

UNITED STATES COURT OF APPEALS  
for the District of Columbia Circuit

SHELLY PARKER, et al.,	)	Case No. 04-7041
	)	
Appellants,	)	BRANDEIS BRIEF
	)	SUPPORTING APPELLANTS
vs.	)	(CRIMINOLOGY OF
	)	FIREARMS)
DISTRICT OF COLUMBIA, et al.,	)	
	)	
Appellees.	)	
_____		

**Brandeis Brief Filed on Behalf of Amici Professors: Frederick Bieber, David J. Burdua; John J. Furedy; Edward Leddy, Joseph Magaddino; Gary Mauser; Glenn Meyer; Jeffrey Miron; Michael Munger; Carol K. Oyster; Gary R. Pearlstein; Jeremy Rabkin; Lance Stell; Lawrence Southwick; Thomas Velk; and the Organization Amici: Second Amendment Foundation, Citizens Committee for the Right to Keep and Bear Arms, Madison Society.**

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On Appeal from the United States District  
Court For the District of Columbia  
(No. CIV. A.03-0213 EGS)

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## DISCLOSURE STATEMENT FOR AMICI CURIAE

The names of the amici represented in this brief are listed in the Certificate infra. None of these amici have any financial interest whatever in the case or in any party or amicus in the case. All the individual persons who appear as amici are American or foreign scholars whose interest is bringing to this court's notice the criminological data and research discussed in the brief. This is also true of the law professors who are listed as counsel for amici. Neither they nor any of the non-lawyer academics have been paid or promised any remuneration in connection with this case, regardless of its outcome.

In addition to the individual person amici, the following groups having no financial interest nevertheless wish to appear in this case as amicus curiae:

1. The Second Amendment Foundation is a 501 (c) (3) non-profit corporation dedicated to educational and legal advocacy activities not including lobbying. It does not issue stock and has no stockholders.
2. The Citizens Committee for the Right to Keep and Bear Arms is a national grass roots organization dedicated to preserving the individual right to keep and bear arms enumerated and codified under the Second Amendment and numerous state constitutions. The Citizens Committee, a 501 (c) (4) non-profit corporation, does not issue stock and has no stockholders.

3. The Madison Society is a non-profit corporation dedicated to educational and advocacy activities not including lobbying. It does not issue stock and has no stockholders.

## CERTIFICATE AS TO PARTIES, RULINGS, AND RELATED CASES

### (A) Parties and Amicus.

All parties and *amicus curiae* appearing before the district court and in this court are listed in the Brief for Appellant.

#### Plaintiffs-Appellants:

Shelly Parker, Dick Heller, Tom G. Palmer, Gillian St. Lawrence, Tracey Ambeau, and George Lyon.

#### Defendants-Appellees:

District of Columbia and Anthony Williams, Mayor of the District of Columbia.

#### Amici Curiae:

The individual amici are: Prof. Frederick Bieber, Harvard Medical School, Boston, MA; Emeritus Prof. David J. Bordua, University of Illinois, Urbana, Il.; Emeritus Professor John J. Furedy, University of Toronto, Toronto, Canada; Prof. Joseph Magaddino, California State University at Long Beach; Prof. Edward Leddy, St. Leo College, Virginia Beach, VA; Prof. Gary Mauser, Simon Fraser University, Burnaby, British Columbia; Prof. Glenn Meyer, Trinity University, San Antonio, TX; Jeffrey Miron, Visiting Professor, Harvard University, Cambridge, MA; Prof. Michael Munger, Duke University, Durham, NC; Prof.

Carol K. Oyster, University of Wisconsin, La Crosse, WI; Prof Emeritus Gary R. Pearlstein, Portland State University, Portland, OR; Prof. Jeremy Rabkin, Cornell University, Ithaca, NY; Prof. Emeritus Lawrence Southwick, State University of New York, Buffalo, NY; Prof. Lance Stell, Davidson College, Davidson, NC and Carolinas Medical Center, Charlotte, NC; Prof. Thomas Velk, Professor of Economics and Chairman of the Department of American Studies, McGill University, Montreal, Canada

For the organization amici please see Disclosure Statement supra

(B) Ruling Under Review.

The motion to dismiss was granted by Judge Sullivan on March 31, 2004. The case is reported as *Parker v. District of Columbia*, 311 F.Supp. 2d 103 (D. D.C. March 31, 2004). References to the ruling at issue appear in the Brief for Appellant. The court also denied appellants' motion for summary judgment.

(C) Related Cases.

None active.

(D) Statutes.

All applicable statutes are contained in the Brief for Appellant.

## SUMMARY OF DISCUSSION

Underlying the enactments challenged in this case is the quasi-religious faith that the more guns (particularly handguns) there are, the more violence and death there will be and, concomitantly, the fewer guns, the fewer deaths. We call this faith quasi-religious because, though there are scores of relevant studies in the U.S. and elsewhere, none shows more guns in a society = more violence and death. If there is any correlation it is that nations with more gun ownership generally have **lower** violent crime and murder rates than nations that forbid guns. (See Table and explanation for this correlation given in section 2 infra.)

There are endless varieties of deadly instruments in every environment. The incidence of these instruments being used in violence is determined by basic socio-cultural and economic factors, not by the mere availability of any particular lethal instrument.

The unique relevance of firearms is that they alone allow weaker people to resist predation by stronger ones.

Reliable, durable, and easy to operate, modern firearms are the most effective means of self-defense ever devised. They require minimal maintenance and, unlike knives and other weapons, do not depend on an individual's physical strength for their effectiveness. Only a gun



can allow a 110 pound woman to defend herself against a 200 pound man.<sup>1</sup>

Each year guns are used three to six times more often to repel criminals than by criminals in attempting crimes.<sup>2</sup>

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<sup>1</sup> Linda Gorman & David B. Kopel, "Self-defense: The Equalizer," 15 FORUM FOR APPLIED RESEARCH AND PUBLIC POLICY 92 (2000).

<sup>2</sup> See statistics and discussion in section 5 infra.

## DISCUSSION

### 1. **Criminological evidence discredits the mantra more guns = more violence and death -- American Data:**

We start with the U.S. for it has the longest, most extensive data on gun ownership and murder rates. The earliest reliable gun ownership data begin right after WWII. In 1946 the civilian gunstock was c. 48.5 million and the murder rate was six per 100,000 population; 55 years later in 2000, civilian gun ownership had quintupled (to 263.8 million) but the murder rate had increased only one tenth of one percent (6.1 per 100,000 population)<sup>3</sup> So much for the quasi-religious faith that a vast growth in civilian gunstock will produce concomitant (or any) increase in murder.

Moving up to the 2000s, each year three million or more guns have been added to the civilian gunstock, a total of c. 9 million more guns as of year-end 2003. Yet our murder rate over those years remained 6.1 per 100,000 pop.<sup>4</sup> These 2000s data follow a dramatic increase in the gunstock during the 1990s -- a decade

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<sup>3</sup> The 1946 gunstock figures come from Gary Kleck, *TARGETING GUNS: FIREARMS AND THEIR CONTROL*, 96 (1997) which gives figures for American gun ownership through 1994. Subsequent figures were supplied us by Prof. Kleck.. The 1946 Public Health Service murder rate comes also from *TARGETING GUNS* (p. 362). The 2000 murder figure comes from the *Vital Statistics Report* for 2000. Kleck's and all U.S. murder rate data used herein derive from the Public Health Service whose data are preferable to F.B.I. figures which are less comprehensive.

<sup>4</sup> *Vital Statistics Report* for 2003 v. 54 # 13 (April 19, 2006), p. 78.

in which murder **decreased** dramatically. In 1990-99 American gun ownership increased by over 47.4 million guns, yet gun murders fell from 7 per 100,000 pop. to 3.9 yearly.<sup>5</sup> In their turn the 1990s culminated a 30 year fall in American murder rates: gun ownership more than doubled but murder **decreased** by a third.<sup>6</sup>

Such comparisons may be multiplied ad infinitum. But no matter how one looks at them, the figures discredit the mantra's prediction that multi-million increases in the civilian gunstock will produce concomitant (or any) increases in murder. That did not occur with the c. 9 million gunstock increase in the 2000s, nor the 47.4 million gunstock increase in the 1990s nor the 145 million gunstock increase over the 30 years 1973-2002 nor the 224.5 million gun increase over the years 1946-2002. Extended study of such matters led to Prof. Southwick's finding that, while rising crime rates cause frightened citizens to acquire guns, rises in the civilian gunstock do **not** increase violent crime.<sup>7</sup>

It should be noted that American murder rates have fluctuated substantially since 1946. What none of those fluctuations did, however, was fulfill the mantra's

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<sup>5</sup> Compare *Vital Statistics Report* for 2000 to *Vital Statistics Report* for 1991.

<sup>6</sup> See discussion in Daniel Polsby & Don B. Kates, "American Homicide Exceptionalism," 69 U. COLO. L. REV. 969, 984-88 (1998)

<sup>7</sup> Lawrence Southwick, "Do Guns Cause Crime? Does Crime Cause Guns? A Granger Test," 25 ATLANTIC ECONOMIC J. 256 (1997)

prediction that vast increase in guns produces increased murder The standard work on the criminology of firearms states:

The per capita accumulated stock of guns (the total of firearms manufactured or imported into the United States, less exports) has increased in recent decades, yet there has been no correspondingly consistent increase in either total or gun violence... About half of the time gun stock increases have been accompanied by violence decreases, and about half the time [they have been] accompanied by violence increases, just what one would expect if *gun levels had no net impact on violence rates*.<sup>8</sup>

**2. Foreign criminological evidence discredits more guns = more death; fewer guns = less death.**

For decades the mantra was promoted by comparison of American violent crime rates to those of a few nations specially selected for having both severely restrictive gun laws and low crime. But this ended in the 1990s as England, Canada and Australia came to have the highest violent crime rates in the industrialized world – double American rates<sup>9</sup> – despite decades of ever more restrictive controls

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<sup>8</sup> TARGETING GUNS, supra at 18, emphasis added.

<sup>9</sup> John van Kesteren, et al., *Criminal Victimization in 17 Industrialised [sic] Countries* (2001). The surveys involved (the International Crime Victim Surveys) were conducted under the

culminating in the outright confiscation of nearly a million guns from those nations' law abiding, responsible adults.

Studies comparing large number of neutrally chosen nations also discredit the mantra. Comparing "homicide and suicide mortality data for thirty-six nations (including the United States) for the period 1990-1995" to gun ownership levels shows "no significant (at the 5% level) association between gun ownership and the total homicide rate."<sup>10</sup> Paralleling this is a later European study of data from 21 nations in which "no significant correlations [of gun ownership levels] with total suicide or homicide rates were found."<sup>11</sup>

In other words, nations with more guns did **not** exhibit higher murder rates than nations with fewer guns as the mantra predicts. See also the Table below comparing gun ownership and murder rate data for all European nations on which we could find the data. Again, these data show no correlation of nations with more guns having higher murder rates. The tendency is actually almost opposite: the annual murder rates for the nine nations having 16,000- 39,000 guns per 100,000

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auspices of the governments of each nation surveyed and the general supervision of the University of Leiden and the Dutch Ministry of Justice.

<sup>10</sup> TARGETING GUNS, supra p. 254.

<sup>11</sup> Quoted from the Abstract to Martin Killias, John van Kesteren & Martin Rindlisbacher, "Guns, Violent Crime, and Suicide in 21 Countries," 43 CANADIAN J. OF CRIMINOLOGY 429-448 (2001).

pop. average out to 1.17 while the murder rates for the nine nations having just 5,000 or fewer guns average out to 5.5, almost five times higher.

**TABLE: EUROPE – GUN OWNERSHIP & MURDER RATES**

[rates given are per 100,000 people]

<u>NATION</u>	<u>MURDER RATE</u>	<u>GUN OWNERSHIP</u>
Russia	20.54 [2002]	4,000
Luxembourg	09.01 [2002]	0
Moldova	07.81	1,000
Slovakia	02.63	3,000
Romania	02.50	300
Macedonia	02.29	16,000
Hungary	02.22 [2003]	2,000
Finland	01.98 [2004]	39,000
Poland	01.79 [2003]	1,500
Slovenia	01.79	5,000
Cz. Republic	01.69	5,000
France	01.65 [2003]	30,000
Denmark	01.21 [2003]	19,000

Greece	01.12	[2003]	11,000
Switzerland	00.99	[2003]	16,000
Germany	00.93	[2003]	30,000
Norway	00.81	[2001]	36,000
Austria	00.80	[2002]	17,000

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**Notes for Table:**

This table covers all European nations for which we have data on both gun ownership and murder rates. The gun ownership data come from the Graduate Institute of International Studies' SMALL ARMS SURVEY 2003 (Oxford U. Press 2003) at pp. 64 and 65, tables 2.2 ("Known Civilian Firearms in the European Union") and 2.3 ("Known Civilian Firearms in Other European Countries").

For 12 of the nations in this Table the murder rate data come from the pamphlets "JURISTAT: Homicide in Canada" (Canadian Centre for Justice Statistics) for the years 2001-04. Each of these pamphlets has a table listing murder rates for various nations. (The nations covered vary from year to year and the pamphlets offer no explanation why any particular nation is covered.) In each case the date of the pamphlet is specified after the murder rate in the Table.

As to the other six nations listed in the Table the murder rate data are from

the Seventh United Nations Survey of Crime Trends and Operations of Criminal Justice Systems covering the period 1998 - 2000 (United Nations Office on Drugs and Crime, Centre for International Crime Prevention.).

Why would comparison of large numbers of nations show those with few guns actually tending to have higher violence rates? We suggest the answer is political not criminological. Every environment abounds with potentially lethal instruments. But many people think the cause of violence is the mere availability of one such instrument, firearms. So in nations with high and rising violence rates governments tend to ban guns as a quick fix rather than focusing on the fundamental socio-cultural and economic factors which are the actual determinants of violence. Since banning guns does not stem lethal violence, nations with high and rising violence come to also have gun bans, while nations with low violence generally allow gun ownership.<sup>12</sup> “Many countries such as Switzerland, Finland, New

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<sup>12</sup> We recognize the substantial evidence that confrontation crime has been greatly reduced in c. 40 states by highly publicized enactments of laws requiring that law abiding, responsible adult applicants be given licenses to carry handguns. See, e.g., John Lott, *MORE GUNS, LESS CRIME* (University of Chicago Press, 2000) and papers in the Oct. 2001 issue of the *JOURNAL OF LAW & ECONOMICS*. But that evidence is limited to the U.S., a high crime nation where many potential victims keep and carry guns for self-protection. It seems implausible that gun ownership severely deters violent crimes in the many foreign nations where violent crime is so rare that, while guns are commonly owned for hunting and collecting purposes .few people seem to keep and carry guns for self-protection



Zealand and Israel, have high gun ownership rates and low crime rates, while many other countries have both low gun ownership rates and [either] high or low crime rates.”<sup>13</sup>

This explanation of the contrast of low-violence nations that allow guns with high violence nations which ban them appears especially at the extremes. Handguns are allowed in all the European nations lowest in violence: Switzerland, Germany, Norway and Austria (See Table supra.). Contrast those nations’ tiny murder rates (below one per 100,000 population) with those of the handgun banning European nations: Luxembourg (nine times higher), Lithuania and other former Soviet nations (10 or more times higher<sup>14</sup>), Russia (20 times higher).<sup>15</sup> The murder rates of those handgun banning nations are not only the highest in Europe by far; they also far exceed U.S. murder rates.<sup>16</sup>

Once again, murder rates are determined by fundamental socio-economic and cultural factors, not by the mere availability of firearms among the variety of deadly

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<sup>13</sup> Lott, MORE GUNS, LESS CRIME, supra at 113.

<sup>14</sup> See rates from the 1990s given in Jeffrey A. Miron, “Violence, Guns, and Drugs: A Cross-Country Analysis,” 44 J. LAW & ECON. 615, 625ff. (2001).

<sup>15</sup> Information on the gun laws of the nations discussed in the text derives from Seventh United Nations Survey supra.

<sup>16</sup> The latest available U.S. Public Health American murder figures are around six per 100,000. See note 4 supra.

weapons with which the world abounds. Quoth two European criminologists (quoting a Canadian social scientist):

It was not the presence of the rifle that provoked the homicide:  
Murderous technology is available everywhere, in every kitchen and every garage; an axe or a knife, a bottle or a car would have accomplished the same end. It is the will to use that technology that is culturally coded... this is what shapes the number of homicidal assaults in a nation.<sup>17</sup>

Consistent with this are criminological studies of the effects of gun bans on murder and suicide in various areas. Some studies show no effect; in others **gun** deaths declined somewhat but this produced no net benefit for killings with other instruments just rose to make up the difference.<sup>18</sup>

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<sup>17</sup> C. Gabrielle Salfati & Evangelos Haratsis, "Greek Homicide: A Behavioral Examination" quoting Canadian anthropologist Elliott Leyton. 5 HOMICIDE STUDIES 335, 337 (2001).

<sup>18</sup> TARGETING GUNS supra ch. 8 (collecting studies), James B. Jacobs, CAN GUN CONTROL WORK 120 (Oxford University Press, 2002) ("if the Brady Act did have the effect of modestly reducing firearms suicides ... this effect was completely offset by an increase of the same magnitude in nonfirearm suicide" resulting in the same number of deaths), Don B. Kates, "The Limits of Gun Control: A Criminological Perspective" p. 65 in Timothy Lytton, ed., SUING THE FIREARMS INDUSTRY: A LEGAL BATTLE AT THE CROSSROADS OF GUN CONTROL AND MASS TORTS (Ann Arbor, University of Michigan Press, 2005), Martin Killias, et al. note 11 supra.

**3. Disarming ordinary people is pointless since they don't commit violent crimes.**

The more guns = more death mantra seems plausible if one thinks murderers are mostly ordinary people killing because they have ready access to a firearm in a moment of rage. If that were true murder rates would probably be higher where many people have guns. But it is not true; as discussed supra, nations with more guns per capita do not have higher murder rates than those with fewer.<sup>19</sup> Moreover, within Canada,<sup>20</sup> "England, America and Switzerland, [the areas] with the highest rates of gun ownership are in fact those with the lowest rates of further violence."<sup>21</sup> The mantra is refuted by data from a study comparing gun ownership and crime rates in various states: "the [reductive] effect of gun ownership on crime is quite large: a 1 percent increase in gun ownership" correlates with a 4.1% **lower** violent crime rate.<sup>22</sup>

Nonetheless gun ban supporters continue to mischaracterize murder as mostly involving ordinary people who kill because they have access to guns in a moment of

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<sup>19</sup> Please review Table supra.

<sup>20</sup> Philip C. Stenning, "Gun Control - A Critique of Current Policy," 15 POLICY OPTIONS 15 (1994).

<sup>21</sup> Joyce Lee Malcolm, GUNS AND VIOLENCE: THE ENGLISH EXPERIENCE (Cambridge, Harvard: 2002).

<sup>22</sup> John Lott, MORE GUNS, LESS CRIME 115 (U. Of Chicago Press, 2000).

rage.<sup>23</sup> This is **never** accompanied by citation to supporting studies, there being none. Rather, perpetrator studies dating back to at least the 1890s invariably show that:

[1] the vast majority of persons involved in life-threatening violence have a long criminal record with many prior contacts with the justice system.<sup>24</sup>

[2] Thus homicide – of a stranger or someone known to the offender -- “is usually part of a pattern of violence, engaged in by people who are known ... as violence prone.”<sup>25</sup>

[3] [Though only 75% of Massachusetts domestic murderers] had a prior criminal history, [23.6%] were under an active restraining order at the time of the homicide. Forty percent of perpetrators had a history of having been under a restraining order at some time prior to the

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<sup>23</sup> See, e.g., a law review article so asserting based on previous unsupported claims by anti gun-advocates – but **without citation to any supporting study**. Frank J. Vandall “The Firearms Sellers’ Immunity Bill,” 38 Akron L. Rev. 113, 118-19 (2005), footnotes 28 and 32. Many more (unsupported) claims that ordinary people murder are chronicled in Don B. Kates, “The Hopelessness of Trying to Disarm the Kinds of People Who Murder,” 12 BRIDGES 313-30 (2005) at 315-16.

<sup>24</sup> Delbert S. Elliott, "Life Threatening Violence is *Primarily* a Crime Problem: A Focus on Prevention," 69 COLO. L. REV. 1081-1098 at 1093 (1998) , collecting studies.

<sup>25</sup> Gerald D. Robin, VIOLENT CRIME AND GUN CONTROL (Academy of Criminal Justice Sciences: 1991) at p. 47.

homicide, taken out by the victim or some other person.<sup>26</sup>

[4] Guns or no guns, ordinary people do not murder... Far from being ordinary, [murderers] are extreme social deviants with life histories of crime, violence, substance abuse and/or psychopathology.<sup>27</sup>

In sum, neither most murderers nor many murderers -- nor virtually any murderers -- are ordinary people. These points are so established in the literature that they rank as "criminological axioms."<sup>28</sup> The extreme aberrance of murderers is evidenced further by psychological studies finding that 80-100% of juvenile murderers are psychotic or have psychotic symptoms.<sup>29</sup>

Though only 15% of Americans have criminal records,<sup>30</sup> roughly 90 percent of adult murderers have adult records, with an average adult crime career of six or more

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<sup>26</sup> Linda Langford, et al., "Criminal and Restraining Order Histories of Intimate Partner-Related Homicide Offenders in Massachusetts, 1991-95" in Paul H. Blackman, et al., THE VARIETIES OF HOMICIDE AND ITS RESEARCH ( F.B.I. Academy, 2000).

<sup>27</sup> "Limits of Gun Control," supra footnote 18, at 67.

<sup>28</sup> David Kennedy & Anthony Braga, "Homicide in Minneapolis: Research for Problem Solving," 2 HOMICIDE STUDIES 263-290 (1998).

<sup>29</sup> Wade C. Myers & Kerrilyn Scott, "Psychotic and Conduct Disorder Symptoms in Juvenile Murderers," 2 HOMICIDE STUDIES 160, 161-63 (1998).

<sup>30</sup> Mark Cooney, "The Decline of Elite Homicide," 35 CRIMINOLOGY 381, 386 (1997).

years, including four major felonies.<sup>31</sup> These national data dovetail with local 19<sup>th</sup>, 20<sup>th</sup> and 21<sup>st</sup> Century studies. For example: "Victims as well as offenders [in 1950s and 1960s Philadelphia murders], finally, tended to be people with prior police records, usually for violent crimes such as assault, and both had typically been drinking at the time of the fatal encounter;"<sup>32</sup> "the great majority of both perpetrators and victims of [1970s Harlem] assaults and murders had previous [adult] arrests, probably over 80% or more;"<sup>33</sup> a colloquium of 1990s Boston police and probation officers agreed that virtually all juveniles who murder are gang members, though the killing is not necessarily gang-directed, e.g. a gang member, suspecting his girlfriend was unfaithful, strangles her.<sup>34</sup> Of Illinois murderers in 1991-2000 the great majority had prior felony records.<sup>35</sup> Eighty percent of 1997 Atlanta murder arrestees had previously been arrested at least once for a **drug** offense; and 70% had three or more

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<sup>31</sup> Gary Kleck & Don B. Kates, ARMED: NEW PERSPECTIVES ON GUN CONTROL 20-21 (2001).

<sup>32</sup> Roger Lane, MURDER IN AMERICA: A HISTORY (Ohio U. Press, 1997) p. 259

<sup>33</sup> A. Swersey and E. Enloe, HOMICIDE IN HARLEM (Rand 1975) 17.

<sup>34</sup> Anthony Braga, Anne M. Piehl & David M. Kennedy, "Youth Homicide in Boston: An Assessment of the Supplementary Homicide Report Data," 3 HOMICIDE STUDIES 277, 283-84 (1999)

<sup>35</sup> Philip Cook, et al. "Criminal Records of Homicide Offenders," 294 JAMA 538-601 (2005).

prior drug arrests – all these being independent of their pre-murder record of **other** kinds of crimes.<sup>36</sup>

Several of the more recent homicide studies we cite were conducted by the Kennedy School at Harvard whose latest study found the great majority of arrested murderers to be known gang members, and almost all to have prior arrests.<sup>37</sup>

Many murders occur within families. But these are not ordinary families nor are the murderers ordinary, law abiding adults. “The day-to-day reality is that most family murders are preceded by a long history of assaults” by the perpetrator (the man) upon his mate or other family members.<sup>38</sup> One study of such murders found "A

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<sup>36</sup> Dean G. Rojek, "The Homicide and Drug Connection", p. 135 in Paul H. Blackman, et al., THE VARIETIES OF HOMICIDE AND ITS RESEARCH (F.B.I. Academy, 2000).

<sup>37</sup> “Some 95% of homicide offenders, 82% of aggravated gun assault offenders, 47% of homicide victims, and 29% of aggravated gun assault victims were arraigned at least once in Massachusetts courts before they committed their crime or were victimized. Individuals that were previously known to the criminal justice system were involved in a wide variety of offenses and, on average, committed many prior crimes... On average, aggravated gun assault offenders had been arraigned for 12 prior offenses, homicide offenders had been arraigned for 9 prior offenses....”Anthony A. Braga, Jack McDevitt, & Glenn L. Pierce, “Understanding and Preventing Gang Violence: Problem Analysis and Response Development in Lowell, MA,” 9 POLICE Q. 20-46 (2006).

<sup>38</sup> See Murray A. Straus, "Domestic Violence and Homicide Antecedents", 62 BULLETIN OF THE N.Y. ACADEMY OF MEDICINE 446, 454, 457 (1986) and "Medical Care Costs of Intrafamily Assault and Homicide", 62 N.Y. ACAD. OF MED. 556, 557 fn. (1986).

history of domestic violence was present in 95.8%" of cases.<sup>39</sup> Quotations like the following are a routine feature of domestic homicide studies:

[1] The overriding theme to emerge from these cases was that [domestic] partner homicide is most often the final outcome of chronic women battering.<sup>40</sup>

[2] [Citing studies from Detroit and Kansas City,] 90% of all the family homicides were preceded by previous disturbances at the same address, with a median of 5 calls per address.<sup>41</sup>

[3] This study reemphasizes the central role of domestic violence as an antecedent to partner femicide.<sup>42</sup>

The only kind of evidence cited to support the mythology that most murderers are ordinary people is that many murders occur between acquaintances and arise from arguments and/or occur in homes.<sup>43</sup> Those who think these bare facts relevant

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<sup>39</sup> Paige Hall-Smith et al., "Partner Homicide in Context," 2 HOMICIDE STUDIES 400, 410 (1998).

<sup>40</sup> Hall-Smith, et al., *supra* at 411.

<sup>41</sup> Robin, *supra* fn. 25, at 47.

<sup>42</sup> Kathryn E. Moracco, Carol W. Runyan, & John D. Butts, "Femicide in North Carolina, 1991-1993," 2 HOMICIDE STUDIES 422-446 (1998).

<sup>43</sup> See, e.g. Adler, et al. Correspondence, 272 JAMA 1409 (1994), responding to criticism on this point of their article Karl P. Adler, et al. "Firearms Violence and Public Health: Limiting the Availability of Guns", 271 JAMA 1281 (1994).



apparently believe criminals don't have acquaintances or homes or arguments so if murders involve these things, the murderers must be non-criminals. Of the many studies belying this, the broadest analyzed a year's national data on gun murders occurring in homes and between acquaintances; in these killings "the most common victim-offender relationship" was "where *both parties knew one another because of prior illegal transactions*."<sup>44</sup>

Thus the term "acquaintance homicide" does not refer to murders between ordinary acquaintances. Rather it refers to, for example: drug dealers being killed by competitors or customers, gang members being killed by members of the same or rival gangs; and women being killed by stalkers or abusers who have previously brutalized them. Federal law already prohibits guns to most such aberrants.<sup>45</sup>

Obviously there are certain people who should not have anything more deadly than a toothpick. Sensible as such prohibitions are, it is unrealistic to think those subject to them will comply any more than they do with laws against violent crime.<sup>46</sup>

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<sup>44</sup> TARGETING GUNS, *supra* 236 (emphasis added).

<sup>45</sup> Current federal law prohibits gun possession by minors, persons previously convicted of domestic violence misdemeanors, or of any felony, or who have been involuntarily committed to mental institutions or by drug addicts. 18 U.S.C. sec. 921ff.; For a summary of the general patterns of federal and state gun laws see CAN GUN CONTROL WORK, *supra*, ch. 2.

<sup>46</sup> "... there is no good reason to suppose that people intent on arming themselves for criminal purposes would not be able to do so even if the general availability of firearms to the larger population were seriously restricted. Here it may be appropriate to

In any event, there is no reason for laws against gun possession by ordinary, law abiding responsible adults since they virtually never murder. Such adults being far more likely to be crime victims than to commit violent crimes, disarming them is not just useless but counter-productive.<sup>47</sup>

#### **4. Handgun prohibitions invariably fail to reduce violence.**

Ironically a prime example is the handgun ban challenged in this case. In the five years before that law was enacted D.C.'s murder rate fell from 37 per 100,000 population to 27. But in the five years after the ban went into effect, the murder rate rose back up to 35. In fact, while crime rates have fluctuated over time, the D.C. murder rate after 1976 has only once fallen below what it was before the handgun ban. Over the ensuing decades D.C.'s murder rate has been the highest in America excepting the few years when it came in second or third.

Faced with the ban's failure, its defenders claimed it at least had curbed the

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recall the First Law of Economics, a law whose operation has been sharply in evidence in the case of Prohibition, marijuana and other drugs, prostitution, pornography, and a host of other banned articles and substances, namely, that demand creates its own supply. There is no evidence anywhere to show that reducing the availability of firearms *in general* likewise reduces their availability to persons with criminal intent or that persons with criminal intent would not be able to arm themselves under any set of general restrictions on firearms." James D. Wright, Peter Rossi, Kathleen Daly, UNDER THE GUN: WEAPONS, CRIME AND VIOLENCE IN THE UNITED STATES 137-38 (italics in original) (1983).

<sup>47</sup> As to the defensive value of firearms -- which are used more often in repelling criminals than by criminals in committing crime -- see discussion, and criminologists quoted, in section 5 of this brief *infra*.

murder rate. When this proved untrue<sup>48</sup> they offered the excuse that municipal bans are unenforceable in a nation where handguns are legal elsewhere. Note that this excuse admits the D.C. ban is useless. Moreover its assumption that national bans are enforceable is refuted by the experience of nations having them.

Consider England where violent crime steadily rose over decades of ever more restrictive controls which culminated in the 1997 ban of handguns and many types of long guns.<sup>49</sup> Despite confiscation of hundreds of thousands of guns, by 2000 England had the industrialized world's highest violent crime rates, far surpassing the U.S.<sup>50</sup> Today English news accounts overflow with crime stories melodramatically headlined like those in American news reports.<sup>51</sup> As Prof. Malcolm writes:

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<sup>48</sup> See Chester L. Britt, et al., "A Reassessment of the D.C. Gun Law: Some Cautionary Notes on the Use of Interrupted Time Series Designs for Policy Impact Assessment," 30 LAW & SOC. REV. 361-379 (1996).

<sup>49</sup> 12 BRIDGES, supra (fn. 23) at 317-19.

<sup>50</sup> Van Kesteren, et al., supra fn. 9.

<sup>51</sup> See e.g.: "Violent Crime is Out of Control" July 21, 2005, <http://uk.news.yahoo.com/050721/140/fntfz.html>; March 13, 2005 NEWS TELEGRAPH (quoting a police chief), "We are Reeling with the Murders; We Are in a Crisis with Major Crime" [<http://news.Telegraph.co.uk>];, April 12, 2005 LONDON EVENING STANDARD "Police fear gun crime explosion" [<http://www.thisislondon.com/news/londonnews/articles/17867375?source=Evening%20Standard>]; May 21, 2003 BBC News:, "Gun Crimes Growing 'Like Cancer,'" and July 16, 2001 "Handgun Crime 'Up' Despite Ban." See also: PUNCH, "Britain's Tough Gun Control Laws Termed Total Failure: Land of Hope and Gunrunning," May 3-16, 2000; NEW STATESMAN, "The British Become Trigger Happy, Nov. 5, 2001; and Reuters (London) Jan. 9, 2003: "Gun crime soars in Britain",

When it had no firearms restrictions [19<sup>th</sup> and early 20<sup>th</sup> Century]

England had little violent crime, while the present extraordinarily stringent gun controls have not stopped the increase in violence or even the increase in armed violence....

Armed crime, never a problem in England, has now become one.

Handguns are banned but the kingdom has millions of illegal firearms.

Criminals have no trouble finding them and exhibit a new willingness to use them. In the decade after 1957 the use of guns in serious crime increased a hundredfold.<sup>52</sup>

Banning handguns has proved unenforceable even in an island nation like England; as its National Crime Intelligence Service 2002 Report laments, while "Britain has some of the strictest gun laws in the world [i]t appears that anyone who

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and the following articles for the dates indicated a) from the LONDON TIMES, Jan. 16, 2000: "Killings Rise As 3 Million Illegal Guns Flood Britain."; October 13, 2002: "Murder rate soars to highest for a century"; Jan. 9, 2003: "Handgun Crime Rises by 46% [in 2002]; b) from the INDEPENDENT NEWS: January 15, 2002 "Police Move to Tackle Huge Rise in Gun Crime; 27 December 2002 "Firearms amnesty to tackle surge in gun crime" [<http://news.independent.co.uk/uk/crime/story.jsp?story=364549>]; c) from the LONDON TELEGRAPH: 25 August, 1999: "[Home Secretary Jack] Straw Braced for 20% Increase in Crime Rate; 17 July 2001, "Gun crime rises despite Dunblane pistol ban"; 17 August 2001, "Gun killings double as police claim progress"; 3 January 2002, "Police fear crime explosion as school-age muggers graduate to guns"; Feb. 24, 2002, "Gun crime trebles as weapons and drugs flood British cities."

<sup>52</sup> Joyce Lee Malcolm, GUNS AND VIOLENCE: THE ENGLISH EXPERIENCE (Harvard, 2002) at pp. 209 and 219.

wishes to obtain a firearm [illegally] will have little difficulty in doing so."<sup>53</sup>

As to continental Europe, the nations that ban handguns all have distinctively higher murder rates than those allowing handguns, e.g., Austria, Germany, Switzerland and Norway, all of which have murder rates below one per 100,000 population. In contrast handgun banning Luxemburg's is nine per 100,000 and the murder rates of Russia and the former USSR republics like Belarus and Lithuania are 10 to 20 per 100,000 pop.<sup>54</sup>

Again we are not suggesting that banning handguns causes nations to have high murder rates. Our explanation is that nations with high and growing violent violence turn to banning guns as a quick fix solution. But since that does not reduce violence the result is an artificial correlation of high crime nations tending to have strict gun controls while low crime nations tend to be far less stringent.

5. **Self-defense works -- and handguns are far more often used to repel criminal attack than by criminals to commit crimes.**

"When I started my research on guns in 1995, I passionately disliked firearms and fully accepted the conventional wisdom that increasing the gun-ownership rate would necessarily raise violent crime and accidental deaths" writes Prof. Mustard. "My views on this subject were formed primarily by media accounts of firearms,

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<sup>53</sup> Quoted in 12 BRIDGES supra (fn. 23) at 319.

<sup>54</sup> See the Table supra and notes 13-16supra.

which unknowingly to me systematically emphasized the costs of firearms while virtually ignoring their benefits.. It is now over six years since I became convinced otherwise and concluded that" laws allowing law abiding responsible adults to carry concealed handguns "reduce violent crime and have no impact on accidental deaths."<sup>55</sup>

This disavowal of his earlier views places Prof. Mustard in distinguished company. Hans Toch of the School of Criminal Justice at the State University of New York (Albany) has long been a leading American criminologist. As a consultant to the 1960s Eisenhower Commission he had joined in its support for national handgun prohibition and "conclusion 'that... reducing the availability of the handgun *will* reduce firearms violence."<sup>56</sup> Thirty-some years later Prof. Toch repudiated that because intervening research showed

that where firearms are most dense, violent crime rates are lowest, and where guns are least dense violent crime rates are highest. \*\*\*

[Moreover] *when used for protection firearms can seriously inhibit aggression* and can provide a psychological buffer against the fear of

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<sup>55</sup> David B. Mustard, "Culture Affects Our Beliefs About Firearms, But Data Are Also Important," 151 U. Penn. L. Rev. 1387, 1391 (2003).

<sup>56</sup> Quoting Hans Toch & Alan J. Lizotte, "Research and Policy: The Case of Gun Control", in PSYCHOLOGY AND SOCIAL POLICY, edited by Peter Sutfield and Philip Tetlock (1992).

crime. Furthermore, the fact that national patterns show little violent crime where guns are most dense implies that *guns do not elicit aggression in any meaningful way*. Quite the contrary, these findings suggest that *high saturations of guns in places, or something correlated with that condition, inhibit illegal aggression*. [Italics ours.]<sup>57</sup>

Opponents of precautionary gun ownership discourage **any** form of resistance to rapists or robbers: "the best defense against injury is to *put up no defense -- give them what they want* or run."<sup>58</sup> But, to the contrary criminological studies "indicate resisting criminal attack with a firearm lowers one's risk of injury *more than unarmed resistance or non-resistance*."<sup>59</sup>

How many gun crimes are committed in the U.S. each year? Slightly less than

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<sup>57</sup> Ibid., p. 234 and fn. 10.

<sup>58</sup> GUNS DON'T DIE, PEOPLE DO, by then-Handgun Control, Inc. Chairman Nelson "Pete" Shields at p. 124-5 (1981), our italics. To the same effect see Matthew Yeager, et al., HOW WELL DOES THE HANDGUN PROTECT YOU AND YOUR FAMILY? (Handgun Control Staff of the U.S. Conference of Mayors, 1976) and Franklin Zimring & Gordon Hawkins, THE CITIZEN'S GUIDE TO GUN CONTROL ch. 4 (1987).

<sup>59</sup> Lance Stell, "Self Defense and Handgun Rights," forthcoming in the Journal of Law, Economics, and Policy," (2006), Jungyeon Tark & Gary Kleck, "Resisting Crime: The Effects of Victim Actions on the Outcomes of Crimes," 42 CRIMINOLOGY 861-909 (2004), Don B. Kates, "The Value of Civilian Arms Possession as Deterrent to Crime or Defense Against Crime," 18 AMERICAN JOURNAL OF CRIMINAL LAW 113 (1991) and studies there cited.

460,000.<sup>60</sup> Compare how often guns are used by victims to repel criminals each year. The lowest research estimate is 1.3 million or almost three times as often. One higher research estimate is 2.5 million defense uses, i.e., almost six times as many defense uses as criminal uses. Summarizing the research, the director of NYU's Center for Research in Crime and Justice writes that, based on 19 different population surveys,

criminologist Gary Kleck found that Americans defend themselves [with guns] 2.5 million times per year by warding off threats to their persons and property. Phil Cook and Jens Ludwig put the number of defensive gun uses at 1.3 million per year. Hemenway and Azrael's national survey, sponsored by the National Institute of Justice, found 1.5 million defensive gun uses per year. All these surveys reveal a great deal of self-defensive gun use of firearms; in fact, *more defensive gun uses than crimes committed with firearms.*"<sup>61</sup>

In 1995 Marvin Wolfgang, often deemed the doyen of American criminologists, was

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<sup>60</sup> U.S. Bureau of Justice Statistics, "Summary of Findings: Firearms and Crime Statistics" reports that in its crime victim surveys for 2004, the latest year available, "449,150 interviewees say they were victimized by attacker(s) with guns" In addition "The FBI's Crime in the United States estimated that 66% of the 16,137 murders in 2004 were committed with firearms.[= 10,751.]" Together this gives a total of 459,901 gun crimes in 2004.

<sup>61</sup> James B. Jacobs, CAN GUN CONTROL WORK? 14 (Oxford U. Press, 2003) italics added.



asked to review one of these studies by the JOURNAL OF CRIMINAL LAW AND CRIMINOLOGY. His evaluation opened: "I am as strong a gun control advocate as can be found among the criminologists in this country. If I [could]...I would eliminate *all* guns from the civilian population and maybe even from the police. *I hate guns...*"

But, Prof. Wolfgang continued, "the methodological soundness of the... [study] is clear. I cannot further debate it.\*\*\* I do not like ... their ... conclusions that having a gun can be useful, but I cannot fault their methodology. They have tried earnestly to meet all objections in advance and have done exceedingly well."<sup>62</sup>

Beyond the studies analyzed by Prof. Jacobs above, other criminological studies have found guns are far more often used to repel crime than by criminals committing violence.<sup>63</sup>

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<sup>62</sup> Marvin E. Wolfgang, "A Tribute to a View I Have Opposed", 86 J. CRIM. L. & CRIMINOL. 188 (1995), evaluating Gary Kleck and Marc Gertz, "Armed Resistance to Crime: The Prevalence and Nature of Self-Defense with a Gun", 86 J. OF CRIM. L. & CRIMINOL. 150 (1995).

<sup>63</sup> See, e.g. Gary A. Mauser, "Armed Self Defense: the Canadian Case," 24 Journal of Criminal Justice 393-406. (1996), Toch & Lizotte, *supra* (fn. 56), Lawrence Southwick, "Self-Defense with Guns: The Consequences," 28 J. CRIM. JUSTICE 351-370 (2000), John Lott, MORE GUNS, LESS CRIME 3 (U. of Chicago Press, 2001), David B. Kopel, "Lawyers, Guns and Burglars," 43 ARIZONA LAW REV. 346, 349-52 (2001), Jungyeon Tark & Gary Kleck, "Resisting Crime: The Effects of Victim Actions on the Outcomes of Crimes," 42 CRIMINOLOGY 861-909 (2004), Lance Stell, "Self Defense and Handgun Rights," forthcoming in the Journal of Law, Economics, and Policy" 2006.

As to the overall effect on crime of widespread gun ownership by responsible, law abiding adults, consider the surveys conducted under the sponsorship of the National Institute of Justice among incarcerated felons, both juvenile and adult: "Seventy percent of the respondents [felons] reported having been 'scared off, shot at, wounded or captured by an armed victim.' [Quoting the actual question asked.]"<sup>64</sup> Many of the felons reported: (1) that they often feared potential victims might be armed; (2) therefore they and/or their friends shied away from confrontation crime; and (3) such fear had caused them and/or others they knew to abort plans to commit confrontation crimes.<sup>65</sup> Moreover "the felons most frightened 'about confronting an armed victim' were those from states with the greatest relative number number of privately owned firearms."<sup>66</sup> As to one specific control, the ban on carrying concealed weapons (CCW) for protection, "violent crime rates were highest in the states [that flatly ban CCW], next highest in those that allowed local authorities discretion [to deny CCW] ... permits, and lowest in states with nondiscretionary"

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<sup>64</sup> Joseph F. Sheley & James D. Wright, *IN THE LINE OF FIRE: YOUTH, GUNS AND VIOLENCE IN AMERICA* 63 (1995), James D. Wright & Peter Rossi, *ARMED AND CONSIDERED DANGEROUS: A SURVEY OF FELONS AND THEIR FIREARMS* chapter 7 (1986).

<sup>65</sup> *Id.*

<sup>66</sup> *Id.* at 151.

CCW laws under which police must license every qualified applicant.<sup>67</sup>

## CONCLUSION

As documented above --

- \* Areas with more guns do not have more death or violent crime than areas with fewer guns. If anything it is the reverse.
- \* The world abounds with deadly instruments. The extent to which these instruments are used in violence in any particular nation is determined by basic socio-cultural and economic factors, not by the mere availability of any particular kind of lethal instrument.
- \* The unique relevance of firearms is only that alone among weapons they allow weaker people (i.e., victims) to resist attack by stronger ones (i.e., predators).

Confirming the foregoing are two recent general studies of gun control. In 2004 the U.S. National Academy of Sciences released its evaluation from review of

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<sup>67</sup> Lott, MORE GUNS, *supra*, 43. As a practical matter, where police retained discretion to grant or deny licenses/permits, they often are only issued to celebrities, the very wealthy and others having extraordinary political influence. Permit holders in jurisdictions with discretionary issuance have included Eleanor Roosevelt, Arthur Ochs Sulzberger (publisher of the NEW YORK TIMES) William F. Buckley, Donald Trump, various DuPonts and Rockefellers, Dianne Feinstein, and actors Tom Selleck, Sean Penn, and James Caan. See, e.g., Melanie Lefkowitz, *Newsday*, Sept. 30, 2002, "Cleared to Carry in [New York] City: [Carry] Permit Totals Drop, But Not for Notables." In nondiscretionary states, c. 4-10% of the adult population apply for licensure and must be granted it upon showing that they are properly trained and law abiding, regardless of whether they have special influence.

253 journal articles, 99 books, 43 government publications and some empirical research of its own. **It could not identify any gun control that had reduced violent crime, suicide or gun accidents.**<sup>68</sup> The same conclusion was reached in a 2003 evaluation by the Centers for Disease Control's of then-extant studies.<sup>69</sup>

Dated: June 14, 2006

Respectfully, submitted



Don B. Kates  
Counsel for Amici Curiae

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<sup>68</sup> Charles F. Wellford, John V. Pepper, and Carol V. Petrie (eds.), FIREARMS AND VIOLENCE: A CRITICAL REVIEW (National Academy of Sciences, 2004).

<sup>69</sup> "First Reports Evaluating the Effectiveness of Strategies for Preventing Violence: Firearms Laws" (CDC, 2003)  
<[cdc.gov/mmwr/preview/mmwrhtml/rr5214a2.htm](http://cdc.gov/mmwr/preview/mmwrhtml/rr5214a2.htm)>

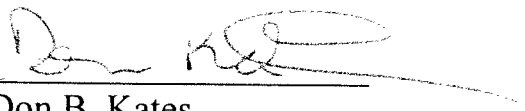
## CERTIFICATE OF COMPLIANCE

Pursuant to Fed. R. App. P. 32(a)(7)(C), the undersigned counsel certifies that this brief complies with the type-volume limitations of the rule.

1. Exclusive of the portions exempted by Fed. R. App. P. 32(a)(7)(B)(iii), the brief contains fewer than 6,800 words and so is well below the 7,000 word limit to which the order on this appeal confines amicus briefs.
2. The brief has been prepared in proportionally spaced typeface using WordPerfect 10 in 14 point Times New Roman type.

The undersigned understands that a material misrepresentation in completing this certificate, or circumvention of the type-volume limits in Fed. R. App. P. 32(a)(7)(B), may result in the Court's striking the brief and imposing sanctions against the person signing the brief.

Dated: June 14, 2006




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## CERTIFICATE OF SERVICE

I, Don B. Kates, hereby certify that I caused two paper copies of the foregoing brief were to be sent via United States Postal Service to counsel for the parties or amici, as follows: R. Ted Cruz, Texas Attorney General's Office, P.O. Box 12548, General Litigation Division, Austin, TX 78711-2548; Ernest McGill, 4423 LeHigh Road, # 273, College Park, MD 20740; Eric Mogilnicki, Wilmer, Cutler, Pickering, Hale & Dorr LLP, 1875 Pennsylvania Ave., N.W. Washington, DC 20006 2445 M Street, N.W. Washington, DC 20037-1420; Stefan B. Tahmassebi, Law Office of Stefan B. Tahmassebi, 3117 Woodland Lane, Alexandria, VA 22309; Lutz Alexander Prager, Corporation Counsel Office, 441 4th Street, N.W., 6th Floor South, Washington, D.C. 20001; and Alan Gura, Attorney at Law, Gura & Possesky, PLLC 2212 Mount Vernon Avenue Suite 3B. Alexandria VA 22301.

Dated: June 14, 2006

  
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## DECLARATION OF SERVICE

I, Claudia Ayala, am employed in the City of Long Beach, Los Angeles County, California. I am over the age eighteen (18) years and am not a party to the within action. My business address is 180 East Ocean Boulevard, Suite 200, Long Beach, California 90802. I hereby declare under penalty of perjury that two paper copies of the foregoing brief were to be sent via United States Postal Service to counsel for the parties or amici, as follows:

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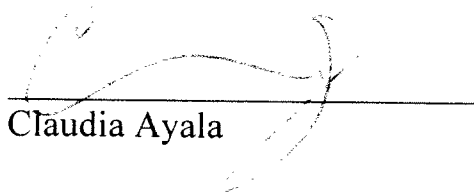
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