Virginia;
- 9 • On January 8, 2011, Jared Loughner, armed with a handgun and multiple
10 LCMs, killed 6 and wounded 13, including Congresswoman Gabrielle
11 Giffords, in Tucson, Arizona;
- 12 • On July 20, 2012, James Holmes, armed with a Smith & Wesson M&P 15
13 assault rifle, 100-round LCMs, and other firearms, killed 12 and wounded 58
14 in a movie theater in Aurora, Colorado;
- 15 • On December 14, 2012, Adam Lanza, armed with a Bushmaster AR-15-style
16 assault rifle, two handguns, and multiple LCMs, killed 26 (20 of whom were
17 young children) and wounded 2 at Sandy Hook Elementary School in
18 Newtown, Connecticut;
- 19 • On December 2, 2015, Syed Rizwan Farook and Tashfeen Malik, armed with
20 2 AR-15 style rifles, semiautomatic handguns, and LCMs, killed 14 and
21 injured 21 at a workplace party in San Bernardino, California; and

22 ⁸ Additional details regarding these incidents were obtained from: Violence Policy
23 Center, *Mass Shootings in the United States Involving High-Capacity Ammunition*
24 *Magazines*, available at http://www.vpc.org/fact_sht/VPCshootinglist.pdf
25 (hereinafter, "Violence Policy Center Report"); Mark Follman, Gavin Aronsen &
26 Deanna Pan, *US Mass Shootings, 1982-2012: Data from Mother Jones'*
27 *Investigation*, updated Feb. 27, 2013, available at [http://www.motherjones.com/](http://www.motherjones.com/politics/2012/12/mass-shootings-mother-jones-full-data)
28 [politics/2012/12/mass-shootings-mother-jones-full-data](http://www.motherjones.com/politics/2012/12/mass-shootings-mother-jones-full-data) (hereinafter, "Follman,
Aronsens & Pan 2013"); and Mark Follman, Gavin Aronsen & Jaeah Lee, *More*
Than Half of Mass Shooters Used Assault Weapons and High-Capacity Magazines,
Feb. 27, 2013, available at [http://www.motherjones.com/politics/2013/02/assault-](http://www.motherjones.com/politics/2013/02/assault-weapons-highcapacity-magazines-mass-shootings-feinstein)
[weapons-highcapacity-magazines-mass-shootings-feinstein](http://www.motherjones.com/politics/2013/02/assault-weapons-highcapacity-magazines-mass-shootings-feinstein) (hereinafter, "Pollman,
Aronsens & Lee 2013").

- 1 • On June 12, 2016, Omar Mateen, armed with a Sig Sauer MCX rifle, a Glock
2 17 semiautomatic handgun, and LCMs, killed 49 and injured 53 in a nightclub
3 in Orlando, Florida.⁹

4 There is evidence to suggest that the particularly large ammunition capacities
5 of assault weapons, along with their military-style features, are more attractive to
6 criminals than lawful users. *See Updated Assessment of the Federal Assault*
7 *Weapons Ban* at 17-18. The available evidence also suggests that large-capacity
8 magazines, along with assault weapons, pose particular dangers by their large and
9 disproportionate involvement in two aspects of crime and violence: mass shootings
10 and murders of police. *See Updated Assessment of the Federal Assault Weapons*
11 *Ban* at 14- 19, 87.

12 With respect to mass shootings, the available evidence before the federal
13 assault weapons ban was enacted in 1994 and after its expiration in 2004 both
14 support this conclusion. Prior to the federal ban, assault weapons or other
15 semiautomatics with LCMs were involved in 6, or 40%, of 15 mass shooting
16 incidents occurring between 1984 and 1993 in which 6 or more persons were killed
17 or a total of 12 or more were wounded. *See Updated Assessment of the Federal*
18 *Assault Weapons Ban* at 14.¹⁰

19 More recently, a *Mother Jones* media investigation and compilation of 62
20 public mass shooting incidents that involved the death of four or more people, over
21 the period 1982-2012, showed that, of the cases where magazine capacity could be
22 determined, 31 of 36 cases, or 86%, involved a large-capacity magazine. Including
23

24 ⁹ For details on these incidents, see Marc Follman et al., *US Mass Shootings, 1982-*
25 *2017: Data from Mother Jones' Investigation*, Mother Jones (June 14, 2017)
26 available at [http://www.motherjones.com/politics/2012/12/mass-shootings-mother-](http://www.motherjones.com/politics/2012/12/mass-shootings-mother-jones-full-data/)
27 jones-full-data/.

28 ¹⁰ These figures are based on tabulations conducted by my research team and me
using data reported in Gary Kleck, *Targeting Guns: Firearms and Their Control*
(1997) at 124-26.

1 all cases, including those where magazine capacity could not be determined, exactly
2 half of the cases (31 of 62) are known to have involved an LCM.¹¹

3 LCMs, because they can be and are used both with assault weapons and guns
4 that fall outside the definition of an assault weapon, appear to present even greater
5 dangers to crime and violence than assault weapons alone.

6 Prior to the federal assault weapons ban, for example, guns with LCMs were
7 used in roughly 13-26% of most gun crimes (as opposed to somewhere between
8 about 1% and 8% for assault weapons alone). *See Updated Assessment of the*
9 *Federal Assault Weapons Ban* at 15, 18-19; *see also America's Experience with the*
10 *Federal Assault Weapons Ban* at 161-62. More recent data discussed below
11 suggest that guns with LCMs now represent an even higher share of guns used in
12 crime.

13 It also appears that guns with LCMs have been used disproportionately in
14 murders of police. Specifically, data from prior to the federal ban indicated that
15 LCMs were used in 31% to 41% of gun murders of police in contrast to their use in
16 13-26% of gun crimes overall. *See Updated Assessment of the Federal Assault*
17 *Weapons Ban* at 18; *see also America's Experience with the Federal Assault*
18 *Weapons Ban* at 162. More recent data discussed below also show a similar pattern
19 of guns with LCMs being more common among weapons used in gun murders of
20 police.

21 In addition, the available evidence suggests that gun attacks with
22 semiautomatics—including both assault weapons and guns equipped with LCMs—
23 tend to result in more shots fired, more persons wounded, and more wounds
24 inflicted per victim than do attacks with other firearms. *See Updated Assessment of*

25 ¹¹ This investigation and compilation of data on mass shootings was done by
26 reporters at *Mother Jones* magazine. *See* Follman, Aronsen & Pan 2013; *see also*
27 Follman Aronsen & Lee 2013; Mark Follman, Gavin Aronsen & Deanna Pan, *A*
28 *Guide to Mass Shootings in America* (updated Feb. 27, 2013), available at
<http://www.motherjones.com/politics/2012/07/mass-shootings-map>.

1 *the Federal Assault Weapons Ban* at 97; *see also America's Experience with the*
2 *Federal Assault Weapons Ban* at 166-67.

3 For example, in mass shooting incidents that resulted in at least 6 deaths or at
4 least 12 total gunshot victims from 1984 through 1993, offenders who clearly
5 possessed assault weapons or other semiautomatics with LCMs wounded or killed
6 an average of 29 victims in comparison to an average of 13 victims wounded or
7 killed by other offenders. *See Updated Assessment of the Federal Assault Weapons*
8 *Ban* at 85-86; *see also America's Experience with the Federal Assault Weapons*
9 *Ban* at 167.

10 Working under my direction, Luke Dillon, a graduate student at George
11 Mason University, recently analyzed the *Mother Jones* data from 1982 through
12 2012 for his Master's thesis, and compared the number of deaths and fatalities of
13 the 62 mass shootings identified therein to determine how the presence of assault
14 weapons and LCMs impacted the outcome.¹² With respect to LCMs, Mr. Dillon
15 compared cases where an LCM was known to have been used (or at least possessed
16 by the shooter) against cases where either an LCM was not used or not known to
17 have been used. He found that the LCM cases (which included assault weapons)
18 had significantly higher numbers of fatalities and casualties: an average of 10.19
19 fatalities in LCM cases compared to 6.35 fatalities in non-LCM/unknown cases.
20 Mr. Dillon also found an average of 12.39 people were shot but not killed in public
21 mass shootings involving LCMs, compared to just 3.55 people shot in the non-
22 LCM/unknown LCM shootings. These findings reflect a total victim differential of
23 22.58 killed or wounded in the LCM cases compared to 9.9 in the non-

24
25
26 ¹² See Luke Dillon, *Mass Shootings in the United States: An Exploratory Study of*
27 *the Trends from 1982 to 2012 (2013)* (unpublished M.A. thesis, George Mason

28 University, Department of Criminology, Law and Society).

1 LCM/unknown LCM cases.¹³ All of these differences were statistically significant
2 and not a result of mere chance.

3 Similarly, a study of handguns attacks in Jersey City, New Jersey during the
4 1990s found that the average number of victims wounded in gunfire incidents
5 involving semiautomatic pistols was 15% higher than in those involving revolvers.
6 The study further found that attackers using semiautomatics to fire more than ten
7 shots were responsible for nearly 5% of all gunshot victims and that 100% of these
8 incidents involved injury to at least one victim. *See Updated Assessment of the*
9 *Federal Assault Weapons Ban* at 84-86, 90-91; *see also America's Experience with*
10 *the Federal Assault Weapons Ban* at 167.¹⁴

11 Similar evidence comes from other local studies. Between 1992 and 1995,
12 gun homicide victims in Milwaukee who were killed by guns with LCMs had 55%
13 more gunshot wounds than those victims killed by non-LCM firearms. Further, a
14 study of gun homicides in Iowa City (IA), Youngstown (OH), and Bethlehem (PA)
15 from 1994 through 1998 found gun homicide victims killed by pistols averaged 4.5
16 gunshot wounds as compared to 2 gunshot wounds for those killed by revolvers.
17 *See Updated Assessment of the Federal Assault Weapons Ban* at 86.

18 And, in an analysis I conducted of guns recovered by police in Baltimore, I
19 also found LCMs to be associated with gun crimes that resulted in more lethal and
20 injurious outcomes. For instance, I found, among other things, that guns used in
21 shootings that resulted in gunshot victimizations were 17% to 26% more likely to

22
23 ¹³ The patterns were also very similar when comparing the LCM cases against just
24 those cases in which it was clear that an LCM was not used (though this was a very
25 small number).

26 ¹⁴ Note that these data were collected in the 1990s during the years of the federal
27 LCM ban and in a city that was also subject to state-level LCM restrictions on
28 magazines holding more than 15 rounds. Hence, these findings may not generalize
well to other locations and the current timeframe. More specifically, given recent
increases in the use of firearms with LCMs as discussed below, the Jersey City
results may understate the current share of gunshot victimizations resulting from
incidents with more than 10 shots fired.

1 have LCMs than guns used in gunfire cases with no wounded victims, and guns
2 linked to murders were 8% to 17% more likely to have LCMs than guns linked to
3 non-fatal gunshot victimizations. *See Updated Assessment of the Federal Assault*
4 *Weapons Ban* at 87.

5 In short, while tentative, the available evidence suggests more often than not
6 that attacks with semiautomatics, particularly those equipped with LCMs, result in
7 more shots fired, leading both to more injuries and injuries of greater severity.
8 Such attacks also appear to result in more wounds per victim. This is significant
9 because gunshot victims who are shot more than once are more than 60% more
10 likely to die than victims who receive only one gunshot wound. *See Updated*
11 *Assessment of the Federal Assault Weapons Ban* at 87 (citing studies showing 63%
12 increase and 61% increase, respectively, in fatality rates among gunshot victims
13 suffering more than one wound).

14 In addition, diminishing the number of victims of shootings by even a small
15 percentage can result in significant cost savings because of the significant social
16 costs of shootings, as discussed herein.

17 C. Effects of the 1994 Federal Assault Weapons Ban

18 1. Provisions of the Federal Assault Weapons Ban

19 Enacted on September 13, 1994—in the wake of many of the mass shootings
20 described above—the federal assault weapons ban imposed prohibitions and
21 restrictions on the manufacture, transfer, and possession of both certain
22 semiautomatic firearms designated as assault weapons and certain LCMs. Pub. L.
23 No. 103-322, tit. XI, subtit. A, 108 Stat. 1796, 1996-2010 (codified as former
24 18 U.S.C. § 922(v), (w)(1) (1994).

25 The federal assault weapons ban was to expire after ten years, unless renewed
26 by Congress. Pub. L. No. 103-322, tit. XI, § 110105(2). Congress did not renew
27
28

1 the ban, and thus, by its own terms, the federal ban expired on September 13,
2 2004.¹⁵

3 **a. Banned Assault Weapons and Features**

4 As noted, the federal assault weapons ban imposed a ten-year ban on the
5 manufacture, transfer, or possession of what the statute defined as “semiautomatic
6 assault weapons.” The federal ban was not a prohibition on all semiautomatic
7 firearms; rather, it was directed against those semiautomatics having features that
8 are useful in military and criminal applications but that are unnecessary in shooting
9 sports or for self-defense.

10 Banned firearms were identified under the federal law in two ways: (i) by
11 specific make and model; and (ii) by enumerating certain military-style features and
12 generally prohibiting those semiautomatic firearms having two or more of those
13 features.

14 First, the federal ban specifically prohibited 18 models and variations of
15 semiautomatic guns by name (*e.g.*, the Intratec TEC-9 pistol and the Colt AR-15
16 rifle), as well as revolving cylinder shotguns. This list also included a number of
17 foreign rifles that the federal government had banned from importation into the
18 country beginning in 1989 (*e.g.*, the Avtomat Kalashnikov models). And, indeed,
19 several of the guns banned by name were civilian copies of military weapons and
20 accepted ammunition magazines made for those military weapons. A list of the
21 weapons banned by name in the 1994 law is set forth in Table 2-1 of the *Updated*
22 *Assessment of the Federal Assault Weapons Ban* at 5.

23 Second, the federal assault weapons ban contained a “features test” provision
24 that generally prohibited other semiautomatic guns having two or more military-

25 ¹⁵ I understand that California prohibited assault weapons in 1989, before the
26 federal ban, but grandfathered most existing assault weapons; and that California
27 prohibited large-capacity magazines in 2000 but grandfathered existing LCMs. I
28 am not aware of any specific studies of the effects of these California laws on gun
markets or gun violence.

1 style features. Examples of such features include pistol grips on rifles, flash
2 suppressors, folding rifle stocks, threaded barrels for attaching silencers, and the
3 ability to accept detachable magazines. This “features test” of the federal ban is
4 described more fully in Table 2-2 of the *Updated Assessment of the Federal Assault*
5 *Weapons Ban* at 6, and in Table 12-1 of *America’s Experience with the Federal*
6 *Assault Weapons Ban* at 160.

7 **b. Banned Large-Capacity Magazines**

8 The federal ban also prohibited most ammunition feeding devices holding
9 more than ten rounds of ammunition (which I have referred to herein as “large-
10 capacity magazines” or “LCMs”). The federal ban on LCMs extended to LCMs or
11 similar devices that had the capacity to accept more than ten rounds of ammunition,
12 or that could be “readily restored or converted or to accept” more than ten rounds of
13 ammunition.¹⁶

14 **c. Exemptions and Limitations to the Federal Ban**

15 The 1994 federal assault weapons ban contained several important exemptions
16 that limited its potential impact, especially in the short-term. *See Updated*
17 *Assessment of the Federal Assault Weapons Ban* at 10-11.

18 First, assault weapons and LCMs manufactured before the effective date of the
19 ban were “grandfathered” in and thus legal to own and transfer. Estimates suggest
20 that there may have been upward of 1.5 million assault weapons and 25-50 million
21 LCMs thus exempted from the federal ban. Moreover, an additional 4.8 million
22 pre-ban LCMs were imported into the country from 1994 through 2000 under the
23 grandfathering exemption. Importers were also authorized to import another 42
24 million pre-ban LCMs, which may have arrived after 2000. *See Updated*

25 ¹⁶ Technically, the ban prohibited any magazine, belt, drum, feed strip, or similar
26 device that had the capacity to accept more than 10 rounds of ammunition, or which
27 could be readily converted or restored to accept more than 10 rounds of
28 ammunition. The ban exempted attached tubular devices capable of operating only
with 22 caliber rimfire (*i.e.*, low velocity) ammunition.

1 *Assessment of the Federal Assault Weapons Ban* at 10; see also *America's*
2 *Experience with the Federal Assault Weapons Ban* at 160-61.

3 Furthermore, although the 1994 law banned “copies or duplicates” of the
4 named firearms banned by make and model, federal authorities emphasized exact
5 copies in enforcing this provision. Similarly, the federal ban did not apply to a
6 semiautomatic weapon possessing only one military-style feature listed in the ban’s
7 features test provision.¹⁷ Thus, many civilian rifles patterned after military
8 weapons were legal under the ban with only slight modifications. See *Updated*
9 *Assessment of the Federal Assault Weapons Ban* at 10-11.¹⁸

10 **D. Impact of the Federal Assault Weapons Ban**

11 This section of my report discusses the empirical evidence of the impact of the
12 federal assault weapons ban. I understand that the Plaintiffs in this litigation
13 contend that California’s prohibition on the possession of LCMs will not have an
14 effect on crime or gunshot victimization because criminal users of firearms will not
15 comply with California’s ban. In my opinion, that contention misunderstands the
16 effect of possession bans. The issue is not only whether criminals will be unwilling
17 to comply with such laws, though this could be an important consideration
18 depending on the severity of penalties for possession or use. The issue is also how
19 possession bans affect the availability of weapons for offenders. Examining the

20
21 ¹⁷ It should be noted, however, that any firearms imported into the country must
22 still meet the “sporting purposes test” established under the federal Gun Control
23 Act of 1968. In 1989, the federal Bureau of Alcohol, Tobacco, Firearms and
24 Explosives (“ATF”) determined that foreign semiautomatic rifles having any one of
25 a number of named military features (including those listed in the features test of
26 the 1994 federal assault weapons ban) fail the sporting purposes test and cannot be
27 imported into the country. In 1998, the ability to accept an LCM made for a
28 military rifle was added to the list of disqualifying features. Consequently, it was
possible for foreign rifles to pass the features test of the federal assault weapons
ban, but not meet the sporting purposes test for imports. See *Updated Assessment*
of the Federal Assault Weapons Ban at 10 n.7.

¹⁸ Examples of some of these modified, legal versions of banned guns that
manufacturers produced in an effort to evade the ban are listed in Table 2-1 of the
Updated Assessment of the Federal Assault Weapons Ban at 5.

1 effects of the federal ban on LCMs could cast some light on how a state or local
2 prohibition on possession of LCMs may diminish their availability for offenders. It
3 is difficult, however, to assess trends in LCM use because of limited information.
4 *See infra* at 20. For that reason, this section discusses the impacts of the federal ban
5 both on LCM use, for which information is limited, and on ownership and use of
6 assault weapons, for which there is more information.

7 **1. Assault Weapons**

8 Prior to the federal ban, the best estimates are that there were approximately
9 1.5 million privately owned assault weapons in the United States (less than 1% of
10 the total civilian gun stock). *See America's Experience with the Federal Assault*
11 *Weapons Ban* at 160-61; *see also Updated Assessment of the Federal Assault*
12 *Weapons Ban* at 10.

13 Although there was a surge in production of assault weapon-type firearms as
14 Congress debated the ban in 1994, the federal ban's restriction of new assault
15 weapon supply helped drive up the prices for many assault weapons (notably
16 assault pistols) and appeared to make them less accessible and affordable to
17 criminal users. *See America's Experience with the Federal Assault Weapons Ban* at
18 162-63; *see also Updated Assessment of the Federal Assault Weapons Ban* at 25-
19 38.

20 Analyses that my research team and I conducted of several national and local
21 databases on guns recovered by law enforcement indicated that crimes with assault
22 weapons declined after the federal assault weapons ban was enacted in 1994.

23 In particular, across six major cities (Baltimore, Miami, Milwaukee, Boston,
24 St. Louis, and Anchorage), the share of gun crimes involving assault weapons
25 declined by 17% to 72%, based on data covering all or portions of the 1995-2003
26 post-ban period. *See Updated Assessment of the Federal Assault Weapons Ban* at
27 2, 46-60; *see also America's Experience with the Federal Assault Weapons Ban* at
28 163.

1 This analysis of local data is consistent with patterns found in the national data
2 on guns recovered by law enforcement agencies around the country and reported to
3 the ATF for investigative gun tracing.¹⁹ Specifically, although the interpretation is
4 complicated by changes in tracing practices that occurred during this time, the
5 national gun tracing data suggests that use of assault weapons in crime declined
6 with the onset of the 1994 federal assault weapons ban, as the percentage of gun
7 traces for assault weapons fell 70% between 1992-93 and 2001-02 (from 5.4% to
8 1.6%). And, notably, this downward trend did not begin until 1994, the year the
9 federal ban was enacted. *See Updated Assessment of the Federal Assault Weapons*
10 *Ban* at 2, 39-46, 51-52; *see also America's Experience with the Federal Assault*
11 *Weapons Ban* at 163.²⁰

12 In short, the analysis that my research team and I conducted indicates that the
13 criminal use of assault weapons declined after the federal assault weapons ban was
14 enacted in 1994, independently of trends in gun crime. *See Updated Assessment of*
15 *the Federal Assault Weapons Ban* at 51-52; *see also America's Experience with the*
16 *Federal Assault Weapons Ban* at 163.

17 This decline in crimes with assault weapons was due primarily to a reduction
18 in the use of assault pistols. Assessment of trends in the use of assault rifles was
19 complicated by the rarity of crimes with such rifles and by the substitution in some
20 cases of post-ban rifles that were very similar to the banned models. In general,
21 however, the decline in assault weapon use was only partially offset by substitution

22
23 ¹⁹ A gun trace is an investigation that typically tracks a gun from its manufacture to
24 its first point of sale by a licensed dealer. It is undertaken by the ATF, upon request
25 by a law enforcement agency. The trace is generally initiated when the requesting
26 law enforcement agency provides ATF with a trace request including identifying
27 information about the firearm, such as make, model and serial number. For a full
28 discussion of the use of ATF gun tracing data, see section 6.2 of *Updated*
Assessment of the Federal Assault Weapons Ban at 40-46.

²⁰ These findings are consistent with other tracing analyses conducted by ATF and
the Brady Center to Prevent Gun Violence. *See Updated Assessment of the Federal*
Assault Weapons Ban at 44 n.43.

1 of post-ban assault weapon-type models. Even counting the post-ban models as
2 assault weapons, the share of crime guns that were assault weapons fell 24% to
3 60% across most of the local jurisdictions studied. Patterns in the local data
4 sources also suggested that crimes with assault weapons were becoming
5 increasingly rare as the years passed. *See Updated Assessment of the Federal*
6 *Assault Weapons Ban* at 46-52; *see also America's Experience with the Federal*
7 *Assault Weapons Ban* at 163-64.

8 Thus, while developing a national estimate of the number of assault weapons
9 crimes prevented by the federal ban is complicated by the range of estimates of
10 assault weapon use and changes therein derived from different data sources,
11 tentatively, it appears that the federal ban prevented a few thousand crimes with
12 assault weapons annually. For example, using 2% as the best estimate of the share
13 of gun crimes involving assault weapons prior to the ban, and 40% as a reasonable
14 estimate of the post-ban drop in this figure, implies that almost 2,900 murders,
15 robberies, and assaults with assault weapons were prevented in 2002. *See Updated*
16 *Assessment of the Federal Assault Weapons Ban* at 52 n.61.²¹ If this tentative
17 conclusion is correct, then contrary to Plaintiffs' contention, prohibitions like the
18 federal ban do have an impact on criminal users of guns.

19 2. Large-Capacity Magazines

20 Assessing trends in LCM use is much more difficult because there was, and is,
21 no national data source on crimes with LCMs, and few local jurisdictions maintain
22 this sort of information.

23 It was possible, nonetheless, to examine trends in the use of guns with LCMs
24 in four jurisdictions: Baltimore, Milwaukee, Anchorage, and Louisville. In all four
25

26 ²¹ While it seems likely that some or all of these crimes happened regardless, as
27 perpetrators merely substituted some other gun for the assault weapon, it also seems
28 likely that the number of victims per shooting incident, and the number of wounds
inflicted per victim, was diminished in some of those instances.

jurisdictions, the overall share of crime guns equipped with LCMs rose or remained steady through at least the late 1990s. This failure to reduce overall LCM use for at least several years after the federal ban was likely due to the immense stock of exempted pre-ban magazines, which, as noted, was enhanced by post-ban imports. *See Updated Assessment of the Federal Assault Weapons Ban* at 68-79; *see also America's Experience with the Federal Assault Weapons Ban* at 164.

My studies did show that crimes with LCMs may have been decreasing by the early 2000s, but the available data in the four cities I investigated were too limited and inconsistent to draw any clear overall conclusions in this regard. *See America's Experience with the Federal Assault Weapons Ban* at 164; *Updated Assessment of the Federal Assault Weapons Ban* at 68-79.

However, a later investigation by *The Washington Post* of LCM use in Virginia, analyzing data maintained by the Virginia State Police as to guns recovered in crimes by local law enforcement officers across the state, suggests that the ban may have had a more substantial impact on the supply of LCMs to criminal users by the time it expired in 2004. In Virginia, the share of recovered guns with LCMs generally varied between 13% and 16% from 1994 through 2000 but fell to 9% by 2004. Following expiration of the federal ban in 2004, the share of Virginia crime guns with an LCM rose to 20% by 2010. *See America's Experience with the Federal Assault Weapons Ban* at 165.²² These data suggest that the federal ban

²² The results of *The Washington Post's* original investigation (which are what are conveyed in *America's Experience with the Federal Assault Weapons Ban* at 165) are reported in David S. Fallis & James V. Grimaldi, *Va. Data Show Drop in Criminal Firepower During Assault Gun Ban*, Wash. Post, Jan. 23, 2011, available at <http://www.washingtonpost.com/wp-dyn/content/article/2011/01/22/AR2011012203452.html>, and attached as Exhibit E to this report. In early 2013, *The Washington Post* updated this analysis, and slightly revised the figures it reported by identifying and excluding from its counts more than 1,000 .22-caliber rifles with large-capacity tubular magazines, which were not subject to the federal ban (and which are similarly not subject to California's ban on large-capacity magazines). *See* David S. Fallis, *Data Indicate Drop in High-Capacity Magazines During Federal Gun Ban*, Wash. Post, Jan. 10, 2013, available at <https://www.washingtonpost.com/investigations/data-point-to-drop-in-high-capacity-magazines-during-federal-gun-ban/2013/01/10/d56d3bb6-4b91-11e2-> (continued...)

1 may have been reducing the use of LCMs in gun crime by the time it expired in
2 2004, and that it could have had a stronger impact had it remained in effect.

3 3. Summary of Results of the Federal Assault Weapons Ban

4 The federal ban's exemption of millions of pre-ban assault weapons and
5 LCMs meant that the effects of the law would occur only gradually—and that those
6 effects were still unfolding when the ban expired in 2004. Nevertheless, while the
7 ban did not appear to have a measurable effect on overall gun crime during the
8 limited time it was in effect, as just discussed, my studies and others do appear to
9 show a significant impact on the number of gun crimes involving assault weapons
10 and a possibly significant impact (based on *The Washington Post's* analysis of
11 Virginia data, see Fallis, *supra*, at Exhibits E & F) on those crimes involving
12 LCMs.²³

13 Moreover, as set forth in my 2013 book chapter, there is evidence that, had the
14 federal ban remained in effect longer (or were it renewed), it could conceivably
15 have yielded significant additional societal benefits as well, potentially preventing
16 hundreds of gunshot victimizations annually and producing millions of dollars of

17 (...continued)

18 a6a6-aabac85e8036_story.html?utm_term=.44aa13f8e442, and attached as Exhibit
19 F to this report. This updated data is reported above.

20 ²³ In our initial 1997 study on the impact of the federal assault weapons ban, Jeffrey
21 Roth and I also estimated that gun murders were about 7% lower than expected in
22 1995 (the first year after the ban), adjusting for pre-existing trends. *See Impact*
23 *Evaluation* at 6, 79-85. However, the very limited post-ban data available for that
24 study precluded a definitive judgment as to whether this drop was statistically
25 meaningful. My later findings on LCM use made it difficult to credit the ban with
26 this effect, however, and I did not update it for the 2004 report. *See Updated*
27 *Assessment of the Federal Assault Weapons Ban* at 92 n.109. Other national
28 studies of trends in gun violence have failed to find an effect of the federal ban on
gun murders (which is consistent with my conclusions in the 2004 report but must
also be interpreted in light of the ban's limitations and delayed effects as discussed
above), though they also suggest that the ban may have reduced fatalities and
injuries from public mass shootings. Mark Gius, *An Examination of the Effects of*
Concealed Weapons Laws and Assault Weapons Bans on State-Level Murder
Rates, 21 *Applied Econ. Letters* 265, 265-267 (Nov. 26, 2013) (hereinafter, "Gius
2013"); Mark Gius, *The Impact of State and Federal Assault Weapons Bans on*
Public Mass Shootings, 22 *Applied Econ. Letters* 281, 281-84 (Aug. 1, 2014)
(hereinafter, "Gius 2014").

1 cost savings per year in medical care alone. Indeed, reducing shootings by even a
2 very small margin could produce substantial long term savings for society,
3 especially as the shootings prevented accrue over many years. *See America's*
4 *Experience with the Federal Assault Weapons Ban* at 166-67; *see also Updated*
5 *Assessment of the Federal Assault Weapons Ban* at 100 n.118. Some studies have
6 shown that the lifetime medical costs for gunshot injuries are about \$28,894
7 (adjusted for inflation). Thus, even a 1% reduction in gunshot victimizations at the
8 national level would result in roughly \$18,781,100 in lifetime medical costs savings
9 from the shootings prevented each year. *See America's Experience with the*
10 *Federal Assault Weapons Ban* at 166-67; *see also Updated Assessment of the*
11 *Federal Assault Weapons Ban* at 100 n.18.

12 The cost savings potentially could be substantially higher if one looks beyond
13 just medical costs. For example, some estimates suggest that the full societal costs
14 of gun violence—including medical, criminal justice, and other government and
15 private costs (both tangible and intangible)—could be as high as \$1 million per
16 shooting. Based on those estimates, even a 1% decrease in shootings nationally
17 could result in roughly \$650 million in cost savings to society from shootings
18 prevented each year. *See America's Experience with the Federal Assault Weapons*
19 *Ban* at 166-67.

20 **E. More Recent Research on Criminal Use of Large Capacity**
21 **Magazines**

22 To provide an updated examination of the assault weapons and LCM issue,
23 my colleagues and I recently investigated current levels of criminal activity with
24 assault weapons and other high capacity semiautomatic firearms in the United
25 States using several local and national data sources.²⁴ I focus here on the results
26 pertaining to the use of guns with LCMs overall. Sources for this portion of the

27 ²⁴ See Koper et al., *supra* note 5.
28

1 analysis included guns recovered by police in eight large cities (Hartford, CT;
2 Syracuse, NY; Baltimore, MD; Richmond, VA; Minneapolis, MN; Milwaukee, WI;
3 Kansas City, MO; and Seattle, WA), guns used in murders of police throughout the
4 nation, and guns used in firearm mass murder incidents in which at least four
5 people were murdered with a firearm (irrespective of the number of additional
6 victims shot but not killed). The use of guns with LCMs was measured precisely
7 for the Syracuse, Baltimore, and Richmond analyses, which were based on data
8 sources having an indicator for magazine capacity, and some of the mass murder
9 incidents. For other analyses, use of guns with LCMs was approximated based on
10 recoveries of semiautomatic firearm models that are commonly manufactured and
11 sold with LCMs. I refer to these guns collectively as LCM firearms.

12 In short, the findings of this study reinforce many of the points made above
13 based on my earlier research. In the police databases, which covered varying time
14 periods from 2008 through 2014, LCM firearms generally accounted for 22-36% of
15 crime guns, with some estimates upwards of 40% for cases involving shootings.²⁵
16 Although these estimates may overstate LCM use somewhat (since some estimates
17 were based on measurement of LCM compatible firearms that may not all have
18 been equipped with LCMs), they suggest that LCMs are used in a substantial share
19 of gun crimes. Consistent with prior research, we also found that LCM firearms are
20 more heavily represented among guns used in murders of police and mass murders.
21 For the period of 2009 through 2013, LCM firearms constituted 41% of guns used
22 in murders of police, with annual estimates ranging from 35% to 48%. Further, our
23 analysis of a sample of 145 mass murders that occurred from 2009 through 2015
24 suggested that LCM firearms were involved in as many as 57% of these incidents

25 ²⁵ An exception is that crime guns were least likely to be equipped with LCMs in
26 Syracuse (14.6%). This may be attributable to New York State LCM restrictions
27 that have been in effect since the early 2000s, but our study did not address this
28 question.

1 based on cases for which a definitive determination could be made (as a caveat,
2 precise data on the guns and magazines used were not available for most cases).
3 The identified LCM cases typically occurred in public locations (80%) and resulted
4 in more than twice as many people shot on average as did other incidents—a
5 statistically significant difference that is not likely due to chance (13.7 victims on
6 average for LCM cases versus 5.2 for other cases).

7 Our study also revealed that LCM firearms have grown substantially as a share
8 of guns used in crime since the expiration of the federal LCM ban. This conclusion
9 is based on guns used in murders of police nationally (2003-2013) as well as guns
10 recovered by police in Baltimore (2004-2014), Richmond (2003-2009), and
11 Minneapolis (2006-2014).²⁶ For these data sources and time frames, the percentage
12 of guns that were LCM firearms increased (in relative terms) by 33-49% in the
13 Baltimore, Minneapolis, and national data, and by 112% in the Richmond data.²⁷

14 This upward trend in criminal use of LCM firearms implies possible increases
15 in the level of gunfire and injury per gun attack since the expiration of the federal
16 LCM ban. Consistent with this inference, national data that we compiled from the
17 federal Centers for Disease Control and Prevention and the Federal Bureau of
18 Investigation show that gun homicides and assault-related non-fatal shootings rose
19 by about 29% relative to the level of overall reported violent gun crimes
20 (homicides, assaults, and robberies) between 2003-2005 and 2010-2012.²⁸

21
22 ²⁶ Note that Maryland restricted LCMs with more than 20 rounds throughout this
period and extended these restrictions to LCMs with more than 10 rounds in 2013.

23 ²⁷ For example, the share of guns used in police murders that were LCM firearms
24 rose from 30.4% for the 2003-2007 period to 40.6% for the 2009-2013 period (a
relative increase of 33.6%). In the Richmond data, LCM firearms increased from
25 10.4% of guns recovered by police for the 2003-2004 period to 22% for the 2008-
2009 period (a relative increase of 111.5%).

26 ²⁸ See Koper et al., *supra* note 5. This trend was driven by assault-weapon-related
27 non-fatal shootings, which have been trending upward since the early 2000s and
recently reached their highest rates since 1995. See Katherine A. Fowler et al.,
28 *Firearm Injuries in the United States*, 79 Preventive Med. 5, 5-14 (Oct. 2015).

1 Although the correlation of these trends does not prove causation, they suggest the
2 possibility that greater use of LCM firearms has contributed to higher levels of
3 shootings in recent years.

4 **VI. SECTION 32310 -- CALIFORNIA'S LARGE-CAPACITY MAGAZINE**
5 **PROHIBITION**

6 **A. The LCM Ban**

7 On July 1, 2016, the State of California enacted Senate Bill No. 1446 (2015-
8 2016 Reg. Sess.), which prohibited the possession of LCMs (defined under Section
9 16740 as “a feeding device with the capacity to accept more than 10 rounds”) beginning on July 1, 2017. Cal. Stats. 2016, ch. 58 (SB 1446) § 1. SB 1446, which
10 went into effect on January 1, 2017, amended Section 32310 to state that, beginning
11 on July 1, 2017, any person possessing an LCM, with exemptions not relevant here,
12 would be guilty of an infraction punishable by a fine starting at \$100 for the first
13 offense. Cal. Stats. 2016, ch. 58 (S.B. 1446) § 1 (amending Section 32310 to add a
14 new subdivision (c)). The law also provided that anyone possessing an LCM may,
15 prior to July 1, 2017, dispose of the magazine by any of the following means: (1)
16 removing it from the state; (1) selling it to a licensed firearms dealer; (3) destroying
17 it; or (4) surrendering it to a law enforcement agency for destruction. Cal. Stats.
18 2016, ch. 58 (S.B. 1446) § 1 (amending Section 32310 to add a new subdivision
19 (d)). The Senate Bill Analysis noted that the amendments were necessary because
20 the prior version of the law, which did not prohibition possession of LCMs, was
21 “very difficult to enforce.” Sen. Bill No. 1446, 3d reading Mar. 28, 2016 (2015-
22 2016 Reg. Sess.) (Cal. 2016)).

23
24 On November 8, 2016, California voters passed Proposition 63, the “Safety for
25 All Act of 2016.” Prop. 63, § 1, as approved by voters (Gen. Elec. Nov. 8, 2016)).
26 The measure included several provisions—including amendments to Section
27 32310—intended to close “loopholes that leave communities throughout the state
28 vulnerable to gun violence and mass shootings.” Prop. 63, § 2, ¶ 5. The

1 amendments to Section 32310 largely mirror the same amendments made under
 2 SB 1446. Both provisions prohibit the possession of LCMs on or after July 1,
 3 2017, and list options for the disposal of LCMs before that date. Prop. 63 also
 4 increased the potential consequence for violations of the possession ban, from an
 5 infraction to an infraction or a misdemeanor. Prop. 63, § 6.1. References to
 6 Section 32310 in this brief are to the statute as amended by Proposition 63.

7 **B. The Potential Impact and Efficacy of California's Ban on**
 8 **Possession of LCMs**

9 California's ban on possession was only recently passed, and I have not
 10 undertaken any study or analysis of this law. Nevertheless, it is my considered
 11 opinion that, based on the similarities of Section 32310 to the federal ban, the
 12 impacts of the federal ban and the ways in which Section 32310 address some of
 13 the weaknesses of the federal ban, Section 32310 is likely to advance California's
 14 interest in protecting public safety.²⁹

15
 16 ²⁹ A few studies of state-level assault weapon and LCM bans have examined the
 17 effects of these laws on gun violence and other crimes. In those studies that have
 18 examined gun homicides and other shootings (the crimes that are logically most
 19 likely to be affected by LCM bans), evidence has been mixed. Although states with
 20 assault weapon and LCM laws tend to have lower gun murder rates, this association
 21 is not statistically significant when controlling for other social and policy factors.
 22 However, other evidence from these studies suggests these laws may produce
 23 statistically significant reductions in fatalities from public mass shootings. See
 24 Gius 2013 at 265-67; see also Gius 2014 at 281-84; Eric W. Fleegler et al., *Firearm*
 25 *legislation and firearm-related fatalities in the United States*, 173 JAMA Internal
 26 Med. 732, 732-40 (2013); Christopher S. Koper & Jeffrey A. Roth, *The Impact of*
 27 *the 1994 Federal Assault Weapon Ban on Gun Violence Outcomes: an Assessment*
 28 *of Multiple Outcome Measures and Some Lessons for Policy Evaluation*, 17 Journal
 of Quantitative Criminology 33-74 (2001); see also *Updated Assessment of the*
Federal Assault Weapons Ban at 81 n.95. Nonetheless, it is difficult to draw
 definitive conclusions from these studies for several reasons including the
 following. For one, there is little evidence on how state LCM bans affect the
 availability and use of LCMs over time. Further, studies have not generally
 accounted for important differences in state assault weapons laws—most notably,
 whether they include LCM bans—and changes in these provisions over time.
 Perhaps most importantly, to the best of my knowledge, there have not been any
 studies examining the effects of LCM laws that ban LCMs without grandfathering,
 as done by the new California statute. Hence, these studies have limited value in
 assessing the potential effectiveness of California's new law.

1 California's LCM ban is more robust than the expired federal ban, and may be
2 more effective more quickly due to its elimination of grandfathering for previously
3 owned LCMs. While the LCM ban was arguably the most important feature of the
4 1994 federal ban (given that LCMs are the key feature contributing to an assault
5 weapon's firepower, and that the reach of the LCM ban was much greater than the
6 assault weapons ban as many semiautomatic guns that were not banned could still
7 accept LCMs), my studies as to the effects of the federal ban indicated that the
8 LCM ban was likely not as efficacious in reducing the use of these magazines in
9 crime as it otherwise might have been because of the large number of pre-ban
10 LCMs which were exempted from the ban. *The Washington Post's* investigation of
11 recovered guns with LCMs in Virginia, which showed an increasing decline in the
12 number of recovered guns with LCMs the longer the ban was in effect, similarly
13 suggests that the grandfathering of pre-ban LCMs delayed the full impact of the
14 federal ban. See Fallis, *supra*, attached as Exhs. E & F. In my opinion, eliminating
15 the grandfathering of pre-ban LCMs, as done by California's new law, would have
16 improved the efficacy of the federal ban.

17 In my opinion, based on the data and information contained in this report and
18 the sources referred to herein, a complete ban on the possession of LCMs has the
19 potential to: (1) reduce the number of crimes committed with LCMs; (2) reduce the
20 number of shots fired in gun crimes; (3) reduce the number of gunshot victims in
21 such crimes; (4) reduce the number of wounds per gunshot victim; (5) reduce the
22 lethality of gunshot injuries when they do occur; and (6) reduce the substantial
23 societal costs that flow from shootings.

24 Through Section 32310 (c) and (d), California has enacted a ban on the
25 possession of LCMs. Like federal restrictions on fully automatic weapons and
26 armor piercing ammunition, I believe this measure has the potential to help prevent
27 the use and spread of particularly dangerous weaponry, and is a reasonable and
28

1 well-constructed measure that is likely to advance California's interest in protecting
2 its citizens and its police force.

3 Respectfully Submitted,

4 
5

6 Dr. Christopher S. Koper
7 October 5, 2017
8 Ashburn, Virginia
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DECLARATION OF SERVICE BY E-MAIL and U.S. Mail

Case Name: **Duncan, Virginia et al v. Xavier Becerra**
No.: **17-cv-1017-BEN-JLB**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service with postage thereon fully prepaid that same day in the ordinary course of business.

On October 6, 2017, I served the attached **EXPERT REPORT OF DR. CHRISTOPHER S. KOPER** by transmitting a true copy via electronic mail. In addition, I placed a true copy thereof enclosed in a sealed envelope, in the internal mail system of the Office of the Attorney General, addressed as follows:

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I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on October 6, 2017, at Sacramento, California.

Chris McCartney
Declarant


Signature

SA2017107272
12840553.docx

Exhibit A

Exhibit 4
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Education

1995	Ph.D., Criminology and Criminal Justice, University of Maryland
1992	M.A., Criminology and Criminal Justice, University of Maryland
1988	B.A. (Summa cum Laude), Criminal Justice, University of Maryland

Career Brief

Dr. Christopher S. Koper is an Associate Professor in the Department of Criminology, Law and Society at George Mason University and the Principal Fellow of George Mason's Center for Evidence-Based Crime Policy. Dr. Koper holds a Ph.D. in criminology and criminal justice from the University of Maryland and has nearly 30 years of experiencing conducting criminological research at George Mason, the Police Executive Research Forum, the University of Pennsylvania, the Urban Institute, the RAND Corporation, the Police Foundation, and other organizations. He has written and published extensively on issues related to firearms, policing, federal crime prevention efforts, research methods, and other topics. Dr. Koper has served as a lead or senior-level investigator for numerous projects funded by the U.S. Department of Justice, including Congressionally-mandated assessments of the 1994 federal assault weapons ban and the federal Community Oriented Policing Services (COPS) program. He is the co-creator of the Evidence-Based Policing Matrix, a tool used by local and national organizations including the federal Bureau of Justice Assistance and the National Policing Improvement Agency of the United Kingdom to visualize research results on police effectiveness and translate those results for practitioners and policymakers. Dr. Koper's work on the methods of patrolling crime hot spots (often referred to as the "Koper curve" principle) is also used by numerous police agencies in the United States and abroad.

Professional Background

Associate Professor:	Department of Criminology, Law and Society, George Mason University (Aug. 2011-present)
	Interim Graduate Director /Associate Chair (Jan.-Jun. 2016)
Director of Research:	Police Executive Research Forum (May 2010-Aug. 2011)
Deputy Director of Research:	Police Executive Research Forum (Dec. 2007 – May 2010)
Behavioral / Social Scientist:	RAND Corporation (2007)

Senior Research Associate:	Jerry Lee Center of Criminology, University of Pennsylvania (2001 – 2006)
Research Associate:	The Urban Institute (1997 – 2001)
Faculty Research Scientist:	Department of Criminology and Criminal Justice, University of Maryland (1997)
Research Scientist:	Crime Control Institute (1994-1997)
Graduate Assistant:	Department of Criminology and Criminal Justice, University of Maryland: (1989-1994)
Social Science Program Specialist (Graduate Intern):	National Institute of Justice, U.S. Department of Justice (1990)
Consultant:	Police Foundation (1988-1989)

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Taylor, Bruce, Christopher S. Koper, and Daniel Woods. 2011. *Combating Auto Theft in Arizona: A Randomized Experiment with License Plate Recognition Technology*. Final report to the National Institute of Justice, U.S. Department of Justice. Washington, D.C.: Police Executive Research Forum. <https://www.ncjrs.gov/pdffiles1/nij/grants/248635.pdf>

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Appears in modified form (and with other contributions) in *Understanding the "Whys" Behind Juvenile Crime Trends*. Philadelphia: University of Pennsylvania.
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Koper, Christopher S. and Evan Mayo-Wilson. 2010. *Police Strategies to Reduce Illegal Possession and Carrying of Firearms: Effects on Gun Crime*. Report to the Campbell Collaboration Crime and Justice Group and the National Policing Improvement Agency of the United Kingdom. Washington, D.C.: Police Executive Research Forum and Department of Social Policy and Social Work, Oxford University.

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Koper, Christopher, Debra Hoffmaster, Andrea Luna, Shannon McFadden, and Daniel Woods. 2010. *Developing a St. Louis Model for Reducing Gun Violence: A Report from the Police Executive Research Forum to the St. Louis Metropolitan Police Department*. (Funded by the Bureau of Justice Assistance, U.S. Department of Justice.) Washington, D.C.: Police Executive Research Forum.

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Harrell, Adele V., Shannon E. Cavanagh, Michele A. Harmon, Christopher S. Koper, and Sanjeev Sridharan. 1997. *Impact of the Children at Risk Program* (Volumes 1 and 2). Report to the National Institute of Justice. Washington, D.C.: The Urban Institute.

Koper, Christopher S. 1993. *The Maryland Project: Community-Oriented Policing and Drug Prevention in Edgewood, Maryland*. Report to the Maryland Governor's Drug and Alcohol Abuse Commission. Special Topics on Substance Abuse, Report 93-3. College Park, MD: Center for Substance Abuse Research.

Translational Publications and Tools

Additional publications and works for practitioner, policymaker, and general audiences

Lum, Cynthia, Christopher S. Koper, and Cody W. Telep. *The Evidence-Based Policing Matrix*. Online interactive tool available at: <http://cebcp.org/evidence-based-policing/the-matrix/>. Fairfax, VA: Center for Evidence-Based Crime Policy, George Mason University. Updated annually.

Lum, Cynthia, Christopher S. Koper, William Johnson, Megan Stoltz, Xiaoyun Wu, and James Carr. 2017. "Measuring Police Proactivity." *The Police Chief* August 2017: 16-17.

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Lum, Cynthia and Christopher S. Koper. 2016. "The Evidence-Based Policing Matrix." *Police Science: Australia and New Zealand Journal of Evidence-Based Policing* 1(2): 39.

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Lum, Cynthia and Christopher S. Koper. 2015. "The Need for More Research on Technology." Testimony submitted to the President's Task Force on 21st Century Policing.

Also appears (in modified form) as "Why 'More Research is Needed' on Police Technology is Not Simply an Academic Cliché." Blog for the Scottish Institute for Policing Research.
<https://blog.dundee.ac.uk/sipr/2015/03/why-more-research-is-needed-on-police-technology-is-not-simply-an-academic-cliche/>

Koper, Christopher S., Cynthia Lum, and James J. Willis. 2014. "Realizing the Potential of Technology for Policing." *Translational Criminology: The Magazine of the Center for Evidence-Based Crime Policy (George Mason University)* Fall 2014: 9-10,17. <http://cebcp.org/wp-content/TCmagazine/TC7-Fall2014>

Koper, Christopher S., Bruce Taylor, and Jamie Roush. 2013. "What Works Best at Violent Crime Hot Spots? A Test of Directed Patrol and Problem-Solving Approaches in Jacksonville, Florida." *Police Chief* 80 (Oct.): 12-13.
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Tate, Renee, Thomas Neale, Cynthia Lum, and Christopher Koper. 2013. "Case of Places." *Translational Criminology: The Magazine of the Center for Evidence-Based Crime Policy (George Mason University)* Fall 2013: 18-21. <http://cebcp.org/wp-content/TCmagazine/TC5-Fall2013>

Lum, Cynthia and Christopher S. Koper. 2013. "Evidence-Based Policing in Smaller Agencies: Challenges, Prospects, and Opportunities." *The Police Chief* 80 (April): 42-47.
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Lum, Cynthia and Christopher S. Koper. 2012. "Incorporating Research into Daily Police Practice: The Matrix Demonstration Project." *Translational Criminology: The Magazine of the Center for Evidence-Based Crime Policy (George Mason University)*. Fall 2012: 16-17. <http://cebcp.org/wp-content/TCmagazine/TC3-Fall2012>

Roush, Jamie and Christopher Koper. 2012. "From Research to Practice: How the Jacksonville, Florida Sheriff's Office Institutionalized Results from a Problem-Oriented, Hot Spots Experiment." *Translational Criminology: The Magazine of the Center for Evidence-Based Crime Policy (George Mason University)*. Winter 2012: 10-11. <http://cebcp.org/wp-content/TCmagazine/TC2-Winter2012>

Aden, Hassan with Christopher Koper. 2011. "The Challenges of Hot Spots Policing." *Translational Criminology: The Magazine of the Center for Evidence-Based Crime Policy (George Mason University)*. Summer 2011: 6-7. <http://cebcp.org/wp-content/TCmagazine/TC1-Summer2011>

Koper, Christopher S. 2011. "A Study Conducted by PERF and Mesa Police Shows that LPRs Result in More Arrests." Presentation summarized in *How Are Innovations in Technology Transforming Policing?* Pp. 28-31. Washington, DC: Police Executive Research Forum.
http://policeforum.org/library/critical-issues-in-policing-series/Technology_web2.pdf

Police Executive Research Forum. 2010. *Guns and Crime: Breaking New Ground by Focusing on the Local Impact*. Washington, DC. (Contributor). <http://policeforum.org/library/critical-issues-in-policing-series/GunsandCrime.pdf>

Koper, Christopher S. 2008. *Policing Gun Violence: A Brief Overview*. Discussion paper prepared for the Police Executive Research Forum and the St. Louis Metropolitan Police Department.

Appears in Koper, Christopher, et al. 2010. *Developing a St. Louis Model for Reducing Gun Violence: A Report from the Police Executive Research Forum to the St. Louis Metropolitan Police Department*. Washington, D.C.: Police Executive Research Forum.

Also distributed as a discussion paper for the Midwest 2013 Summit to Combat Gun Violence held by the City of Minneapolis and the City of Milwaukee. Minneapolis, 2013.
<http://www.midwestinterstatecoalition.org/pages/resources/pdf/Koper%20Policing%20Gun%20Violence%20Review%202008.pdf>

Police Executive Research Forum. 2008. *Violent Crime in America: What We Know About Hot Spots Enforcement*. Washington, DC. (Contributor). http://policeforum.org/library/critical-issues-in-policing-series/HotSpots_v4.pdf

Also includes Koper, Christopher S. 2008. "PERF's Homicide Gunshot Survey." Presentation summarized in *Violent Crime in America: What We Know About Hot Spots Enforcement*, pp. 25-27. Washington, DC: Police Executive Research Forum. http://policeforum.org/library/critical-issues-in-policing-series/HotSpots_v4.pdf

Koper, Christopher S. 2004. "Disassembling the Assault-Gun Ban." Editorial. *The Baltimore Sun*: September 13.

Koper, Christopher S. 1995. "Reducing Gun Violence: A Research Program in Progress." Presentation summarized in *What To Do About Crime: The Annual Conference on Criminal Justice Research and Evaluation – Conference Proceedings*, pp. 58-60. Washington, D.C.: U.S. Department of Justice.

Other Publications, Reports, and Working Papers

Lum, Cynthia, Christopher S. Koper, and Daniel Nagin. 2017. *Methodological Issues in Detecting Cost Benefits of the Use of License Plate Readers (LPRs) in Investigations*. Discussion paper for the New York University Policing Project, Cost-Benefit Analysis Lab and Conference. New York City: February 2017.

Koper, Christopher S. 2007. *Assessments of Corporate Culture and Prosecutorial Decisions by U.S. Attorneys: A Draft Research Proposal*. Concept paper prepared for the LRN-RAND Corporation Center for Corporate Ethics, Law, and Governance.

Koper, Christopher S. 2003. *Police Strategies for Reducing Illegal Possession and Carrying of Firearms: A Systematic Review Protocol Prepared for the Campbell Collaboration*. Published by the Campbell Collaboration Crime and Justice Group. <http://campbellcollaboration.org/lib>

Koper, Christopher S. 2002. *Testing the Generalizability of the Concealed Carry Hypothesis: Did Liberalized Gun Carrying Laws Reduce Urban Violence, 1986-1998?* Working Paper. Philadelphia: Jerry Lee Center of Criminology, University of Pennsylvania.

Koper, Christopher S. 2002. *Gun Types Used in Crime and Trends in the Lethality of Gun Violence: Evidence from Two Cities*. Working Paper. Philadelphia: Jerry Lee Center of Criminology, University of Pennsylvania.

Koper, Christopher S. 1995. *Gun Lethality and Homicide: Gun Types Used By Criminals and the Lethality of Gun Violence in Kansas City, Missouri, 1985-1993*. Ph.D. Dissertation. College Park, MD: Department of Criminal Justice and Criminology, University of Maryland. (Published by University Microfilms, Inc.: Ann Arbor, Michigan.)

Koper, Christopher S. 1995. Review essay on *The Politics of Gun Control* by Robert J. Spitzer. *The Criminologist* 20:32-33.

Koper, Christopher S. 1992. *The Deterrent Effects of Police Patrol Presence upon Criminal and Disorderly Behavior at Hot Spots of Crime*. M.A. Thesis. College Park, MD: Department of Criminology and Criminal Justice, University of Maryland.

Koper, Christopher S. 1989. *Quality Leadership and Community-Oriented Policing in Madison: A Progress Report on the EPD (Experimental Police District)*. Report prepared for the Police Foundation (Washington, D.C.).

Portions reprinted in *Community Policing in Madison: Quality from the Inside Out* (1993). Report to the National Institute of Justice, U.S. Department of Justice by Mary Ann Wycoff and Wesley G. Skogan. Washington, D.C.: Police Foundation.

Koper, Christopher S. 1989. *The Creation of Neighborhood-Oriented Policing in Houston: A Progress Report*. Report prepared for the Police Foundation (Washington, D.C.).

Koper, Christopher S. 1989. *External Resources for Police*. Report prepared for the Police Foundation (Washington, D.C.).

Funded Research

Selected projects as a principal or senior-level investigator

Principal Investigator (with Cynthia Lum, PI). "The Proactive Policing Lab." \$348,111 grant from the Laura and John Arnold Foundation. Awarded 2016.

Principal Investigator (with Cynthia Lum, PI). "Creating a Blueprint Document to Guide Implementation of the President's Task Force on 21st Century Policing Report." \$168,821 subcontract from the Laura and John Arnold Foundation and the International Association of Chiefs of Police to George Mason University. Awarded 2015.

Principal Investigator (with Cynthia Lum, PI): "A Systematic Development of a Research Agenda for Body Worn Camera Research." \$174,552 grant from the Laura and John Arnold Foundation. Awarded 2015.

Principal Investigator (with Cynthia Lum, PI): Extension of "The Evidence-Based Policing Matrix Demonstration Project." \$499,999 extension grant from the Bureau of Justice Assistance (U.S. Department of Justice) to George Mason University. Awarded 2014.

Principal investigator (with Cynthia Lum, PI): "Evaluating the Crime Control and Cost-Benefit Effectiveness of License Plate Recognition (LPR) Technology in Patrol and Investigations." \$553,713 grant from the National Institute of Justice (U.S. Department of Justice) to George Mason University. Awarded 2013.

Principal investigator (with Cynthia Lum, PI). "Violent Gun and Gang Crime Reduction Program (Project Safe Neighborhoods), Fiscal Year 2013." \$29,997 research partner subcontract from the U.S. Attorney's Office (District of Columbia) funded through the Bureau of Justice Assistance (U.S. Department of Justice). Awarded 2013.

Principal Investigator (with Cynthia Lum, PI): "The Evidence-Based Policing Matrix Demonstration Project." \$749,237 grant from the Bureau of Justice Assistance (U.S. Department of Justice) to George Mason University. Awarded 2011.

Principal Investigator: "Realizing the Potential of Technology for Policing: A Multi-Site Study of the Social, Organizational, and Behavioral Aspects of Implementing Policing Technologies." \$592,151 grant from the National Institute of Justice (U.S. Department of Justice) to the Police Executive Research Forum and George Mason University (subcontractor). Awarded 2010.

Principal Investigator (2009-Aug. 2011) and consultant (Aug. 2011-Dec. 2013): "Hiring of Civilian Staff in Policing: An Assessment of the 2009 Byrne Program." \$549,878 grant from the National Institute of Justice (U.S. Department of Justice) to the Police Executive Research Forum. Awarded 2009.

Principal Investigator (Jan. 2011-Aug. 2011): "Community Policing Self-Assessment Tool Short Form, COPS Hiring Recovery Program Administration." \$85,444 subcontract from ICF International and the Office of Community Oriented Policing Services (U.S. Department of Justice) to the Police Executive Research Forum. Awarded 2011.

Principal Investigator: "National Study of Gun Enforcement and Gun Violence Prevention Practices Among Local Law Enforcement Agencies." \$70,400 grant from the Joyce Foundation to the Police Executive Research Forum. Awarded 2010.

Principal Investigator: "Development of the Community Policing Self-Assessment Tool Short Form." \$53,907 subcontract from ICF International and the Office of Community Oriented Policing Services (U.S. Department of Justice) to the Police Executive Research Forum. Awarded 2010.

Principal Investigator: "A Systematic Review of Research on Police Strategies to Reduce Illegal Gun Carrying." \$15,600 subcontract from George Mason University and the National Policing Improvement Agency of the United Kingdom to the Police Executive Research Forum. Awarded 2010.

Co-Principal Investigator (2005-2010): "Understanding and Monitoring the 'Whys' Behind Juvenile Crime Trends." \$2,249,290 grant from the Office of Juvenile Justice and Delinquency Prevention (U.S. Department of Justice) to the University of Pennsylvania (with subcontracts to the Police Executive

Research Forum, 2009-2010). Initial and continuation awards, 2001-2005.

Principal Investigator: "Police Interventions to Reduce Gun Violence: A National Examination." Supported through \$200,000 in funding from the Motorola Foundation to the Police Executive Research Forum. Awarded 2009.

Principal Investigator: "The Varieties and Effectiveness of Hot Spots Policing: Results from a National Survey of Police Agencies and a Re-Assessment of Prior Research." Supported through \$80,000 in funding from the Motorola Foundation to the Police Executive Research Forum. Awarded 2008.

Co-Principal Investigator: "Assessment of Technology Needs in Law Enforcement." \$185,866 contract from the Lockheed Martin Corporation to the Police Executive Research Forum. Awarded 2008.

Co-Principal Investigator (for research partner subcontract): "An Evaluation of the Jacksonville Data Driven Reduction of Street Violence Project." \$650,008 grant from the Bureau of Justice Assistance (U.S. Department of Justice) to the Jacksonville, FL Sheriff's Office and the Police Executive Research Forum (subcontractor). Awarded 2007.

Co-Principal Investigator: "A Randomized Experiment Assessing License Plate Recognition Technology in Mesa, Arizona." \$474,765 grant from the National Institute of Justice (U.S. Department of Justice) to the Police Executive Research Forum. Awarded 2007.

Evaluation Director (for research partner subcontract): "Developing a St. Louis Model for Reducing Gun Violence." \$500,000 grant from the Bureau of Justice Assistance (U.S. Department of Justice) to the St. Louis Metropolitan Police Department and the Police Executive Research Forum (subcontractor). Awarded 2007.

Co-Principal Investigator: "Evaluation Study of the Prince William County Police Immigration Enforcement Policy." \$282,129 contract from the Prince William County Police Department to the University of Virginia and the Police Executive Research Forum (subcontractor). Awarded 2008.

Principal Investigator: "Crime Gun Risk Factors: The Impact of Dealer, Firearm, Transaction, and Buyer Characteristics on the Likelihood of Gun Use in Crime." \$103,514 grant from the U.S. Department of Justice to the University of Pennsylvania. Awarded 2004.

Principal Investigator: "A Reassessment of the Federal Assault Weapons Ban." \$38,915 grant from the U.S. Department of Justice to the University of Pennsylvania. Awarded 2003.

Co-Principal Investigator: "Pennsylvania Fair Share Tax Project." \$100,000 grant from the Jerry Lee Foundation to the University of Pennsylvania. Awarded 2003.

Principal Investigator: "The Impact of Dealer and Firearm Characteristics on the Likelihood of Gun Use in Crime." \$60,000 grant from the Smith Richardson Foundation to the University of Pennsylvania. Awarded 2001.

Principal Investigator: "Police Hiring and Retention Study." \$250,000 grant from the U.S. Department of Justice to the Urban Institute. Awarded 1999.

Co-Principal Investigator: "Analysis of Title XI Effects." \$301,826 grant from the U.S. Department of Justice to the Urban Institute. Awarded 1998.

Co-Principal Investigator: "Illegal Firearms Markets." \$499,990 grant from the U.S. Department of Justice to Northeastern University and the Urban Institute (subcontractor). Awarded 1997.

Co-Principal Investigator (director of national survey and evaluation task leader), 1997-2001: "Evaluation of Title I of the 1994 Crime Act." \$3,356,156 grant from the U.S. Department of Justice to the Urban Institute.

Co-Principal Investigator: "Impact Evaluation of the Public Safety and Recreational Firearms Use Protection Act of 1994." \$150,000 grant from the U.S. Department of Justice to the Urban Institute (subcontract later awarded to the Crime Control Institute). Awarded 1995.

Principal Investigator: "Gun Density versus Gun Type: Did More, or More Lethal, Guns Drive Up the Dallas Homicide Rate, 1978-1992?" \$49,714 grant from the U.S. Department of Justice to the Crime Control Institute. Awarded 1994.

Selected Presentations

Invited presentations, lectures, and policy briefings

"Assessing the State of Research on Police Body-Worn Cameras." Symposium on Body-Worn Cameras: Building a Secure and Manageable Program for Law Enforcement (sponsored by the Major Cities Chiefs Association, the International Association of Chiefs of Police, the Police Foundation, and SafeGov). Washington, DC, 2016. Video: <http://www.policefoundation.org/2016-body-worn-camera-symposium/>

Lectures for the Contemporary Issues in Criminology series of the Osher Lifelong Learning Institute, George Mason University.

- "Hot Spots Policing." Fall 2016.
- "Gun Crime and Gun Policy." Fall 2015.

"Evidence Based Policing Strategies." Missouri Attorney General's Urban Crime Summit. University of Missouri, Kansas City, 2013.

"Putting Hot Spots Research into Practice." 6th International Conference on Evidence-Based Policing. Cambridge University, United Kingdom, 2013. Video: <http://www.crim.cam.ac.uk/events/conferences/ebp/2013/>

"America's Experience with the Federal Assault Weapons Ban, 1994-2004: Key Findings and Implications." Summit on Reducing Gun Violence in America: Informing Policy with Evidence and Analysis. Johns Hopkins University, 2013. Video: C-SPAN (<http://www.c-spanvideo.org/clip/4304369>) and the Johns Hopkins University Bloomberg School of Public Health (<http://www.jhsph.edu/events/gun-policy-summit/video-archive>).

"Assessing Police Efforts to Reduce Gun Crime: Results from a National Survey."

- Federal Government Accountability Office's Homeland Security and Justice speaker series.

Washington, D.C., 2013.

- Firearms Committee of the International Association of Chiefs of Police, 2012

"Police Strategies for Reducing Gun Violence." 2013 Summit to Combat Gun Violence hosted by the City of Minneapolis and the City of Milwaukee. Minneapolis, 2013.

"A Randomized Trial Comparing Directed Patrol and Problem-Solving at Violent Crime Hot Spots"

- 4th International Conference on Evidence-Based Policing. Cambridge University, United Kingdom, 2011
- 12th Annual Jerry Lee Symposium on Criminology and Public Policy. Washington, D.C. (held in the U.S. Senate Russell Office Building), 2011
- Annual Symposium of the Center for Evidence-Based Crime Policy, George Mason University. Fairfax, VA, 2010

"Evaluation Study of Prince William County's Illegal Immigration Enforcement Policy"

- Prince William County, Virginia Board of County Supervisors, November 16, 2010 (co-presented with Thomas Guterbock)
- Briefings for senior staff of the Prince William County Police Department and Prince William County Government, October-November 2010 (co-presented with Thomas Guterbock)

"Police Strategies for Reducing Gun Violence." Congressional briefing on "Evidence-Based Policy: What We Know, What We Need to Know," organized by the Center for Evidence-Based Crime Policy, George Mason University. Washington, D.C. (U.S. Capitol Visitors' Center), 2009. Video:

<http://cebcp.org/outreach-symposia-and-briefings/evidence-based-crime-policy/>

"Hot Spots Policing: A Review of the Evidence." 2nd International Conference on Evidence-Based Policing (sponsored by the National Policing Improvement Agency of the United Kingdom and Cambridge University). Cambridge University, United Kingdom, 2009.

"Assessments of Corporate Culture and Prosecutorial Decisions by U.S. Attorneys." Presentation to the advisory board of the LRN-RAND Center for Corporate Ethics, Law, and Governance. New York, 2007.

"Risk Factors for Crime Involvement of Guns Sold in Maryland." Center for Injury Research and Policy, Johns Hopkins School of Public Health. Baltimore, 2007

"Police Strategies for Reducing Illegal Possession and Carrying of Firearms"

- Annual Jerry Lee Crime Prevention Symposium. Washington, D.C. (U.S. Senate Dirksen Office Building), 2005
- Firearm and Injury Center at Penn (FICAP) Forum Series. University of Pennsylvania, Philadelphia, 2005

"The Impacts of the 1994 Federal Assault Weapons Ban on Gun Markets and Gun Violence"

- Briefings for the Associate Attorney General of the United States and other staff of the U.S. Department of Justice and the U.S. Department of the Treasury. Washington, D.C., 1997
- National Research Council, Committee to Improve Research Information and Data on Firearms. Washington, D.C., 2002
- Firearm and Injury Center at Penn (FICAP) Forum Series. Philadelphia, 2003

- Jerry Lee Center of Criminology (University of Pennsylvania) Colloquium. Philadelphia, 2001
- "Federal Legislation and Gun Markets: An Assessment of Recent Initiatives Affecting Licensed Firearms Dealers." Jerry Lee Center of Criminology (University of Pennsylvania) Colloquium. Philadelphia, 2003.
- "Juvenile Gun Acquisition." Philadelphia Interdisciplinary Youth Fatality Review Team (A Project of the Philadelphia Departments of Public Health and Human Services). Philadelphia, 2002.
- "A National Study of Hiring and Retention Issues in Police Agencies." Briefing for staff of the Office of Community Oriented Policing Services (U.S. Department of Justice) and the National Institute of Justice (U.S. Department of Justice). Washington, D.C., 2001.
- "COPS and the Level, Style, and Organization of American Policing: Findings of the National Evaluation"
 - Press briefing sponsored by the Urban Institute. Washington, D.C., September 2000
 - Briefings for staff of the Office of Community Oriented Policing Services (U.S. Department of Justice) and the National Institute of Justice (U.S. Department of Justice). Washington, D.C., 1998 and 1999

Other conference presentations
(Summary list)

- Annual meeting of the American Society of Criminology (1991-2001, 2003-2006, 2008-2016)
- Annual Stockholm Criminology Symposium (2006, 2010, 2014)
- Annual meeting of the Police Executive Research Forum (2008-2009)
- 14th World Congress of Criminology (2005)
- Annual meeting of the Academy of Criminal Justice Sciences (1995, 1997, 1999-2001, 2012)
- U.S. Department of Justice Annual Conference on Criminal Justice Research and Evaluation (1995-1997, 1999, 2002)
- U.S. Department of Justice National Conference on Community Policing (1998)
- National Institute of Justice (U.S. Department of Justice) Firearms Cluster Conference (1996)

Workshops and other events

Speaker: 2017 Symposium on Evidence-Based Crime Policy held by the Center for Evidence-Based Crime Policy. George Mason University, Arlington, VA, 2017.

Professional training sessions on evidence-based policing (co-taught with Cynthia Lum)

- National Institute of Justice LEADS (Law Enforcement Advancing Data and Science) Scholars Program (June 2017)
- New York City Police Department (June 2017)
- Hollywood, FL Police Department (March 2016)
- Sheboygan, WI Police Department (June 2015)
- Milwaukee Police Department (and other nearby agencies) (April 2014)
- Las Vegas Police Department (December 2013)

Invited speaker and participant: Violent Crime Strategy Executive Session held by the Police Foundation and Major City Chiefs Police Association. Washington, DC, 2016.

Speaker and session organizer: 2014 Symposium on Challenges in Evidence-Based Crime Policy held by the Center for Evidence-Based Crime Policy and the Inter-American Development Bank. George Mason University, Arlington, VA, 2014.

Co-organizer and speaker: Seminar on Evidence-Based Policing Leadership Training for Supervisors held by the Center for Evidence-Based Crime Policy and the Center for Justice Leadership and Management. George Mason University, Arlington, VA, 2014. Video: <http://www.youtube.com/playlist?list=PLoagclcHgvlin4vK1bM7DMXPBmeWX69IT>.

Co-organizer, speaker, and session leader: Center for Evidence-Based Crime Policy's Evidence-Based Policing Workshop. George Mason University, Fairfax, VA, 2012. Presentation materials: <http://cebcp.org/cebcp-symposium-2012/>. Video: <http://www.youtube.com/playlist?list=PL4E509820FD3010E9&feature=plcp>

Organizer and speaker: Congressional briefing on "Reducing Gun Violence: Lessons from Research and Practice." Sponsored by the Center for Evidence-Based Crime Policy, George Mason University. Washington, D.C. (Rayburn Building of the U.S. House of Representatives), 2012. Video: <http://cebcp.org/outreach-symposia-and-briefings/reducing-gun-violence/>

Speaker and session leader: Center for Evidence-Based Crime Policy's Evidence-Based Policing Workshop. George Mason University, Fairfax, VA, 2011. Presentation slides and video: <http://cebcp.org/evidence-based-policing/evidence-based-policing-workshop/>

Speaker: Police Executive Research Forum symposium, "How are Innovations in Technology Transforming Policing?" (Critical Issues in Policing Series). Washington, D.C., 2011

Co-organizer, speaker, and session leader: Police Executive Research Forum and Lockheed Martin Law Enforcement Future Technologies Workshop. Suffolk, Virginia, 2008.

Speaker: Police Executive Research Forum symposium on "Hot Spots" (2008 Critical Issues in Policing Series). Washington, D.C., 2008.

Speaker and participant: Firearm Injury Center at Penn (FICAP, University of Pennsylvania) Workshop on Existing and Innovative Methods in the Study of Gun Violence. Bryn Mawr, Pennsylvania, 2003

Academic Teaching

Courses taught

CRIM 781: Justice Program Evaluation (George Mason University)
CRIM 490 (special topics): Firearms Law, Policy, and Politics (George Mason University)
CRIM 491/492: Undergraduate Honors Seminar (George Mason University)
CRIM 797: Professionalization Seminar (co-taught by all CLS faculty at George Mason University)

2016 International Graduate Summer School for Policing Scholarship, hosted by the Scottish Institute for Policing Research and George Mason University with the University of St. Andrews (co-taught with other

faculty from the United States and Scotland)

Dissertation and thesis committees (completed)

- M.A. committee (chair) for William Johnson (Department of Criminology, Law and Society, George Mason University, 2017)
- M.A. committee for Jordan Nichols (Department of Criminology, Law and Society, George Mason University, 2016)
- Ph.D. committee for Heather Vovak (Department of Criminology, Law and Society, George Mason University, 2016)
- Ph.D. committee for Julie Grieco (Department of Criminology, Law and Society, George Mason University, 2016)
- Ph.D. committee for Marthinus Koen (Department of Criminology, Law and Society, George Mason University, 2016)
- M.A. committee for Ronald Zimmerman (Department of Criminology, Law and Society, George Mason University, 2016)
- M.A. committee for Xiaoyun Wu (Department of Criminology, Law and Society, George Mason University, 2015)
- M.A. committee (chair) for Luke Dillon (Department of Criminology, Law and Society, George Mason University, 2013)
- Ph.D. committee for Cody Telep (Department of Criminology, Law and Society, George Mason University, 2013)
- M.A. committee for Josh Conroy (Department of Criminology, Law and Society, George Mason University, 2013)
- M.A. committee for Sarah Merrill (Department of Criminology, Law and Society, George Mason University, 2013)
- Ph.D. committee for Jeffrey Monroe (Department of Criminal Justice, Temple University, 2004)
- M.A. committee for Darin Reedy (Department of Criminology and Criminal Justice, University of Maryland, 2001)
- M.A. committee for Kevin Strom (Department of Criminology and Criminal Justice, University of Maryland, 1997)

Professional Service

Editorships

- Associate editor, *Journal of Experimental Criminology* (fall 2016-present)
- Co-editor of *Translational Criminology* briefs series (in progress for Springer-Verlag)
- Editorial advisory board member, *Cambridge Journal of Evidence-Based Policing*
- Editorial committee member for *Epidemiologic Reviews*, 2016 theme issue on Gun Violence: Risk, Consequences, and Prevention (Oxford Journals, editor-in-chief Michel A. Ibrahim)
- Area editor for police strategies and practices, *Encyclopedia of Criminology and Criminal Justice* (Springer Verlag, Gerben Bruinsma and David Weisburd, editors-in-chief). Published 2014.
- Topic editor for *Criminology and Public Policy*, Feb. 2016 issue on police use of deadly force

Reviews of manuscripts, reports, and proposals

- *Journal of Experimental Criminology* (2004, 2009, 2011, 2012, 2015-2017)

- *Journal of Quantitative Criminology* (2001-2005, 2009, 2011, 2013-2015, 2017)
- *Police Quarterly* (2002-2004, 2011, 2016-2017)
- *Criminology* (2006, 2010, 2015, 2017)
- *American Journal of Preventive Medicine* (2017)
- *University of Tasmania Law Review* (2017)
- Laura and John Arnold Foundation (2016)
- *Justice Quarterly* (2008, 2016)
- *Policing: A Journal of Policy and Practice* (2013-2016)
- *Epidemiologic Reviews* (2015)
- *Justice Research and Policy* (2012, 2016)
- *Policing: An International Journal of Police Strategies and Management* (2013, 2015)
- *Victims and Offenders* (2015)
- *Criminology and Public Policy* (2005, 2013-2015)
- *Journal of Urban Health* (2015)
- *Evaluation Review* (2014)
- *Journal of Criminal Law and Criminology* (2014)
- *Journal of Policy Analysis and Management* (2014)
- *Injury Prevention* (2004-2005, 2014)
- *Australian and New Zealand Journal of Criminology* (2013)
- *Police Practice and Research* (2013)
- National Institute of Justice, U.S. Department of Justice (2001, 2013)
- *Sociological Quarterly* (2012)
- Oxford University Publishing (2011, 2013)
- *Homicide Studies* (2008)
- Population Reference Bureau (1994)

Other professional affiliations, service, and consulting

- Principal Fellow, Center for Evidence-Based Crime Policy, George Mason University
- Member, American Society of Criminology (ASC)
 - o Program committee member for 2016-2017 conferences
 - o Award selection committee member for 2002 conference
- Member, ASC Division of Experimental Criminology
 - o Executive Counselor, 2013-2015
- Member, ASC Division of Policing
 - o Executive Counselor (Nov. 2016-present)
- Member of the Research Advisory Board of the Police Foundation (2012-2015) and current consultant
- Former Delphi process participant to develop international reporting guidelines for randomized trials for the CONSORT Statement for Social and Psychological Interventions
- Consultant to the New York State Office of the Attorney General
- Consultant to the Connecticut Office of the Attorney General
- Consultant to the Maryland Office of the Attorney General
- Consultant to the Office of the City Attorney of the City of San Francisco (California)
- Consultant to the Office of the City Attorney of the City of Sunnyvale (California)
- Consultant to the Police Executive Research Forum (2011-2014)
- Contributor to the Crime and Justice Group of the Campbell Collaboration
- Former Associate of the Jerry Lee Center of Criminology, University of Pennsylvania

- Former Associate of the Firearm and Injury Center at Penn, University of Pennsylvania Health System
- Participant in the National Research Collaborative on Firearm Violence convened by the Firearm and Injury Center at Penn (2005)
- Participant in National Institute of Justice (U.S. Department of Justice) focus group on identity theft research (2005)
- Participant in annual fellowship fundraiser for the American Society of Criminology (1993-2006, 2012-2015)
- Member of the Advisory Committee for the National Criminal History Improvement Program State Firearms Research Project of the Justice Research and Statistics Association (1996)

Selected Honors and Awards

Fellow of the Academy of Experimental Criminology (2013)

Excellence in Law Enforcement Research Bronze Award from the International Association of Chiefs of Police, 2012 (for co-authorship of *Evaluation Study of Prince William County's Illegal Immigration Enforcement Policy*)

Scholar-in-Residence of the Firearm and Injury Center at Penn (University of Pennsylvania Health System), 2004 – 2006

Smith Richardson Foundation Public Policy Research Fellowship, 2001

Graduate Assistant Award, Department of Criminology and Criminal Justice, University of Maryland, 1989-1994

Honors, Ph.D. Theory Comprehensive Examination, Department of Criminology and Criminal Justice, University of Maryland, 1993

Summa cum Laude, University of Maryland, 1988

Peter P. Lejins Award for Top Graduate in Criminal Justice, Department of Criminology and Criminal Justice, University of Maryland, 1988