

No. 17-56081

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

VIRGINIA DUNCAN; et al.,
Plaintiffs-Appellees

v.

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

On Appeal from the United States District Court for the
Southern District of California, No. 17-cv-01017 (Benitez, J.)

**BRIEF OF *AMICI CURIAE*
GIFFORDS LAW CENTER TO PREVENT GUN VIOLENCE AND
CALIFORNIA LIEUTENANT GOVERNOR GAVIN NEWSOM
IN SUPPORT OF APPELLANTS AND REVERSAL**

J. ADAM SKAGGS
HANNAH SHEARER
GIFFORDS LAW CENTER TO
PREVENT GUN VIOLENCE
268 Bush St. #555
San Francisco, California 94104
Telephone: (415) 433-2062

ANTHONY SCHOENBERG
REBECCA H. STEPHENS
FARELLA BRAUN + MARTEL LLP
235 Montgomery Street, 17th Floor
San Francisco, California 94104
Telephone: (415) 954-4400

Attorneys for Amici Curiae

CORPORATE DISCLOSURE STATEMENT

Pursuant to Federal Rule of Appellate Procedure 26.1, Giffords Law Center to Prevent Gun Violence states that it has no parent corporations. It has no stock, and therefore, no publicly held company owns 10% or more of its stock.

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INTEREST OF *AMICI CURIAE*

Amicus curiae Giffords Law Center to Prevent Gun Violence (“Law Center”), formerly the Law Center to Prevent Gun Violence, is a national, nonprofit organization dedicated to reducing gun deaths in America. The organization was founded in 1993 after a gun massacre at a San Francisco law firm, perpetrated by a shooter armed with semiautomatic pistols and large-capacity magazines, and was renamed Giffords Law Center in October 2017. Today, Giffords Law Center provides legal expertise in support of effective gun safety laws, and has filed *amicus* briefs in *District of Columbia v. Heller*, 554 U.S. 570 (2008), *Fyock v. City of Sunnyvale*, 779 F.3d 991 (9th Cir. 2015), and numerous other cases.

Amicus curiae Gavin Newsom is the Lieutenant Governor of the State of California, a former two-term Mayor of San Francisco, and a leading advocate for sensible firearm policies. As Lieutenant Governor, Mr. Newsom partnered with *amicus* Giffords Law Center to draft and advocate for Proposition 63 (the “Safety for All” Act), which included the prohibition on possession of large-capacity magazines enjoined by the district court in this case. As authors and key proponents of Proposition 63, *amici* have a special interest in participating in this constitutional challenge.

INTRODUCTION AND SUMMARY OF ARGUMENT¹

On January 8, 2011, a man walked into a Tucson parking lot where Congresswoman Gabrielle Giffords was hosting a constituent meeting. Using a semiautomatic pistol equipped with a 33-round magazine, the man opened fire on Congresswoman Giffords, her staff, and members of the public lined up to meet her. In 15 seconds, he fired 33 rounds and hit 19 victims, killing six, including a young girl named Christina-Taylor Green. Congresswoman Giffords's husband, retired Navy Captain Mark Kelly, later testified that a law prohibiting ammunition magazines holding more than 10 rounds could have saved the girl's life:

The shooter in Tucson . . . unloaded the contents of [his 33-round] magazine in 15 seconds. Very quickly. It all happened very, very fast. The first bullet went into Gabby's head. Bullet number 13 went into a nine-year-old girl named Christina-Taylor Green, who was very interested in democracy and our Government and really deserved a full life committed to advancing those ideas. . . . When [the shooter] tried to reload one 33-round magazine with another 33-round magazine, he dropped it. And a woman named Patricia Maisch grabbed it, and it gave bystanders a time to tackle him. I contend if that same thing happened when he was trying to reload one 10-round magazine with another 10-round magazine, meaning he did not have access to a high-capacity magazine, and the same thing happened, Christina-Taylor Green would be alive today.²

Unfortunately, preventable tragedies like the one Captain Kelly describes have

¹ All parties have consented to or stated they do not oppose the filing of this brief. No counsel for a party authored this brief in whole or in part. No person other than *amici*, their members, or their counsel contributed money to fund this brief's preparation or submission.

² 159 Cong. Rec. S2743 (daily ed. Apr. 17, 2013) (statement of Sen. Leahy) (quoting Judiciary Committee testimony of Captain Mark Kelly).

become commonplace. Large-capacity magazines (“LCMs”) holding more than 10 rounds of ammunition—in some cases up to 100 rounds—allow shooters to inflict mass casualties by continuously firing without pausing to reload. LCMs are the thread linking notorious high-fatality gun massacres, including the 2012 Sandy Hook shooting, where a gunman fired 154 rounds, killing 26 children and teachers; the 2015 San Bernardino shooting, where assailants shot 36 people and killed 14; and the 2016 Orlando shooting, where a gunman shot over 100 people and killed 49. And this month, a shooter in Las Vegas used LCMs to perpetrate the deadliest mass shooting in modern American history, firing near-continuously into a crowd for ten minutes, killing 58 people and injuring 489.³

These horrific events underscore the extraordinary lethality of LCMs—how they enable even untrained shooters to take down dozens of people, and how they eliminate the possibility of interruption while shooters reload. It is the latter point, in particular, that makes LCMs so dangerous. In many mass shootings, the pause to reload is when lives are saved. Other incidents in which LCMs holding more than 10 rounds were not used—and rampages were cut short while shooters reloaded—stand in stark contrast to the examples above.⁴

³ Alex Horton, *Las Vegas Shooter Modified a Dozen Rifles to Shoot Like Automatic Weapons*, THE WASHINGTON POST, Oct. 3, 2017, <https://www.washingtonpost.com/news/checkpoint/wp/2017/10/02/video-from-las-vegas-suggests-automatic-gunfire-heres-what-makes-machine-guns-different/>.

⁴ During the 2013 massacre at Washington Navy Yard, a man with a seven-shell

To help prevent the occurrence of high-fatality gun massacres, and to reduce the bloodshed when these tragedies occur, California outlawed possession of magazines holding more than 10 rounds of ammunition (the “LCM possession ban”). As discussed below, this measure was first enacted by the Legislature in July 2016, and in November 2016, by a 25-point margin, California voters adopted the later, controlling version of the policy (“Proposition 63”).

Proposition’s 63’s LCM possession ban is an evidence-based measure that is consistent with the Second Amendment. In *District of Columbia v. Heller*, 554 U.S. 570 (2008), the Supreme Court held that law-abiding citizens have a right to keep a handgun in the home for self-defense but recognized that “[l]ike most rights, the right secured by the Second Amendment is not unlimited.” It is “not a right to keep and carry any weapon whatsoever in any manner whatsoever and for whatever purpose.” 554 U.S. at 626. *Heller* approved banning “dangerous and unusual weapons,” and confirmed that other “longstanding” regulations are

shotgun killed twelve people, but while he reloaded, a victim he had cornered was able to crawl to safety. In 2014, a gunman at Seattle Pacific University was tackled while reloading. Other examples abound. John Wilkens, *Construction Workers Felt They ‘Had To Do Something,’* SAN DIEGO UNION-TRIBUNE, Oct. 11, 2010, <http://www.sandiegouniontribune.com/sdut-hailed-as-heroes-construction-workers-who-stopped-2010oct11-htmlstory.html> (workers stopped gunman “as he stopped to reload”); *Deer Creek Middle School Shooting*, HUFFINGTON POST, Apr. 25, 2010, http://www.huffingtonpost.com/2010/02/23/deer-creek-middle-school_n_473943.html (math teacher “tackled the suspect as he was trying to reload”); Sheila Dewan, *Hatred Said to Motivate Tenn. Shooter*, THE NEW YORK TIMES, Jul. 28, 2008, <http://www.nytimes.com/2008/07/28/us/28shooting.html> (“It was when the man paused to reload that several congregants ran to stop him.”).

constitutional. *Id.* at 626-27 & n.26.

California’s LCM possession ban is unlike the handgun ban *Heller* invalidated. To suggest otherwise would ignore *Heller*’s recognition that people are not entitled to “any weapon whatsoever.” Plaintiffs-Appellees’ (“Plaintiffs”) Second Amendment claim fails because the law they challenge does not burden Second Amendment-protected activity. LCMs are an accessory, not a protected “arm,” but either way, their possession may be banned because they are dangerous, unusual devices best suited for military purposes, and have historically been restricted. Even if LCMs were constitutionally protected, the State’s evidence amply shows that the ban survives intermediate scrutiny. Because Plaintiffs’ Second Amendment claim cannot succeed, the Court should reverse the preliminary injunction order.⁵

ARGUMENT

I. The LCM Possession Ban Closes a Dangerous Loophole in Existing Law

A. California’s Gun Laws and “Grandfathering” Loophole

Over the last two decades, California has comprehensively addressed illegal gun use and reduced firearm homicides and accidents. The district court critiqued California’s “matrix of gun control laws [as] among the harshest in the nation.” 1ER-0005. To the contrary, California’s laws are among the nation’s most

⁵ The State also correctly explains why the possession ban affords due process and is not an unlawful “taking.” *Amici* join those arguments in full.

effective. Between 1993 and 2015, the state passed laws regulating gun shows; restricting “junk” handguns, assault weapons, and LCMs; and creating a system to identify purchasers who later became prohibited from gun possession.⁶ Over those same 22 years, California’s gun death rate decreased by 56%⁷ – more than double the national decline. Centers for Disease Control and Prevention, Web-based Injury Statistics Query and Reporting System (WISQARS), *Fatal Injury Data*, <https://www.cdc.gov/injury/wisqars> (visited September 12, 2017). Today, with its strong gun laws, California has a much lower firearm death rate than the rest of the nation – 7.4 gun deaths per 100,000, compared to the national average of 10.2. Nat’l Ctr. for Health Statistics, *Stats of the State of California* (Jun. 2016), <https://www.cdc.gov/nchs/pressroom/states/california.htm>.

Among the state’s lifesaving polices are laws designed to stem the proliferation of military-grade magazines. California first restricted access to LCMs in 2000, by prohibiting the manufacture, importation, sale, and transfer of magazines holding more than 10 rounds. This law—like the 1994 federal ban—was enacted soon after the gun industry began packaging LCMs with newer semiautomatic firearm models. Before the 1980s, the only handgun most

⁶ Giffords Law Center, *California’s Smart Gun Laws: A Blueprint for the Nation*, <http://lawcenter.giffords.org/californias-smart-gun-laws-a-blueprint-for-the-nation/>.

⁷ *Id.* n.2 (CDC data shows that California’s gun death rate fell from 17.48 per 100,000 residents in 1993 to 7.65 per 100,000 residents in 2015).

Americans owned was a revolver, usually holding six rounds of ammunition. Violence Policy Center, *Backgrounder on Glock 19 Pistol and Ammunition Magazines Used in Attack on Representative Gabrielle Giffords And Others* 1 (Jan. 2011), http://www.vpc.org/fact_sht/AZbackgrounder.pdf. Police also used six-round revolvers, which were “seen as adequate for officers’ defensive needs.” Eugene Volokh, *Are Laws Limiting Magazine Capacity to 10 Rounds Constitutional?*, VOLOKH CONSPIRACY (Mar. 6, 2014), <https://washingtonpost.com/news/volokh-conspiracy/wp/2014/03/06/are-laws-limiting-magazine-capacity-to-10-rounds-constitutional/>. But in the 1980s, the gun industry began aggressively promoting a new generation of pistols that can be equipped with larger magazines. In the 1980s and 1990s, more jurisdictions—including California—recognized that access to the LCMs marketed with these guns endangered the public, and modern LCM restrictions came into being.

Although the state prohibited the manufacture and sale of LCMs, California initially did not ban possession of LCMs obtained before the prohibition took effect in 2000. But instead of serving as a limited exception, this “grandfathering” exception swallowed the rule by making the LCM restrictions impossible to implement. LCMs lack identifying marks to indicate when they were manufactured or sold, meaning police could not tell when recovered LCMs were acquired or manufactured—and thus whether they were legal. *See* 9ER-2123 (law enforcement

officials believed a possession ban was needed to enforce existing LCM restrictions). Reflecting the sheer difficulty of enforcement, Los Angeles police started to recover *more* crime guns loaded with LCMs after the 2000 restrictions took effect, suggesting the law was not having its intended effect. Press Release, Citizens Crime Commission of New York City, *NYC & LA City Councils Introduce Rezo for Federal Ban on Large Capacity Magazines* (Mar. 2, 2011), <http://www.nycrimecommission.org/pdfs/CrimeCmsnNYCLACouncils.pdf>.

To address the troubling proliferation of LCMs in California despite a ban on their sale or transfer, in 2015, *amici* drafted Proposition 63, which proposed to close the LCM grandfathering loophole (among other provisions). Proposition 63 was carefully drafted to ease the burdens of compliance. For example, by incorporating California's existing definition of an LCM, codified in California Penal Code § 16740, Proposition 63 allows LCM owners to comply by permanently altering LCMs so that they cannot hold more than 10 rounds. Indeed, Plaintiff California Rifle & Pistol Association previously submitted a letter to the state calling attention to this simple option. 3ER-0608-21.

B. The Need for Proposition 63

California's LCM possession ban was adopted to protect the public from the devastating use of LCMs in mass shootings and everyday crimes. When LCMs are used in shootings, the outcome is far more lethal, because more shots are fired and

bystanders' opportunities to intervene are limited. On average, shooters who use LCMs or assault weapons shoot more than twice as many victims compared to other mass shootings. Everytown Research, *Analysis of Recent Mass Shootings*, at 4 (Aug. 2015), <https://everytownresearch.org/documents/2015/09/analysis-mass-shootings.pdf>. Use of LCMs or assault weapons correlates with 47% more victims killed, *id.*, and medical research corroborates the unsurprising fact that shootings involving LCMs are deadlier. Jen Christensen, *Gunshot Wounds Are Deadlier Than Ever As Guns Become Increasingly Powerful*, CNN, Jun. 14, 2016, <http://www.cnn.com/2016/06/14/health/gun-injuries-more-deadly/>.

The district court discounted the State's interest in reducing mass shooting deaths by finding that the LCM ban is a "haphazard solution likely to have no effect on an exceedingly rare problem." 1ER-0033. The relative rarity of mass shootings does not diminish the importance of efforts to stem injuries and community trauma resulting from them, especially in light of their increasing frequency and lethality. Indeed, the district court overlooked evidence that mass shootings are not "exceedingly rare," and are becoming more commonplace. Dr. Louis Klarevas recently surveyed high-fatality mass shootings (with at least six fatalities) between 1966 and 2015, and found that they have risen in incidence and lethality to "unprecedented levels in the past ten years." Louis Klarevas, *RAMPAGE NATION: SECURING AMERICA FROM MASS SHOOTINGS* 215, 76-79 (2016) (Ex. A at

8-9).⁸ Because some researchers have defined “mass shootings” to include incidents where four or more are killed, Dr. Klarevas also analyzed the universe of such incidents – which are also increasing. *E.g.*, Tanya Basu, *Mass Public Shootings in the U.S. Have Risen*, TIME, Aug. 4, 2015, <http://time.com/3983557/mass-shootings-america-increasing> (citing analysis by the Congressional Research Service). Dr. Klarevas found that from 2013-2015, an average of 433 Americans were killed annually in four-or-more-fatality attacks. *Id.* at 85-86 (Ex. A at 12-13). This greatly outstrips U.S. fatalities from terrorist attacks. In the decade after 9/11, terrorists killed 27 people —the same number of children and educators killed at Sandy Hook in one morning. *Id.*

Dr. Klarevas’s analysis also corroborates other experts’ conclusion that banning LCMs is likely to reduce gun deaths. 2ER-0230-31. (Webster Decl. ¶ 26) (“good reason to believe” LCM ban will “lead to modest reductions in gun violence”); 2ER-0191 (Donohue Decl. ¶ 10) (“LCM ban is well-tailored to limit ... violent criminal behavior”). Dr. Klarevas found that “the factor most associated with high death tolls in gun massacres” is use of a “magazine holding more than ten bullets.” RAMPAGE NATION, *supra*, at 257 (Ex. A at 24). “If such magazines were completely removed from circulation, the bloodshed” during mass shootings

⁸ The Law Center submitted excerpts from Dr. Klarevas’s mass shooting survey to the district court. Those excerpts are also appended here as Exhibit A.

“would be drastically reduced.” *Id.* 215-25 (Ex. A at 15-20).⁹

The above evidence, and that submitted by the State, shows that banning LCMs can be expected to reduce the incidence and lethality of gun massacres. The evidence also shows that California’s prior LCM restrictions, with a grandfathering exception that swallowed the general prohibition, did not fully achieve the state’s desired safety gains. Proposition 63 proposed to end grandfathering, and accordingly, to reduce death tolls during mass shootings and other homicides.

C. Proposition 63’s Enactment

Proposition 63’s language was finalized in December 2015 and readied for the November 2016 ballot. However, after the deadline to finalize the initiative’s text passed, lawmakers galvanized by the San Bernardino shooting introduced new gun safety bills. On July 1, 2016, Governor Brown signed SB 1446, which, like Proposition 63, ends grandfathering by prohibiting LCM possession. In November 2016, California voters approved Proposition 63. Since Proposition 63 was enacted later and amends the same code sections, Proposition 63 supersedes SB 1446. *See People v. Bustamante*, 57 Cal. App. 4th 693, 701 (Cal. Ct. App. 1997).

The voter initiative is “one of the most precious rights of [California’s]

⁹ In fact, reduced bloodshed is exactly what Dr. Klarevas found occurred between 1994 and 2004, when federal law restricted LCM possession. RAMPAGE NATION, *supra*, at 240-43 (Ex. A at 22-23). While the federal ban was in effect, fatalities during large-scale mass shootings declined substantially, and spiked again when the ban expired. *Id.* at 243 (Ex. A at 23).

democratic process.” *Brosnahan v. Brown*, 32 Cal. 3d 236, 261-62 (Cal. 1982).

When considering constitutional challenges to a ballot measure, courts are empowered to “resolv[e] reasonable doubts in favor of the people’s” initiative right. *Id.* While voters cannot pass an unconstitutional measure, in this case, it remains appropriate to safeguard the people’s initiative power by faithfully applying *Heller* and this Court’s precedents. *Heller*, 554 U.S. at 626 (the Second Amendment is “not a right to keep and carry any weapon whatsoever”); *Jackson v. City & Cty. of San Francisco*, 746 F.3d 953, 966 (9th Cir. 2014) (crediting city’s “reasonable inference” from evidence supporting gun law’s efficacy).

Under those precedents, Plaintiffs’ Second Amendment challenge cannot succeed. The district court erred in holding otherwise.

II. The LCM Possession Ban is Constitutional Because It Regulates Activity Outside the Second Amendment’s Scope

California’s LCM possession ban is constitutional as a matter of law because it prohibits only one class of uniquely dangerous accessories that are unprotected by the Second Amendment. As other courts have ruled, the Constitution does not guarantee the right to possess magazines often selected by mass shooters to quickly kill and injure many people. *Kolbe v. Hogan*, 849 F.3d 114, 135 (4th Cir. 2017) (en banc) (“the Second Amendment does not shield” LCMs); *Friedman v. City of Highland Park*, 784 F.3d 406, 412 (7th Cir. 2015) (upholding LCM ban and observing “at least some categorical limits on the kinds of weapons that can be

possessed are proper”).

In *Fyock v. City of Sunnyvale*, this Court heard a challenge to an ordinance banning LCM possession, and affirmed the denial of the challengers’ motion for a preliminary injunction. 779 F.3d at 1001. The district court held that while the ordinance imposes a “slight” burden on Second Amendment rights, it survived intermediate scrutiny. *Fyock*, 25 F. Supp. 3d 1267, 1281 (N.D. Cal. 2014). This Court affirmed the intermediate scrutiny ruling, but did not decide whether the Second Amendment protects LCMs, holding only that the district court’s ruling on that score was not an abuse of discretion. *Fyock*, 779 F.3d at 997-98.

After this Court’s ruling in *Fyock*, new research on LCMs became available, including Dr. Klarevas’s survey of mass shootings (discussed *supra* pp. 9-10), and a historical analysis showing the ubiquity of laws like LCM bans (discussed *infra* pp. 22-23). This important work suggests that this Court need not even reach the question of whether California’s LCM prohibition survives intermediate scrutiny, because the Second Amendment does not protect LCM possession in the first instance. There are four independent reasons why this is true.

A. LCMs Are Not Protected “Arms”

First, the Second Amendment applies to “arms,” which *Heller* defined as “weapons of offence, or armour of defence.” 554 U.S. at 581 (citing 1 Dictionary of the English Language 106 (4th ed.) (reprinted 1978)). An LCM is neither—it is

an ammunition storage device. 1ER-0155 (Complaint ¶ 1 & n.1). When LCMs are used, they increase the number of rounds a gun may fire before it is necessary to reload, but a gun will still function with a legal magazine (it will just fire no more than 10 rounds without reloading). Because they are optional devices, LCMs are better categorized as an accessory than as offensive or defensive weaponry.¹⁰

The district court concluded that LCMs are arms, but its reasoning shows only that *some* kind of magazine is essential to a firearm that accepts magazines. 1ER-0016 (“Most, if not all, pistols and many rifles are designed to function with detachable magazines.”). It is true that a magazine is required to operate many arms. It is also true that an LCM that can hold more than 10 rounds is an option for such arms, and may even come standard as the “factory-issued” magazine. But such arms will also function with a legal magazine holding 10 or fewer rounds, meaning an LCM that can accept more than ten rounds is still only an *option*. 1ER-0165 (Complaint ¶ 44) (“Firearm users have had the choice of magazine types and capacity for over 130 years”). It is not an essential part, and the district court’s reasoning does not prove otherwise. An LCM can be swapped for a lower-capacity

¹⁰ Historical sources support the conclusion that accessories like LCMs are not “arms.” A founding-era militia law distinguished “arms” and “ammunition” from a third category, “accoutrements”—analogous to accessories that enhance an already-functional firearm. *Heller*, 554 U.S. at 650 (Stevens, J., dissenting) (quoting Act for Regulating and Disciplining the Militia, 1785 Va. Acts ch. 1, § 3, p. 2). The gun industry draws this distinction today, selling magazines as “accessories,” not firearms or ammunition. *E.g.*, *Accessories*, ATLANTIC FIREARMS, www.atlanticfirearms.com/accessories.html (visited Jun. 21, 2017).

magazine, or it can be permanently modified so that it can only store 10 rounds. California Penal Code § 16740. Plaintiffs agree. 3ER-0613 (“There are countless articles and videos online on how to modify LCMs to hold 10 rounds”).

That is not to say that *ammunition*, or magazines with a maximum capacity of 10 rounds, should never be considered protected by the Second Amendment. *Cf.* 1ER-0016 (PI Order at 16). A magazine necessary to provide a constitutionally-protected firearm with bullets that facilitate its intended use may be essential to the arm’s core function, unlike LCMs. *See Jackson*, 746 F.3d at 967 (“A regulation eliminating a person’s ability to obtain or use ammunition could” “make it impossible to use firearms for their core purpose.”); *Fyock*, 779 F.3d at 998 (recognizing corollary “but not unfettered” right to ammunition “necessary to render firearms operable”). But the argument that ammunition is integral to a gun’s function is inapplicable to a magazine that enhances ammunition capacity far beyond what is needed to make a firearm operable for lawful purposes, such as self-defense.

LCMs are not protected “arms” because they optionally enhance ammunition storage beyond what is constitutionally required. Like scopes or silencers, LCMs are not arms or ammunition, but non-essential accessories. *See United States v. Cox*, 235 F. Supp. 3d 1221, 1221 (D. Kan. 2017) (silencers “are outside the scope of Second Amendment protection”).

B. Even if LCMs Were Arms, They Are Unprotected Because They Are “Dangerous and Unusual”

LCMs are also unprotected by the Second Amendment because they are “dangerous and unusual.” *Fyock*, 779 F.3d at 997.

1. LCMs Are Dangerous

Fyock confirmed that under *Heller*, LCMs may be prohibited if there is sufficient evidence that they pose an “increased danger” and are unusual. 779 F.3d at 998. LCMs pose a vastly “increased danger” because they boost the firepower and lethality of firearms using them. As discussed above, LCMs are catastrophic when employed by a mass shooter; a recent study (*supra* pp. 9-10) shows that LCM use during massacres is the variable most responsible for increased fatalities.

2. LCMs Are “Unusual”

The district court erred in rejecting the argument that LCMs are “unusual” for two independent reasons. First, the district court concluded that the term must be defined based on nationwide possession rates, 1ER-0019, when the proper basis for this Court’s inquiry is how unusual LCMs are in California, where they are rarely possessed. But even if LCMs were commonly *possessed*, it is amply clear they are not commonly *used for self-defense*—in California or elsewhere. Because LCMs’ use for any constitutionally protected purpose is highly unusual, they do not enjoy Second Amendment protection.

As an initial matter, this Court should use a localized standard in assessing

whether possession of LCMs is common or unusual. Other rights are reviewed on a local basis to account for interstate diversity. Whether material is obscene under the First Amendment, for example, depends on standards of the relevant community, because “[i]t is neither realistic nor constitutionally sound to read the First Amendment as requiring that the people of Maine or Mississippi accept public depiction of conduct found tolerable in Las Vegas, or New York City.” *Miller v. California*, 413 U.S. 15, 32-33 (1973). So, too, here.

Decisions of out-of-state regulators cannot cast doubt on California’s ability to exercise its judgment to ban devices that are already unusual in its borders. To read the Second Amendment to thwart California from prohibiting dangerous devices that are unusual within the state, just because not enough other states have enacted this lifesaving measure, violates core principles of federalism. As many have noted, gun policies should be tailored to the safety needs of individual states and communities. *E.g.*, *Kolbe*, 849 F.3d at 150 (Wilkinson, J., concurring); *Friedman*, 784 F.3d at 412 (“*McDonald* ... does not foreclose all possibility of experimentation” by states). *Heller* did not dictate that a weapon’s commonality must be assessed nationally. And while the district court in *Fyock* found that “common use” should be examined nationally, this Court affirmed that ruling without mandating a national test. *See Fyock*, 779 F.3d at 998.

Though the Court can and should take a localized approach, LCM

possession is also “unusual” nationwide. As the State’s expert observed, LCM ownership is concentrated among a small subset of gun owners. 2ER-0191-92 (Donohue Decl. ¶ 11). This is confirmed by national polling showing that 62% of Americans support banning LCM possession, suggesting that a sizable majority—nearly two-thirds—of Americans do not own an LCM and never plan to own or use one. CNN/ORC Poll, *December 17-18 – Gun Rights* 3 (Dec. 2012), at <http://i2.cdn.turner.com/cnn/2012/images/12/19/cnnpoll.december19.4p.pdf>.¹¹

Moreover, the State has presented strong evidence that it is quite unusual for LCMs to actually be used—or ever needed—for self-defense, the core purpose from which any constitutional protection of LCMs must derive. Plaintiffs imagine scenarios in which LCMs are needed to defend against groups of home invaders, but self-reports from gun owners reveal that such scenarios are purely hypothetical, since it is highly unusual for anyone to fire more than ten defensive rounds. 2ER-0178 (Allen Decl. ¶¶ 6-7). The average number of shots fired in self-defense is about *two*. *Id.*; see also 2ER-0212 (James Decl. ¶ 8) (40-year law enforcement veteran unaware of any victim firing more than ten defensive shots).

¹¹ Sales data, like that cited by the district court, does not prove that LCMs are typically possessed. That data may reflect the popularity of semiautomatic pistols with factory-issued LCMs; it does not mean that LCMs, specifically, are obtained or possessed for lawful purposes. At most, the data is inconclusive. *Fyock*, 779 F.3d at 998 (“Because Fyock relies primarily on marketing materials and sales statistics, his evidence does not necessarily show that large-capacity magazines are in fact commonly possessed by law-abiding citizens for lawful purposes.”); accord *N.Y. Rifle & Pistol Ass’n v. Cuomo*, 804 F.3d 242, 256-57 (2d Cir. 2015).

Regardless of how many LCMs have been sold, the State’s evidence proves that LCMs are not commonly used for constitutionally-protected purposes, because responsible self-defense does not necessitate continuously firing bullets. *Heller* and its progeny make clear that to the extent the Second Amendment protects any firearms, accessories, or ammunition, it is because of those devices’ utility for self-defense. Even if gun-industry data suggests many LCMs have been sold, the State’s evidence establishes that they are rarely used for self-defense and are possessed by only a subset of gun owners. LCMs are thus “unusual” in addition to being dangerous, and constitutionally unprotected.

C. LCMs Are Not Protected by the Second Amendment Because They Are Most Suitable for Military Use

LCMs are also unprotected because they are best suited for military use, not civilian self-defense. *Heller* recognized that “weapons that are most useful in military service—M-16 rifles and the like—may be banned” without violating the Second Amendment. 554 U.S. at 627. In *Kolbe v. Hogan*, the *en banc* Fourth Circuit held that LCMs are “like” the M-16, and therefore may be prohibited even if commonly owned by Americans—because *Heller*’s statement had no caveat that such items may be banned only if they are uncommon. 849 F.3d at 136-37.¹²

The district court erred in rejecting the Fourth Circuit’s reasoning. The court

¹² In *Fyock*, the Court was not presented with and did not address the argument that LCMs may be prohibited because they are most useful in military service.

drew from *Heller* and *United States v. Miller*, 307 U.S. 174 (1939), the untenably broad holding that the Constitution guarantees “possession by a law-abiding citizen of a weapon that could be part of the ordinary military equipment for a militia member.” 1ER-0014. The court then cited *Kolbe*, apparently to suggest that it contradicts *Miller* and *Heller*. 1ER-0015. But contrary to the district court, *Heller* held that governments *may* prohibit “sophisticated arms” that would “be useful against modern-day bombers and tanks”—even if a modern-day militia might desire such arms. 554 U.S. at 627 (recognizing that “modern developments have limited the degree of fit between the prefatory clause,” regarding well-regulated militias, “and the protected right”).

The Fourth Circuit’s decision in *Kolbe* is consistent with this section of *Heller*, while the district court’s reasoning is to the contrary. If followed, the district court’s logic would mean that civilians have an absolute right to possess machine guns, bombers, and tanks, so that theoretical private militias can keep pace with the military. This is plainly wrong. Indeed, the district court acknowledged that its rationale might invalidate a ban on *100-round magazines*. 1ER-0038 (“criminalization of possession of 100-round drum magazines would seem to be a reasonable fit . . . On the other hand, it may be the type of weapon that would be protected by the Second Amendment for militia use under *Miller*”).

This cannot be squared with *Heller*.¹³

Kolbe correctly concluded that LCMs may be banned because, like machine guns, they are *most* suited for military use, regardless of potential self-defense uses. The same is true here. Plaintiffs hypothesize that LCMs have self-defense utility in civilian hands. But this theoretical utility pales in comparison to the State’s evidence that LCMs give criminals military-level firepower, enabling shooters to turn public spaces into war zones. *E.g.*, 5ER-0922-1069 (ability to accept an LCM characterizes military firearms, and serves no sporting purpose); 2ER-0178, 0182 (Allen Decl. ¶¶ 6-7, 14) (the average number of shots fired in self-defense is about *two*, while on average, shooters who used LCMs fired *75 shots*).

As the Fourth Circuit recognized, magazines that allow firing more than 10 rounds at once are “designed and most suitable for military and law enforcement applications,” 849 F.3d at 137, where there is an actual need to “enhance” shooters’ “capacity to shoot multiple human targets very rapidly.” *Id.* LCMs’ lethality suits them to military use, but also makes them the preferred choice of criminals trying to inflict maximum carnage. 2ER-0197 (Donohue Decl. ¶ 25).

Because LCMs are most suitable for military purposes—and killers seeking to

¹³ In addition to contradicting *Heller*, the district court’s reasoning contravenes *Presser v. Illinois*, which provides that militia membership is governed by state law and is not an individual right. 116 U.S. 252, 267 (1886). Under *Presser*, there can be no private right to form a militia using weaponry the state prohibits. *Cf. Heller*, 554 U.S. at 620 (“no one supporting” the individual rights interpretation of the Second Amendment argues “States may not ban” unauthorized militias).

emulate military firepower—they are unprotected by the Second Amendment.

D. LCM Restrictions are “Longstanding” And Thus Outside the Scope of the Second Amendment

In addition to approving prohibitions on military-grade weapons, *Heller* “recognized that the Second Amendment does not preclude certain ‘longstanding’” regulations. *Silvester v. Harris*, 843 F.3d 816, 820 (9th Cir. 2016). A twentieth-century law can be “longstanding,” and constitutional, “even if it cannot boast a precise founding-era analogue.” *Id.* at 831.

Naturally, no Founding-era law prohibited LCMs, because it was not until much later that firearms accepting such magazines attained any significant market share. LCM bans do, however, have antecedents in early twentieth century laws restricting weapons based on ammunition capacity. In 1932, Congress prohibited weapons that can fire 12 or more times without reloading in the District of Columbia. Act of July 8, 1932, ch. 465, §§ 1, 8, 47 Stat. 650, 650, 652. Previously, in 1927, Michigan and Rhode Island enacted bans with 16- and 12-round caps. Robert Spitzer, *Gun Law History in the United States and Second Amendment Rights*, 80 Law & Cont. Probs. 55, 68 (2017). Other close antecedents included laws prohibiting highly dangerous firearms, like semiautomatic weapons (restricted in as many as 10 states in the 1920s-30s), and machine guns (restricted in at least 28 states). *See id.* at 67-69 (describing “concerted national push to regulate ... gangster-type weapons” that had begun to “spread in the civilian population in the

mid-to-late 1920s”).

Fyock recognized that twentieth century laws can be “longstanding” “if their historical prevalence and significance” is developed. 779 F.3d at 997. The above laws are prevalent, having been enacted by more than half of states. Spitzer, *supra*, at 67-71 (LCM bans enacted in three jurisdictions, machine gun bans in 28, and semiautomatic weapon restrictions in at least seven). And they are significant, reflecting a “national push” to restrict the preferred tools of gangsters. *Id.* at 67. California’s LCM possession ban is constitutional because it reflects the tradition of prohibiting dangerous weaponry that has come to be misused.

III. California’s LCM Possession Ban Withstands Intermediate Scrutiny

Even if the Court were to decide that LCM possession is constitutionally protected, California’s ban at most slightly burdens Second Amendment rights. *Fyock*, 779 F.3d at 999 (affirming determination that LCM ban on “only a subset of magazines” is not a severe restriction). Accordingly, were this Court to find that heightened scrutiny is required, it should apply intermediate scrutiny. *Id.*

The intermediate scrutiny “test is not a strict one.” *Silvester*, 843 F.3d at 827. The challenged law need not be the “least restrictive means of furthering a given end,” *id.*, but must “promote[] ‘a substantial government interest that would be achieved less effectively absent the regulation.’” *Fyock*, 779 F.3d at 1000 (citation omitted). The State may use “any evidence ‘reasonably believed to be relevant’ to

substantiate its important interests.” *Id.* (quoting *Renton v. Playtime Theatres, Inc.*, 475 U.S. 41, 52 (1986)). “[R]easonable inference[s]” from such evidence should be credited. *Mahoney v. Sessions*, No. 14-35970, 2017 U.S. App. LEXIS 18149, at *18 (9th Cir. Sep. 19, 2017); *see also Wiese v. Becerra*, No. 2:17-903-WBS, 2017 U.S. Dist. LEXIS 101522, at *10 (E.D. Cal. Jun. 29, 2017) (crediting the State’s interpretation of evidence, though “[r]easonable minds will always differ” on how to “reduce the incidence and harm of mass shootings”).

By rejecting evidence the State reasonably determined relevant, and requiring a perfect fit between the ban and the State’s interests, the district court effectively applied strict rather than intermediate scrutiny. This was error.

A. The District Court Erred by Failing to Credit Reasonable Evidentiary Inferences

The district court explained its departure from *Fyock* by observing that the State submitted an unpersuasive factual record, consisting of “incomplete studies from unreliable sources.” 1ER-0023-24. The court rejected each of the State’s experts after finding that they lacked a specific enough foundation for their opinions. 1ER-0042-49.

The court’s rationale for disregarding the experts was erroneous, because it failed to credit reasonable inferences from competent evidence. *Fyock*, 779 F.3d at 1000 (Sunnyvale “entitled to rely on any evidence ‘reasonably believed to be relevant’ to substantiate its important interests”). For example, the court rejected

Daniel Webster’s inferences from studies examining both assault weapon and LCM use (1ER-0042-43), even though Dr. Webster reasonably explained why it can be assumed from these studies that prohibiting LCMs had the larger public safety effect. 2ER-0230 (Webster Decl. ¶ 25). The court also refused to credit expert analysis based on data collected by news magazine *Mother Jones*, noting the “magazine has rarely been mentioned by any court as reliable” scientific evidence. 1ER-0027. But the court nowhere explains why, even if *Mother Jones* is not a scientific publication, its factual accounts of shootings—which actually did occur—were unreliable. The State’s experts appropriately used reporting from *Mother Jones* as the basis for their own analyses of whether LCMs contributed to the documented deaths. *E.g.*, 2ER-0310 (Dr. Koper explaining statistical analysis of incidents reported by *Mother Jones*); 2ER-0227-29 (Webster Decl. ¶¶ 22-23) (Dr. Webster explaining same).

The district court further erred by discounting evidence from other states and international jurisdictions, *e.g.*, 1ER-0027, 30, and critiquing evidence that was over four years old. 1ER-0026. Under intermediate scrutiny, one jurisdiction may rely on relevant experiences of other jurisdictions, and on older data. *Renton*, 475 U.S. at 51 (to satisfy First Amendment intermediate scrutiny, the City of Renton could rely on evidence from “Seattle and other cities”); *City of Los Angeles v. Alameda Books*, 535 U.S. 425, 436, 430 (2002) (plurality opinion) (upholding

zoning law supported by one 1977 study).

The district court ultimately refused to credit *any* inference the State and its experts drew from evidence, instead holding it to be self-evident that “[g]uns in the hands of criminals are dangerous; guns in the hands of law-abiding responsible citizens ameliorate that danger.” 1ER-0051. But the record adequately supports the competing inference that LCMs are employed to devastating effect by mass shooters, and are not needed by law-abiding, responsible citizens for self-defense. *See supra* pp. 9-10, 18-19 (describing this evidence). The record also supports the inference that in past mass shootings, use of a magazine holding no more than 10 rounds would have saved lives. *Supra* p. 1 & n.2 (Christina-Taylor Green was struck by the thirteenth bullet). Under intermediate scrutiny, the court may not simply assume the truth of the opposite conclusion and use that to discount the State’s reasoned inferences.

B. The District Court Erred By Requiring a Perfect Fit

In the end, the district court limited itself to considering a single survey of mass shootings. 1ER-0028-29 & n.9. The court then speculated that none of the shootings would have been stopped had LCMs been prohibited, either because an LCM was not used, the magazine type was unknown, because shooters would have simply used an *illegal* magazine, or because shooters would have simply used a *legal* magazine. *E.g.*, 1ER-0037 (of a Santa Monica mass shooting: “It is hard to

imagine that the shooter . . . would have dispossessed himself of the illegally acquired large capacity magazines”); *id.* at 38 (of the Colorado movie theater shooting: California’s law “would not have prevented the shooter from acquiring and using the shotgun and pistols loaded with smaller 10-round magazines”).

This is not how intermediate scrutiny works. By requiring evidence that some number of past shootings would have been averted under any conceivable set of facts, the district court improperly required a perfect fit between the regulation and its public safety goals. *Cf. Wiese*, 2017 U.S. Dist. LEXIS 101522 at *11-12 (reasonable fit does not require showing LCM ban would stop “past incidents of gun violence”). And by rejecting the hypothesis that California’s ban would deter any shooter from either using illegal LCMs or committing the same murders with smaller magazines, the district court again failed to credit logical inferences the State made from evidence that showed the requisite “reasonable fit.”

To be sure, one *could* rationalize that since mass shooters are lawbreakers, prohibiting LCM possession may not provide “any additional protection” beyond existing law. 1ER-0032. But it was at least equally reasonable, if not much more reasonable, for the State to conclude that gun laws do impact the behavior of criminals—a sensible conclusion in a state that for two decades has enacted stronger gun laws and seen its firearm death rate plummet. *See supra* pp. 5-6 & n.6. Although the ability of any law to deter criminals can be second-guessed, it

was still reasonable for the State to determine that criminalizing LCMs would force some shooters to change weapons and inflict fewer injuries. *E.g.*, 2ER-0195 (Donohue Decl. ¶ 21) (“bans on large capacity magazines can help save lives by forcing mass shooters to pause and reload”); 2ER-0183 (Allen Decl. ¶ 17) (“the majority of guns used in mass shootings were obtained legally,” so laws may impact weapon choices). It was reasonable, too, for the State to conclude that while shooters might obtain an illegal LCM, it will be harder to do so if police are able to identify illegal LCMs. *See, e.g.*, 9ER-2120 (Ex. 92 to Gordon Decl.).

The district court also ignored the State’s argument that LCMs are more lethal when used and instead speculated that “[i]f magazines holding more than 10 rounds are banned,” shooters will simply “use multiple 10-round magazines.” *E.g.*, 1ER-0032. Even if this is true, lives could still be saved. 2ER-0191 (Donohue Decl. ¶ 7) (“every reason to believe” the Sandy Hook shooter “would have killed fewer individuals if he had to persistently reload”). By focusing on whether a given shooter would have completely abandoned criminal plans, the court improperly ignored the State’s interest in reducing the number of lives lost.

In one instance—the Tucson shooting targeting Congresswoman Giffords—the district court did not offer any explanation as to why an LCM possession ban would have been ineffectual. 1ER-0038. Instead, the court simply noted that the shooter’s Glock was a “quintessential self-defense weapon.” *Id.* Even if the State

was required to show specific lives could have been saved during a past shooting—which was not the State’s burden—the Tucson massacre satisfies this obligation. *Supra* p. 1 & n.2 (LCM ban could have saved Christina-Taylor Green, the nine-year-old killed in Tucson).

CONCLUSION

For the above reasons, the Court should reverse the preliminary injunction order.

Dated: October 19, 2017

Respectfully submitted,

FARELLA BRAUN + MARTEL LLP

By /s/ Anthony Schoenberg
ANTHONY SCHOENBERG

Attorneys for *Amici Curiae*

CERTIFICATE OF COMPLIANCE

I hereby certify that:

1. This brief complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(B) because it contains 6,815 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(f).
2. The brief further complies with the requirements of Fed. R. App. P. 32(a)(5) and the type-style requirements of Fed. R. App. P. 32(a)(6) because it has been prepared in a proportionately spaced typeface using Microsoft Word 2010 in 14-point Times New Roman.

Dated: October 19, 2017

Respectfully submitted,

FARELLA BRAUN + MARTEL LLP

By /s/ Anthony Schoenberg
ANTHONY SCHOENBERG

Attorneys for *Amici Curiae*

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system on October 19, 2017.

Participants in the case are registered CM/ECF users and will be served by the appellate CM/ECF system.

Dated: October 19, 2017

Respectfully submitted,

FARELLA BRAUN + MARTEL LLP

By /s/ Anthony Schoenberg
ANTHONY SCHOENBERG

Attorneys for Amici Curiae

EXHIBIT A

to

BRIEF OF *AMICI CURIAE*
GIFFORDS LAW CENTER TO PREVENT GUN VIOLENCE AND
CALIFORNIA LIEUTENANT GOVERNOR GAVIN NEWSOM
IN SUPPORT OF APPELLANTS AND REVERSAL

1 Anthony Schoenberg (State Bar No. 203714)
 Farella Braun + Martel LLP
 2 Rebecca H. Stephens (State Bar No. 299234)
 rstephens@fbm.com
 3 235 Montgomery Street, 17th Floor
 4 San Francisco, California 94104
 Telephone: (415) 954-4400
 5 Facsimile: (415) 954-4480

6 Attorneys for *Amicus Curiae*
 7 Law Center to Prevent Gun Violence

8
 9 UNITED STATES DISTRICT COURT
 10 SOUTHERN DISTRICT OF CALIFORNIA
 11

12 VIRGINIA DUNCAN, RICHARD
 13 LEWIS, PATRICK LOVETTE,
 DAVID MARGUGLIO,
 14 CHRISTOPHER WADDELL,
 CALIFORNIA RIFLE & PISTOL
 15 ASS'N, INC., a California corporation,

16 Plaintiffs,

17 vs.

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

21 Defendants.

Case No. 17-CV-10017 -BEN-JLB

**EXHIBIT A TO BRIEF OF
 AMICUS CURIAE LAW CENTER
 TO PREVENT GUN VIOLENCE IN
 SUPPORT OF DEFENDANT'S
 OPPOSITION TO PLAINTIFFS'
 MOTION FOR A PRELIMINARY
 INJUNCTION**

Date: June 13, 2017
 Time: 10:00 A.M.
 Place: 5A

The Hon. Roger T. Benitez

EXHIBIT A

LOUIS KLAREVAS

SECURING AMERICA FROM
MASS SHOOTINGS





teaches in the Department of Global Affairs at the University of Massachusetts–Boston. He also regularly serves as a consultant to the federal government on national-security matters. A frequent commentator on homeland security and foreign policy, he has appeared on numerous news programs, including CNN, ABC, NPR, and the BBC. In the past, he has taught at American University, George Washington University, City University of New York, and New York University. In addition, he has served as the Defense Analysis Research Fellow at the London School of Economics and a Senior Fulbright Scholar in Security Studies.

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	7

THE REAL NUMBERS

It's easy to be dismissive of pundits and partisans, even ones with *PhD* after their names like John Lott. After all, they often take to the airwaves, the print media, and the blogosphere to impart a variety of assertions about rampage violence, usually with little consequence for being erroneous, biased, or intentionally deceptive. But there's one place where claims don't get a free pass: the courts. Under oath and subject to cross-examination, "experts" aren't afforded an escape from scrutiny during litigation. Case in point: the legal battle over the constitutionality of Colorado's recent ban on large-capacity magazines.

After a mentally disturbed man wielding an assault weapon armed with a 100-round magazine killed twelve and wounded an additional fifty-eight cinema patrons in Aurora, Colorado, the state legislature enacted tight restrictions on the sale, possession, and transfer of any magazines that held more than fifteen rounds of ammunition. The objective of the statute was to reduce the carnage of shooting sprees by limiting the number of bullets a semiautomatic weapon can fire in a single feed. In 2013, this law came under attack when a group of thirty plaintiffs—a combination of gun-rights organizations, firearms dealers, and individual gun owners—asked a federal court to strike it down, arguing that it violated the Second Amendment. At the crux of their case, the plaintiffs asserted that mass shootings are rare to begin with, so magazine restrictions are likely to have little to no positive impact on the casualty tolls of gun attacks. Believing that the ban would have a negligible impact on gun violence, they insisted that it unnecessarily infringed on their rights to lawfully own large-capacity magazines.⁷¹

To help establish their claim, the plaintiffs in *Colorado Outfitters Association et al. v. Hickenlooper* put criminologist Gary Kleck on the stand to make a key point: "Mass shootings are extremely rare."⁷² Perhaps you'll recall the name from the previous chapter. Kleck was the first scholar to define and study mass shootings as a unique subset of gun violence. In the past decade, he has become one of the go-to scholars for the gun-rights movement, earning \$350 an hour as an expert witness who testifies against certain gun-control measures.⁷³

When Kleck conducted his initial study of mass shootings in 1997, he defined them as "incident[s] in which six or more victims

were shot dead with a gun, or twelve or more total were wounded."⁷⁴ He has since broadened his definition to "shooting[s] in which more than six people were shot, fatally or nonfatally, in a single incident."⁷⁵ While Kleck's conceptualization still maintains a fairly high casualty threshold—remember the emerging consensus is that mass shootings are acts of violence where four or more people are shot—he testified that in the nearly two decades between January 1994 and July 2013, there were only fifty-seven mass shootings in the United States. With fewer than three mass shootings per year, on average, Kleck concluded that any such attack was a "rare event."⁷⁶

On cross-examination, Assistant Attorney General for Colorado Matthew Grove began with a simple question: "So if you missed a quarter of the data, that might be a problem, right?"⁷⁷ Kleck admitted it would. When the time came to discuss Kleck's analysis, Grove asked: "You testified earlier that you considered *all* mass shooting incidents that met your criteria of seven or more killed or wounded, correct?" Again, Kleck confirmed Grove's leading question, acknowledging that there were only fifty-seven such attacks in the twenty-year period he examined.⁷⁸ Grove then turned to the data set. Handing Kleck a binder full of exhibits, Grove had Kleck read through each document. Here's a sampling from the transcripts of how this played out:

Q Please take a moment to read Exhibit 101. . . . This article is entitled, "Tech worker charged in seven deaths at Massachusetts firm." Correct?

A That's correct.

Q And in the second paragraph, it says, "Prosecutors accuse McDermott of acting with premeditation and without mercy when colleagues were shot repeatedly with a 12-gauge shotgun and an assault rifle fed with a 60-round magazine," correct?

A Yes.

Q And the next paragraph says, "The seven Edgewater Technology employees were shot a combined 30 times," correct?

A Correct.

Q This meets your criteria for inclusion in your report, correct?

A It does.

Q And it was not included in [your expert report], right?

A Correct. . . .

Q. Let's turn to Exhibit 102 . . . Title of this is, "Factory feud is cited in shooting in Indiana." Do you need a moment to read this?

A. Yes, please. Okay.

Q. So the very first sentence of this says, "The factory worker who killed a co-owner of the factory and wounded six others before fatally shooting himself was apparently angered over a dispute." So that's one dead, six wounded, correct?

A. That's correct.

Q. That meets your criteria?

A. Yes, it does.

Q. And you didn't include this in your report, did you?

A. No.⁷⁹

This painful cross-examination continued for approximately forty-five minutes; each time, Kleck confirmed that he had omitted the specific mass shooting from his inquiry.⁸⁰ When Grove was finished, he had successfully pointed out that, even under Kleck's high casualty threshold, there were at least twenty-nine mass shootings that the plaintiff's expert failed to report. As Kleck admitted on the stand, "Yes, it's about 50 percent of the ones I analyzed."⁸¹ Earlier, Kleck had testified that investigations that overlooked a quarter of the cases were problematic. Grove had just established that Kleck's analysis—which disregarded at least a third of the data (twenty-nine out of eighty-six cases)—was flawed by his own standards.

Grove followed up by reminding Kleck that, in his official expert report submitted to the court, he asserted "all [mass] shooting incidents were examined."

Kleck backtracked on his claim: "Yes, I did say all. Had I been more precise, I would have said, all that I knew of, or all that I could discover, or words to that effect."

"All' would suggest every one, though, right?"

"Well, to me, it suggested all that I knew about," Kleck replied in one final attempt to salvage his testimony. But it was too late.⁸²

On June 26, 2014, the judge in the case issued a fifty-page ruling upholding Colorado's restrictions on large-capacity magazines. Kleck's name, let alone his claims, never appeared in the decision. Not even in passing. Meanwhile, the court expressly stated that it accepted the views of the state's expert witness, Jeffrey Zax, who offered testimony

that at times directly contradicted Kleck. It was a signal. Like the pro-gun-rights lawsuit itself, the argument that mass shootings occur too infrequently to merit legislative action was dismissed.⁸³

★ ★ ★

Testifying under oath, Gary Kleck was forced to acknowledge that mass shootings occur with greater frequency than his research confirmed. In fact, they take place more often than most Americans probably realize—at a higher rate of incidence than even many in the gun-control camp claim. The real numbers are actually quite disturbing.

When I started conducted research for this book, I decided to collect information on every known gun massacre that took place in the United States over the past fifty years. While it was a labor-intensive process that required a full year of searching through a variety of data sets and news banks, I came up with 111 attacks that resulted in six or more people—not including the perpetrator(s)—*dying* as a result of gunshot wounds (see table 3.2).⁸⁴ As these are the deadliest gun attacks of the past five decades, they are the most disconcerting, deserving special attention.

The statistics paint a troubling picture. Since 1966, gun massacres have claimed 904 lives (see figure 3.1). What's most alarming about these extreme acts of violence is that they're taking place with greater frequency, with the sharpest increase in deaths occurring in the past decade (see figure 3.2).⁸⁵ Specifically, over one-third (39 out of 111) of gun massacres during the past fifty years occurred in the past decade (2006–2015). That's a 160 percent increase from the previous decade, which only experienced fifteen high-fatality mass shootings (see figure 3.3). Equally disturbing, the total number of people killed in gun massacres in the past decade (349 out of 904) accounts for nearly 40 percent of all murders in such acts of violence during the same fifty-year span (see figure 3.4). This is a massive increase from the previous decade, when only 111 people died in such shootings. The past decade has clearly been the worst, exceeding the second worst (1976–1985) by way more than a third in terms of number of incidents and by more than double in terms of total deaths.⁸⁶ It's also the only decade to average roughly nine deaths per attack (see table 3.3).

Table 3.2. Gun Massacres in the United States, 1966–2015.

Date	City	State	Perpetrator(s)	Deaths
8/1/1966	Austin	TX	Charles Whitman	14
8/26/1966	New Haven	CT	Arthur Davis	6
10/23/1967	Lock Haven	PA	Leo Held	6
3/16/1968	Homewood	MI	Eric Pearson	7
6/25/1968	Good Hunt	MI	Undetermined	6
12/19/1968	Napa	CA	Charles Bray	6
9/3/1971	Picoixix	AZ	John Freeman	7
6/21/1972	Cherry Hill	NJ	Edwin Grace	6
1/7/1973	New Orleans	LA	Mark Essex	7
6/21/1973	Fedos Hills	IL	William Workman	7
4/22/1973	Los Angeles	CA	William Bonner	7
6/9/1973	Boston	MA	George O'Leary	6
11/4/1973	Cleveland	OH	Cyril Rovonsak	7
2/16/1974	Fayette	MS	Frankie Liss	7
1/13/1974	Anthonyville	NY	Ronald Berfoe	6
3/30/1975	Hamilton	OH	James Ruppert	11
10/19/1975	Sutherland	NE	Ervin Spriggs	6
3/12/1976	Evreux	PA	George Gestezewski	6
7/12/1976	Fallston	CA	Edward Alleyway	7
7/23/1977	Kenneth Falls	OR	DeWitt Henry	6
8/26/1977	Hackettstown	NJ	Ernie Benoit	6
7/16/1978	Oklahoma City	OK	Harold Stafford, Roger Stafford, and Verno Stafford	6
1/3/1981	Delmar	VA	Gene Silber	6
1/7/1981	Richmond	VA	Arlie Roy Cherry, Michael Franco, and Myer Finkak	6
5/2/1981	Cinton	MD	Ronald Ellis	6
8/21/1981	Indianapolis	IN	King Bell	6
2/17/1982	Fernald	MI	Robert Haggart	7
8/9/1982	Grand Prairie	TX	John Forist	6
8/20/1982	Miami	FL	Carl Brown	8
9/7/1982	Craig	AK	Undetermined	8
9/25/1982	Willis-Borne	WA	George Banks	13
2/18/1983	Seattle	WA	Kevin Fu Jock and Benjamin Ng	6
3/3/1983	McCarthy	AK	Louis Hastings	6
10/11/1983	College Station and Hempstead	TX	Euseo Moreno	6
4/15/1984	Brooklyn	NY	Christopher Thomas	10
5/19/1984	Monter Hot Springs	AK	Michael Silka	8
6/29/1984	Dufur	TX	Abdelkrim Belchichab	6
7/18/1984	San Ysidro	CA	James Huberty	21
10/18/1984	Fonsville	IN	Rita Lewis and David Weckli	6
8/20/1986	Edmond	OK	Percy Sheriff	14
12/8/1986	Oakland	CA	Rita Lewis and David Weckli	6
2/5/1987	Fint	RI	Terry Aberts	6
4/23/1987	Punta Bay	FL	William Crase	6
7/12/1987	Tacoma	WA	Daniel Lynem	7
9/25/1987	Ekland	MO	Jones Schrick	7
12/30/1987	Appona	IA	Robert Deesson	6
2/16/1988	Stamprale	CA	Richard Farley	6
9/14/1989	Louisville	KY	Joseph Westecker	8
6/18/1990	Jacksonville	FL	James Pough	7
1/26/1991	Chimayo	NM	Ricky Aoyra	9
8/9/1991	Widdell	AZ	Jonathan Dooly and Aleksandro Garcia	9
10/16/1991	Killean	TX	George Hennerd	23
11/7/1992	Macro Boy and Pasa Robles	CA	Lynwood Drake	6
1/8/1993	Paduine	IL	James Dugoski and Juan Luna	7

55	5/16/1993	Fresno	CA	Allen Heffin and Johnnie Mankley	7
56	7/1/1993	San Francisco	CA	Gene Luigi Fetti	8
57	12/7/1993	Garden City	NY	Colin Ferguson	6
58	4/20/1999	Irifieldon	CO	Eric Harris and Dylan Klebold	13
59	7/12/1999	Atlanta	GA	Mark Barton	6
60	7/29/1999	Atlanta	GA	Mark Barton	9
61	9/15/1999	Fort Worth	TX	Larry Ashbrook	7
62	11/2/1999	Honolulu	HI	Byron Kofi Uyesugi	7
63	12/26/2000	Wickfield	MA	Michael McBernett	7
64	12/28/2000	Philadelphia	PA	Shihsein Block, Dawood Farooq, Khalid Farooq, and Bruce Vener	7
65	8/26/2002	Redeagle	AL	Wesley Harris	6
66	1/15/2003	Eshelberg	TX	Humberto Garza, Robert Garza, Rodolfo Medina, and Juan Ramirez	6
67	7/8/2003	Meridian	MS	Douglas Williams	6
68	8/27/2003	Chicago	IL	Schvolar Topik	6
69	3/12/2004	Fresno	CA	Marous Wesson and Sethranth Wesson	6
70	11/21/2004	Birchwood	WI	Choi Soou Yong	6
71	3/12/2005	Brookfield	WI	Terry Barzmann	6
72	3/21/2005	Red Lake	MIN	Jeffrey Waseo	9
73	1/30/2006	Soldato	CA	Jennifer San Marco	7
74	3/25/2006	Seattle	WA	Kyle Huff	7
75	6/1/2006	Indianapolis	IN	James Stewart and Desmond Turner	6
76	12/16/2006	Kansas City	KS	Hersel Swanson	7
77	4/16/2007	Blacksburg	VA	Seung Hui Cao	32
78	10/1/2007	London	WI	Tyler Peterson	6
79	12/5/2007	Ondra	NE	Robert Henkins	8
80	12/24/2007	Campton	WA	Michelle Anderson and Joseph McInroe	6
81	2/1/2008	Kirkwood	MO	Charles Lee Thornton	6
82	9/2/2008	Alger	WA	Isaac Zamora	6
83	12/24/2008	Convo	CA	Bruce Pardo	6
84	1/27/2009	Los Angeles	CA	Erin Lupo	6
85	3/10/2009	Kinston, Samsom, and Geneva	AL	Michael McLendon	10
86	3/29/2009	Garriage	NC	Robert Stewart	8
87	4/3/2009	Birmingham	NY	Henry Wong	13
88	11/5/2009	Fort Hood	TX	Hidal Hosen	13
89	1/19/2010	Alpena	VA	Christopher Speight	8
90	8/3/2010	Manchester	CT	Omur Thornton	8
91	1/8/2011	Tucson	AZ	James Haines	6
92	7/7/2011	Grand Rapids	MI	James Haines	6
93	8/1/2011	Conley Township	OH	Richard Dantzer	7
94	10/12/2011	Seal Beach	CA	Michael Hance	7
95	12/25/2011	Georgetown	TX	Scott Dekoari	8
96	4/2/2012	Oakland	TX	Azz Yazdaniyanich	6
97	7/20/2012	Aurora	CO	One Goh	7
98	8/5/2012	Oak Creek	WI	James Haines	12
99	9/27/2012	Minneapolis	MN	Andrew Engeldinger	6
100	12/14/2012	Newtown	CT	Wade Page	6
101	7/26/2013	Hialeah	FL	Adam Lonzi	27
102	9/16/2013	Washington	DC	Pedro Vargas	6
103	7/9/2014	Spring	TX	Aaron Hicks	12
104	9/18/2014	Bell	TX	Ronald Lee Huskeil	6
105	2/28/2015	Tyone	MO	Don Spitt	7
106	5/17/2015	Waco	TX	Joseph Jesse Aldridge	7
107	6/17/2015	Camden	SC	Undetermined	9
108	8/8/2015	Houston	TX	Dylan Roof	9
109	10/1/2015	Rosburg	OR	David Conley	9
110	11/15/2015	Pilestine	TX	Christopher Hogue-Walker	8
111	12/2/2015	San Bernardino	CA	William Hudson	9
				Syed Rizwan Farook and Tashreeq Malik	6

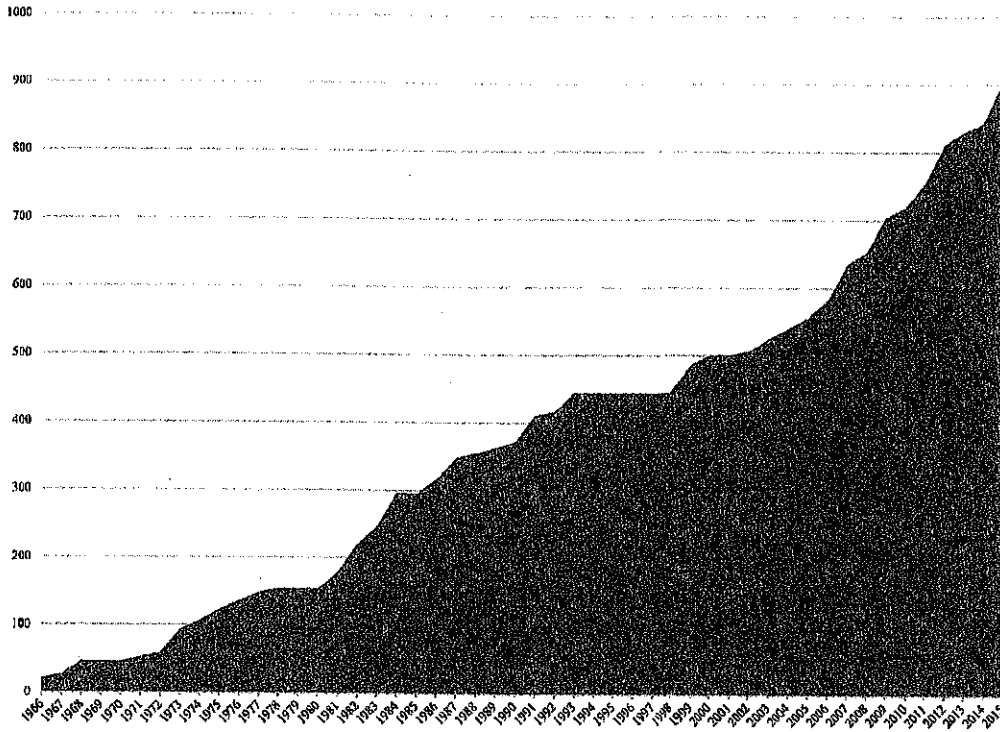


Fig. 3.1. Cumulative Death Toll of Gun Massacres in the United States, 1966–2015. Source: Table 3.2.

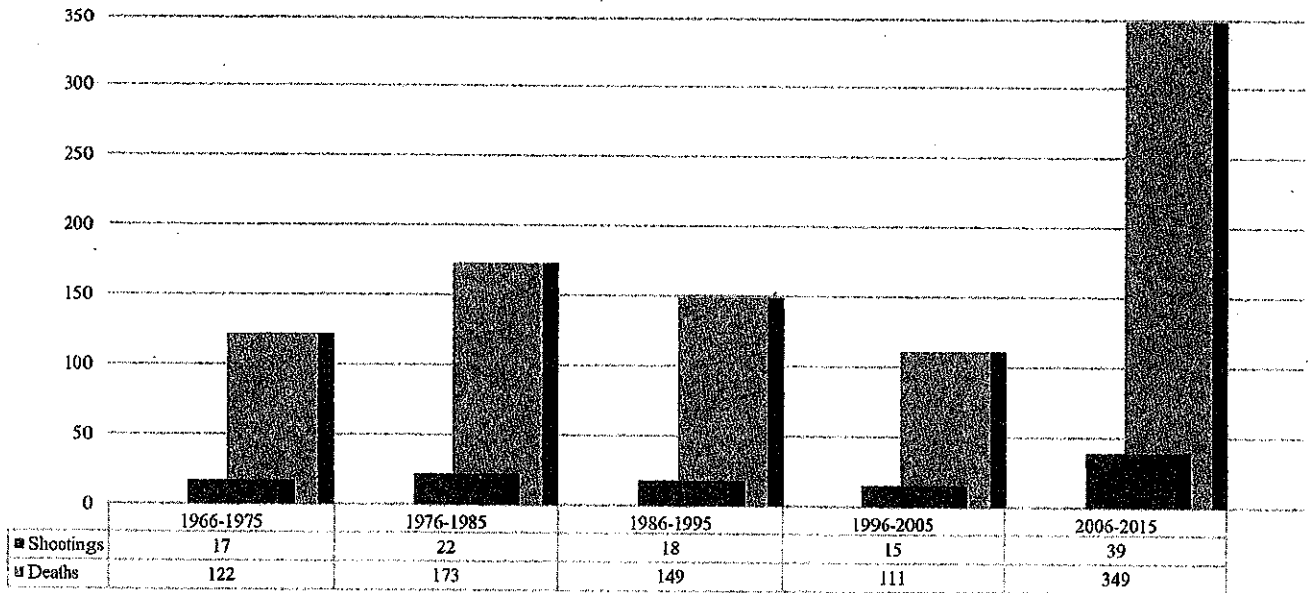


Fig. 3.2. Gun Massacres in the United States by Decade, 1966–2015. Source: Table 3.2.

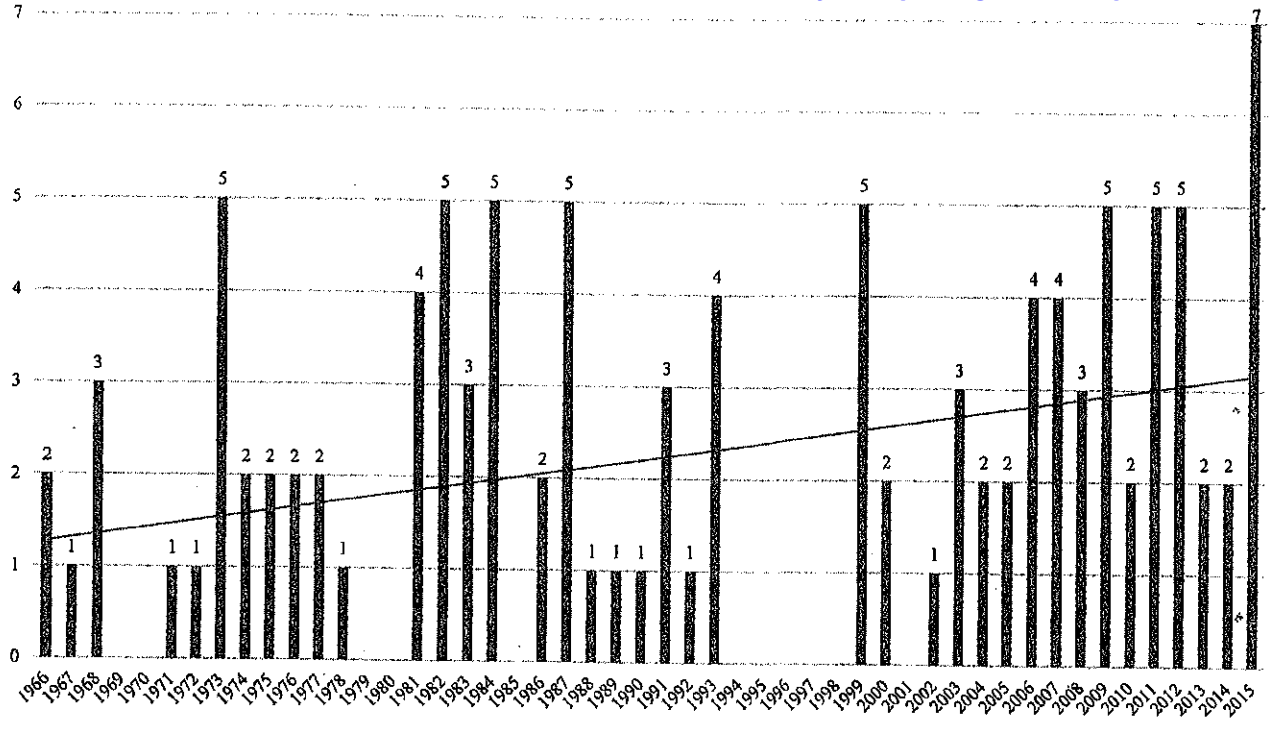


Fig. 3.3. Annual Number of Gun Massacres In the United States, 1966–2015. Source: Table 3.2.

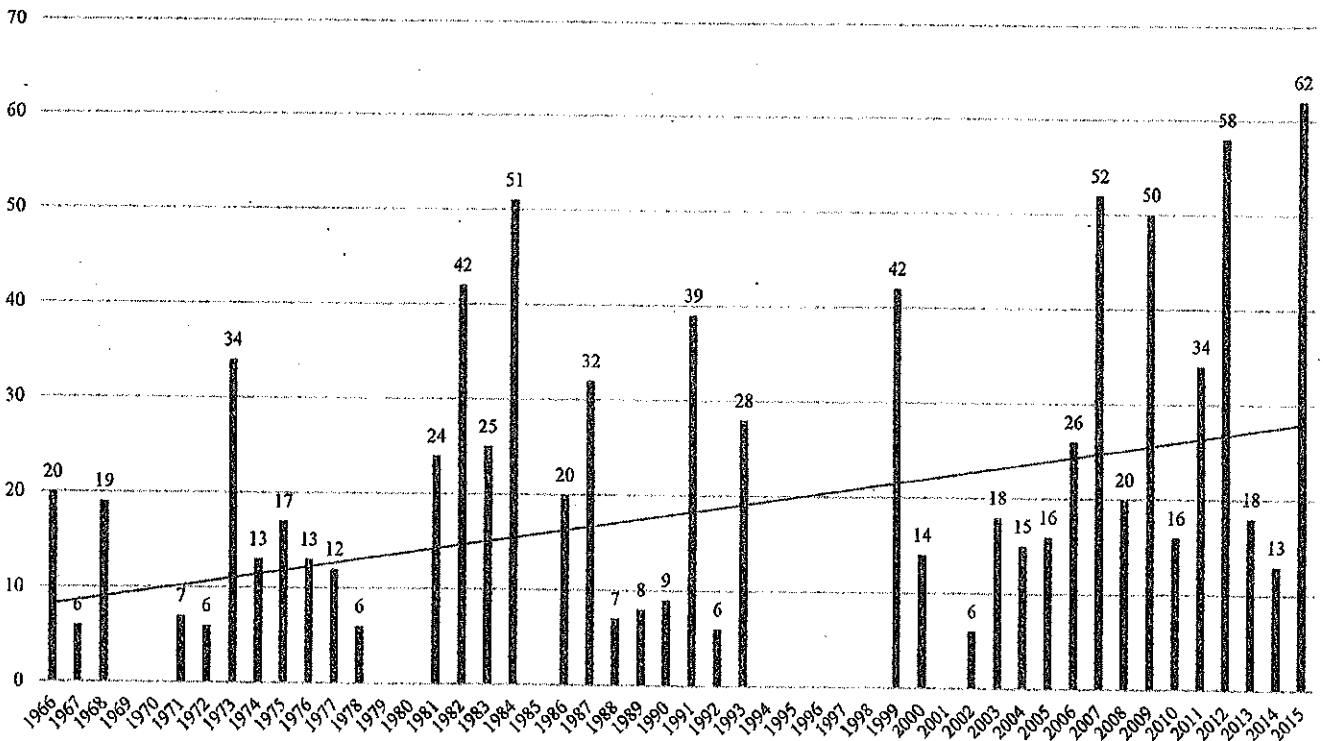


Fig. 3.4. Annual Death Toll of Gun Massacres In the United States, 1966–2015. Source: Table 3.2.

Table 3.3. Average Death Tolls of Gun Massacres in the United States by Ten-Year Period, 1966–2015.

Ten-Year Period	Average Death Toll Per Gun Massacre
1966–1975	7.2
1976–1985	7.9
1986–1995	8.3
1996–2005	7.4
2006–2015	8.9

A breakdown of the data shows how this disturbing pattern came to be. Until 2015, there has never been a year with more than five gun massacres. In 2015, there were seven gun massacres. Moreover, the past decade has experienced more “five-plus-shooting-years” than any other decade (see figure 3.3). It’s also the only decade with consecutive five-plus-shooting-years (2011 and 2012). When expanded to track four-plus-shooting-years, the past decade qualifies as the most disturbing ten-year-period, surpassing the next closest ten-year-period (1976–1985) by three additional years of four-plus gun massacres.

The past decade is also the only decade not to have had a year without a gun massacre. Every other decade under study had at least two years of reprieve from such heinous acts of gun violence—and the five-year period from 1994 to 1998 experienced no such shootings at all. In terms of lethality, the past decade again stands apart from the others. For instance, while there have been only five years that experienced fifty or more deaths as a result of gun massacres, four of those years were in the past decade (see figure 3.4). Indeed, 2015 is the deadliest year on record for murders resulting from gun massacres, with sixty-two combined fatalities. Furthermore, a comparison of the last two decades reveals an eightfold increase in the number of double-digit fatality shootings (see table 3.4).

Between 1966 and 2015, the population of the United States has increased nearly 65 percent, from approximately 195 million people to over 320 million people. Yet even this demographic shift has failed to reverse the troubling trend in rampage violence, as evidenced by incidence rates, which assess the occurrence of attacks and fatalities

relative to the population in a given time. Over the past ten years, gun massacres have taken place at an unprecedented rate of one for roughly every eight million residents and deaths have been incurred at a rate that exceeds one fatality for every one million residents (see table 3.5). Even when accounting for population growth, the past decade still stands out as the worst ten-year period of the last fifty years, marked by a rising trajectory that doesn’t bode well for the coming decade (see figure 3.5).

Table 3.4. The Deadliest Mass Shootings in the United States, 1966–2015.

Death Toll	Date	Perpetrator(s)	City	State
32	4/16/2007	Sang Hui Cho	Blackburg	VA
27	12/14/2014	Adam Lanza	Newtown	CT
23	10/16/1991	George Hennard	Killeen	TX
21	7/18/1984	James Huberty	San Ysidro	CA
14	8/1/1966	Charles Whitman	Austin	TX
14	8/20/1986	Patrick Sherrill	Edmond	OK
14	12/2/2015	Syed Rizwan Farook and Tashreen Malik	San Bernardino	CA
13	9/25/1982	George Banks	Wilkes-Barre	PA
13	2/18/1983	Kwon Fai Mok and Benjamin Ng	Seattle	WA
13	4/20/1999	Eric Harris and Dylan Klebold	Littleton	CO
13	4/3/2009	Jiweny Wong	Binghamton	NY
13	11/5/2009	Nidal Hasan	Fort Hood	TX
12	7/20/2012	James Holmes	Aurora	CO
12	9/16/2013	Aaron Alexis	Washington	DC
11	3/30/1975	James Ruppert	Hamilton	OH
10	4/15/1984	Christopher Thomas	Brooklyn	NY
10	3/10/2009	Michael McLendon	Kinston, Sumner, and Geneva	AL

At a time when modern emergency medicine can save the lives of most gunshot victims if they reach the hospital alive within the “golden hour,” the death rate of mass casualty gun attacks should’ve gone down significantly in the past decade.⁸⁸ That this hasn’t happened speaks to the danger mass shootings pose.

Table 3.5. Ten-Year Incidence Rates for Gun-Massacre Attacks and Deaths, 1966–2015.

Decade	Attack Rate	Death Rate
1966–1975	0.08	0.59
1976–1985	0.10	0.76
1986–1995	0.07	0.59
1996–2005	0.05	0.39
2006–2015	0.13	1.12

Note: Rates are calculated using the mean population estimates for the United States (in millions) over the applicable ten-year periods.

Source: Attack and death tolls are drawn from table 3.2. Population data are drawn from United States Census Bureau, "Population Estimates," www.census.gov/popest/index.html (accessed May 3, 2016).

Above, I argued that high-fatality mass shootings are now in a different class. This becomes abundantly clear when gun massacres are compared to other common forms of homicide. The most recent decade of available data illustrates that, while most forms of homicide continue to decline, gun-massacre deaths are heading in the opposite trajectory (see figure 3.6). This presents a troubling mystery: Why are such deadly shooting sprees on the rise when most other homicides are on the wane? Equally baffling, this increase is occurring despite a steady decrease in gun-ownership rates (see figures 3.7 and 3.8).⁸⁹ Even if we allow for the fact that the absolute number of households with firearms has consistently held at around forty million over the last forty years, it still fails to correlate with the upsurge in gun massacres.⁹⁰ My data set, while unique, is limited by the exclusion of mass shootings that didn't result in at least six victims being murdered. Indications are that if the bar is lowered below a minimum of six deaths, the rate of occurrence is even more disturbing. Unfortunately, due in part to a funding prohibition enacted by Congress—at the urging of the National Rifle Association (NRA)—government agencies eschew research that would compile such data.⁹¹ Frustrated by these restrictions, a group of social-media-savvy individuals launched a crowdsourcing experiment on Reddit to track every gun assault in the United States that resulted in four or more people being shot.⁹²

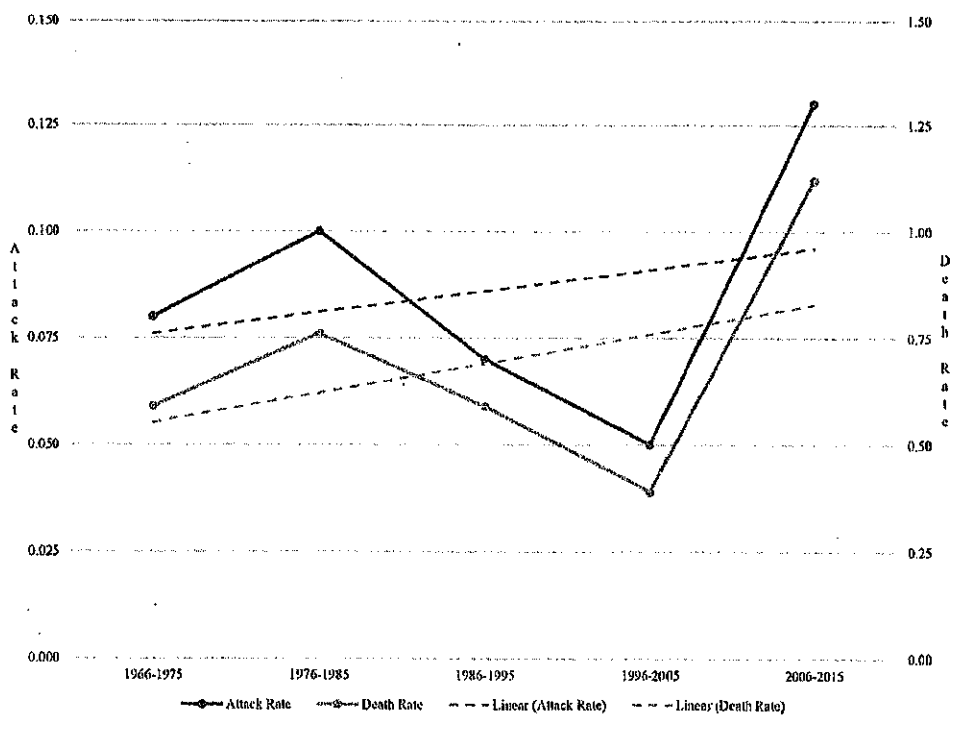


Fig. 3.5. Ten-Year Incidence Rates for Gun-Massacre Attacks and Deaths, 1966–2015. Source: Table 3.5.

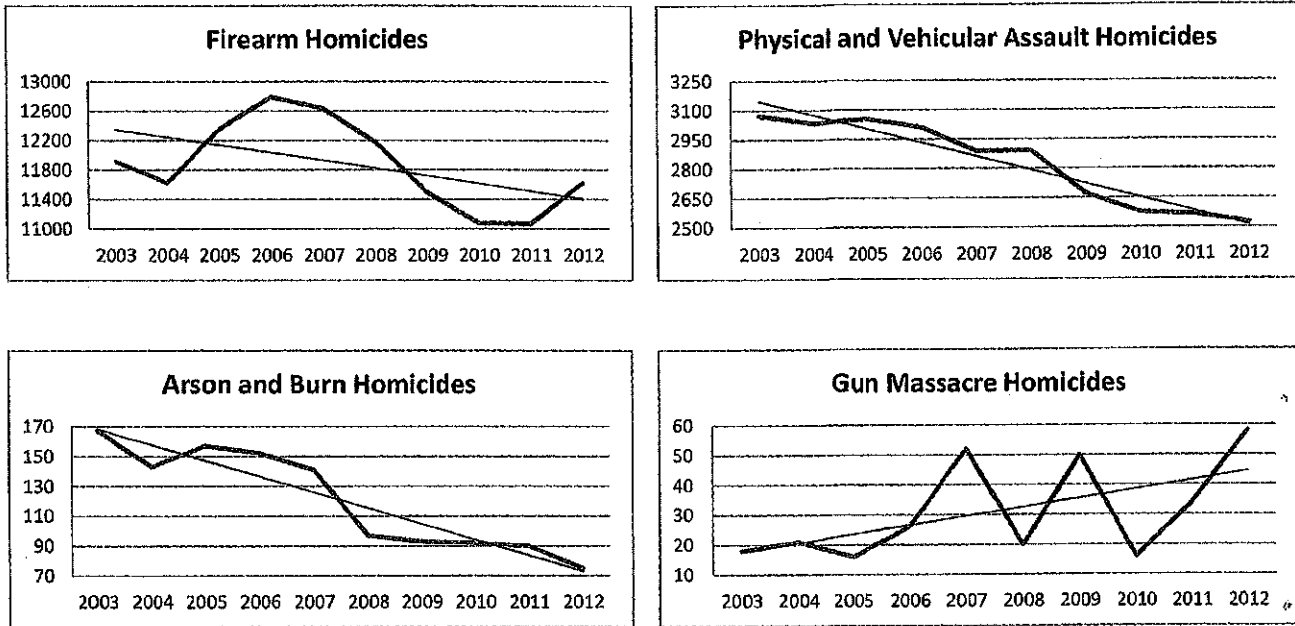


Fig. 3.6. Trends In Common Forms of Homicide, 2003–2012.

Note: The data represent the most recent decade of available data and indicate the cumulative number of such homicides per year. All data except for gun-massacre homicides are drawn from the Center for Disease Control WONDER Database (available at wonder.cdc.gov). Gun-massacre homicides are drawn from table 3.2.

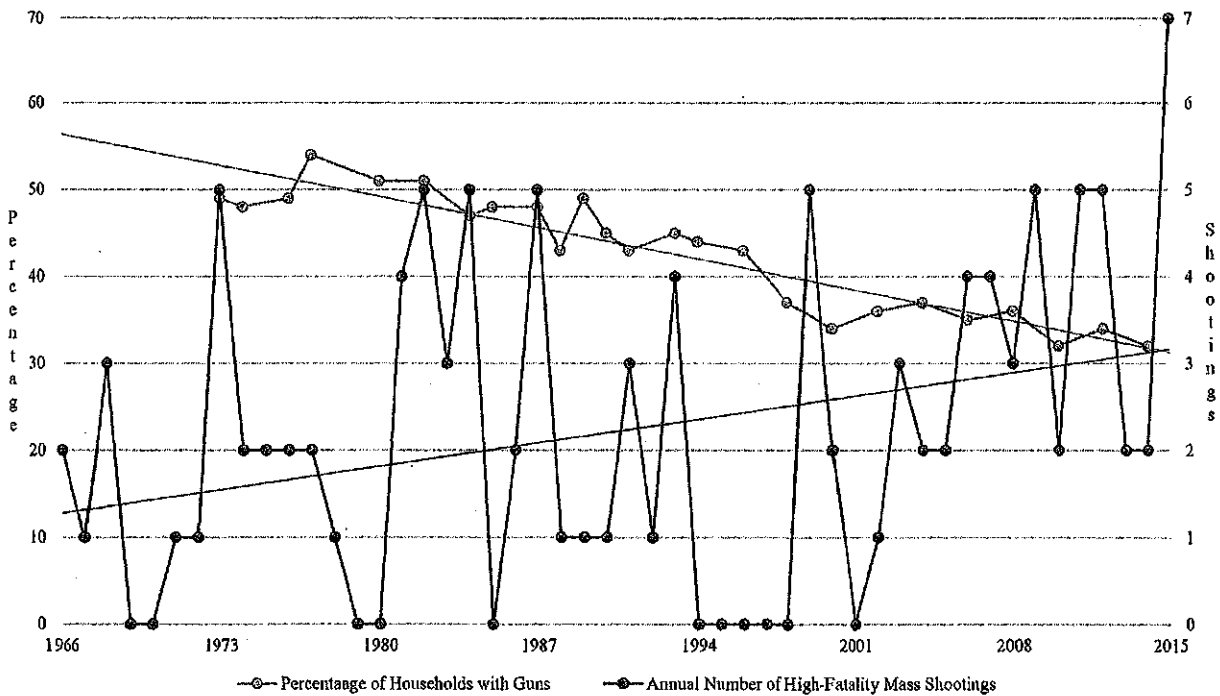


Fig. 3.7. Comparison of Trends In Gun Massacres and Gun-Ownership Rates, 1966–2015. Source: Table 3.2 and General Social Survey Data (1973–2014).

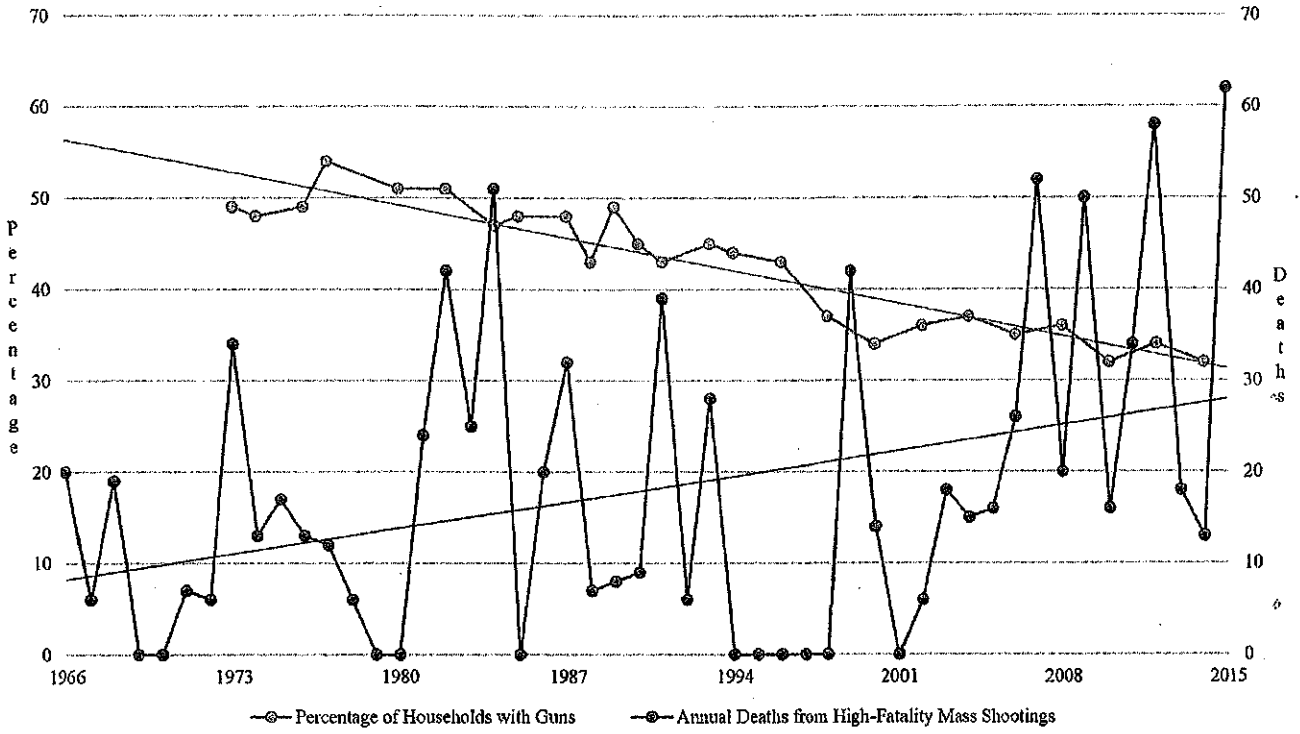


Fig. 3.8. Comparison of Trends in Gun-Massacre Deaths and Gun-Ownership Rates, 1966–2015.
Source: Table 3.2 and General Social Survey Data (1973–2014).

Table 3.6. Mass Shootings in the United States, 2013–2015.

	2013	2014	2015	Combined
0 Deaths	130	145	159	434
1 Death	93	95	108	296
2 Deaths	47	30	38	115
3 Deaths	22	26	26	74
4 Deaths	34	19	26	79
5 Deaths	8	7	5	20
6 Deaths	3	2	3	8
7 Deaths	1	0	0	1
8 Deaths	0	1	2	3
9 Deaths	0	0	2	2
10 Deaths	0	0	1	1
...
13 Deaths	1	0	0	1
...
16 Deaths	0	0	1	1
Total Shootings	339	325	371	1,035
Total Deaths	467	364	469	1,300

Note: The Mass Shooting Tracker defines mass shootings as any gun attack where four or more people, including the shooter(s), are shot. As a result, the death tolls in this table include gunmen, if they died during the perpetration of their crimes.

Source: www.massshootingtracker.org.

In its first year (2013), the Mass Shooting Tracker logged a total of 339 multiple-victim shootings (see table 3.6). This dropped by fourteen, to 325 incidents, the following year. By 2015, however, the total number of mass shootings had jumped to 371, surpassing the rate of one per day. A review of the three-year period indicates that 1,300 people lost their lives during the commission of these 1,035 gun attacks. That's an annual average of 433 fatalities—a far cry from the “18 lives a year” gun-rights activist Emily Miller tells us die on average in mass shootings in the United States. What's arguably most alarming is that, in all three years, the number of lethal incidents in the Mass Shooting Tracker's data set exceeds the number of nonlethal inci-

dents. Indeed, on an annual average, six in ten mass shootings result in at least one death, and three in ten result in multiple deaths.

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Remember John Fund? He's the conservative columnist who claimed that, for Americans, the odds of dying in a mass shooting are equal to those of being struck by lightning. Well, not so. According to the National Weather Service, an average of 267 people are struck by lightning in the United States every year.⁹⁵ That's far less than the 433 individuals who lose their lives annually in a mass shooting. In fact, in any given year, the odds of being struck by lightning are about one in 1.2 million, whereas the odds of dying in a multiple-victim gun attack are about one in 700,000. And those are the chances of dying in a mass shooting. If we expand this calculation to the number of people who are shot in a mass shooting every year—so as to make a true apples-to-apples comparison—the odds increase significantly.

Since we're putting mass shootings in a proper perspective, let's add one final comparison to what most Americans consider to be the gravest threat to their security: terrorism.⁹⁴ Certainly, given the way politicians in Washington are always carrying on about groups like al Qaeda and ISIS, you might think that you're more likely to be killed by a terrorist than by a rampage gunman. But the opposite is true. In the ten years immediately following 9/11, terrorists killed twenty-seven individuals in the United States.⁹⁵ That's the same number of people Adam Lanza killed in Newtown. In other words, what terrorists took a decade to accomplish, a single, well-armed individual on a gun rampage pulled off in one morning.⁹⁶

The bottom line is that, no matter how you crunch the numbers, the outcome is consistently the same: in the past decade, no single incident of violence has killed more people in the United States than the mass shooting. Quite simply, the most credible violent threat to American society currently comes out of the barrel of a gun—and, unfortunately, the threat is growing.

PART 2

PROBE

Table 6.1. Comparison of Firearm Capabilities.

Average Shooter				
Firearm	Six-Shot Revolver	Semi-Auto Handgun (Ten-Round Magazines)	Semi-Auto Handgun (Thirty-Round Magazines)	Assault Rifle (One-Hundred-Round Drums)
Firing Rate	1 Shot per Second	2 Shots per Second	2 Shots per Second	2 Shots per Second
Reload Rate	20 Seconds	10 Seconds	10 Seconds	15 Seconds
Time Shooting	18 Seconds	20 Seconds	40 Seconds	50 Seconds
Time Not Shooting	42 Seconds	40 Seconds	20 Seconds	10 Seconds
Bullets Fired	18 Rounds	40 Rounds	80 Rounds	100 Rounds

Expert Shooter				
Firearm	Six-Shot Revolver	Semi-Auto Handgun (Ten-Round Magazines)	Semi-Auto Handgun (Thirty-Round Magazines)	Assault Rifle (One-Hundred-Round Drums)
Firing Rate	1.5 Shots per Second	3 Shots per Second	3 Shots per Second	3 Shots per Second
Reload Rate	10 Seconds	5 Seconds	5 Seconds	10 Seconds
Time Shooting	20 Seconds	25 Seconds	40 Seconds	50 Seconds
Time Not Shooting	40 Seconds	35 Seconds	20 Seconds	10 Seconds
Bullets Fired	24 Rounds	75 Rounds	120 Rounds	150 Rounds

THE AURORA THEATER MASSACRE ARSENAL

Following the Aurora theater massacre, the Colorado legislature enacted three sweeping gun-control bills that, among other things, banned the sale of ammunition magazines with a capacity larger than fifteen bullets. Avid Second Amendment advocates revolted against these laws. In a blunt attempt to punish two major proponents of these public-safety measures, the gun-rights movement organized a recall campaign. On September 10, 2013, State Senate President John Morse and State Senator Angela Giron—both Democrats—were removed from office and replaced by pro-gun Republicans.¹⁰⁶ State Senator Bernie Herpin was one of those who ascended to office in the wake of the recall, replacing Morse. In February 2014,

during a Senate committee hearing on a bill Herpin sponsored to repeal the ban on extended-capacity magazines, one of his Democratic colleagues questioned the utility of his proposal: “My understanding is that James Holmes bought his 100-round capacity magazine legally. So in fact, [the 2013 high-capacity magazine ban] would have stopped James Holmes from purchasing a 100-round magazine. I was wondering if you agree with me.”¹⁰⁷ Herpin, in what was clearly a poorly thought-out response, replied: “As it turned out, that was maybe a good thing that he had a 100-round magazine, because it jammed. If he had four, five, six 15-round magazines, there’s no telling how much damage he could have done until a good guy with a gun showed up.” Herpin was trying to suggest that the larger the capacity of the magazine, the more likely it is that the magazine might jam. But to the families of the victims, Herpin’s suggestion that the public should put its faith in product defects as a means to ensure its safety came across as stupid and insensitive.

The AR-15 that James Holmes fired at the Century 16 multiplex did, in fact, jam. But not before it discharged sixty-five rounds. As we have already seen, one-hundred-round drums provide greater kill potential than smaller-capacity magazines. Had Holmes—at best, an average shooter by his own admission—been using thirty-round magazines, it would have provided theater patrons with approximately two additional ten-second windows to escape or to confront Holmes before he could have gotten off sixty-five shots.¹⁰⁸ And had he been using ten-round magazines, the shooting downtime would have increased to six ten-second windows—a full minute.

Contrary to the suggestion floated by Herpin, the one-hundred-round drum used by James Holmes played a critical role in making the Aurora theater massacre one of the highest-casualty mass shootings in American history.¹⁰⁹

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James Holmes’s arsenal—particularly his polymer AR-15 assault rifle armed with a one-hundred-round drum—lends credence to the proposition that, as firearms become lighter and their ammunition capacities become larger, they become more lethal. But that’s the

anecdotal takeaway from one gun massacre (albeit one that registered an extremely high casualty toll). What about the weapons used in other gun massacres?

If all firearms were equal, we would find that, on average, they produced similar outcomes, especially similar fatality tolls. In practice, however, that's not the case. After examining the firearms used in the 111 gun massacres in my data set, it's clear that there is a significant difference between attacks that involve semiautomatic weapons and those that do not. Those massacres where there was no evidence that the weapons used were semiautomatic firearms resulted, on average, in fewer deaths per attack. In fact, those high-fatality mass shootings accounted for 97 percent of the 111 incidents in my data set, but for only 23 percent of the 904 cumulative deaths resulting from those incidents (see table 6.2). On the other hand, gun massacres involving semiautomatic firearms produced, on average, higher death tolls. Semiautomatic firearm attacks accounted for 73 percent of all the incidents in my data set, but 77 percent of the fatalities resulting from those incidents. The conclusion is unambiguous: semiautomatic firearms, when used in mass shootings, increase the lethality of such attacks.¹¹⁰

Table 6.2. Percentage of Gun-Massacre Incidents and Cumulative Fatalities by Firearm Type.

Gun Massacres between 1966 and 2015...	Percentage of All Incidents (N = 111)	Percentage of All Deaths (N = 904)	Difference (in Percentage)
...Not Involving Semiautomatics	27	23	-4
...Involving Semiautomatics	73	77	+4
...Involving Assault Weapons	25	29	+4
...Involving EDWs	47	55	+8
...Involving Polymer Guns	34	42	+8
...Involving Assault Weapons + EDWs	22	27	+5
...Involving EDWs + Polymer Guns	30	38	+8
...Involving Polymer Assault Weapons + EDWs	12	15	+3

Note: There is no separate category for polymer assault weapons without extended-capacity magazines (EDWs) as every gun massacre involving polymer assault weapons also involved EDWs.

This finding is particularly troubling because, over the course of the past fifty years, semiautomatic firearms have become more prevalent in high-fatality mass shootings (see figure 6.1). Their use in gun massacres has consistently increased decade after decade. The shift is particularly drastic when the first ten-year period of the past fifty years is compared to the most recent ten-year period. During the period 1966–1975, semiautomatic firearms were involved in 47 percent of all gun massacres. Jump forward to the present and you'll see that they have been involved in 92 percent of all gun massacres that have occurred in the past ten years. A similar pattern exists in terms of deaths resulting from semiautomatic firearm use in high-fatality mass shootings (see figure 6.2). During the period 1966–1975, semiautomatic firearm massacres accounted for 48 percent of all gun-massacre fatalities. In the past ten years, they have accounted for 95 percent of fatalities. It's also worth noting that, forty to fifty years ago, the range in the average number of deaths per gun massacre between those not involving semiautomatic weapons and those involving such weapons was relatively close: 7.1–7.3 (see figure 6.3). In the past decade, however, that difference has grown to its widest margin, with the former producing, on average, six fatalities per attack and the latter over nine deaths. In fact, in the past twenty years, the average death toll for incidents not involving semiautomatic firearms has bottomed out at six deaths—the minimum number of fatalities required for a shooting to meet the definition of a gun massacre.¹¹¹

As discussed in chapter 3, gun massacres escalated extensively between the time periods 1966–1975 and 1976–1985. Afterward, they waned in both occurrence and lethality, reaching new lows in the 1990s, before spiking to unprecedented levels in the past ten years (see table 6.3). The use of semiautomatic firearms in such incidents has also grown to unprecedented levels of late.

Following the Aurora massacre, assault weapons seemed to bear the brunt of the blame. But, as I argued earlier in this chapter, polymer firearms and extended-capacity magazines are also considerably responsible for the increased bloodshed. A review of the data supports this assessment. In fact, the two factors that have correlated with the highest differential in death tolls are polymer guns and large-capacity magazines (see table 6.2). Assault weapons, on their own, were involved

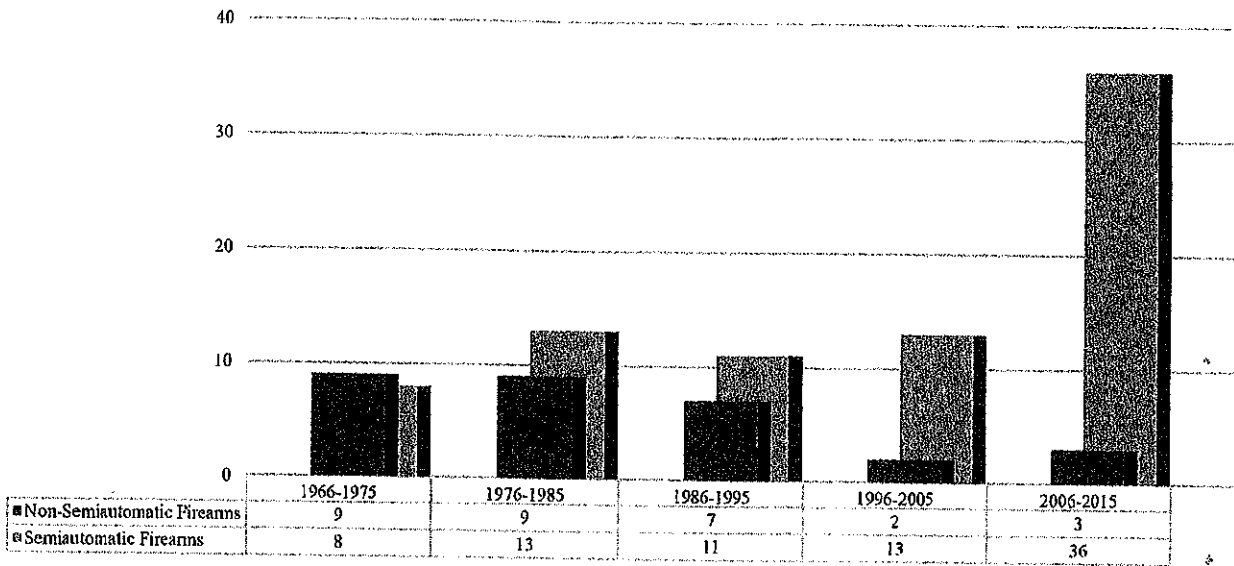


Fig. 6.1. Number of Gun Massacres per Decade (Massacres Involving Semiautomatic Firearms versus Massacres Not Involving Semiautomatic Firearms).

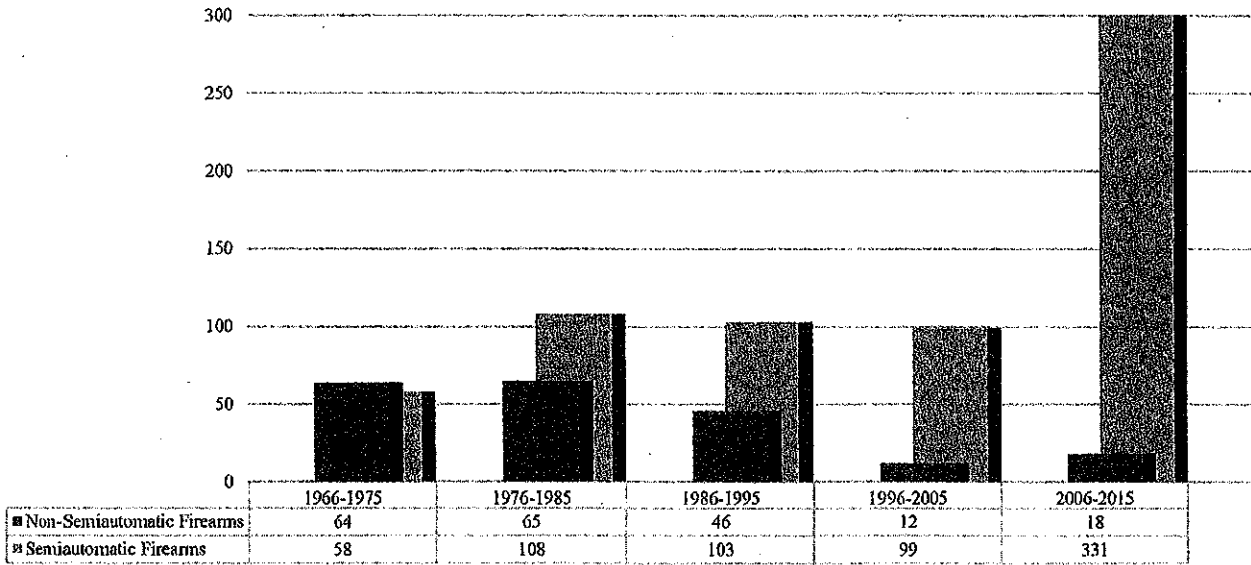


Fig. 6.2. Number of Deaths Resulting From Gun Massacres per Decade (Massacres Involving Semiautomatic Firearms versus Massacres Not Involving Semiautomatic Firearms).

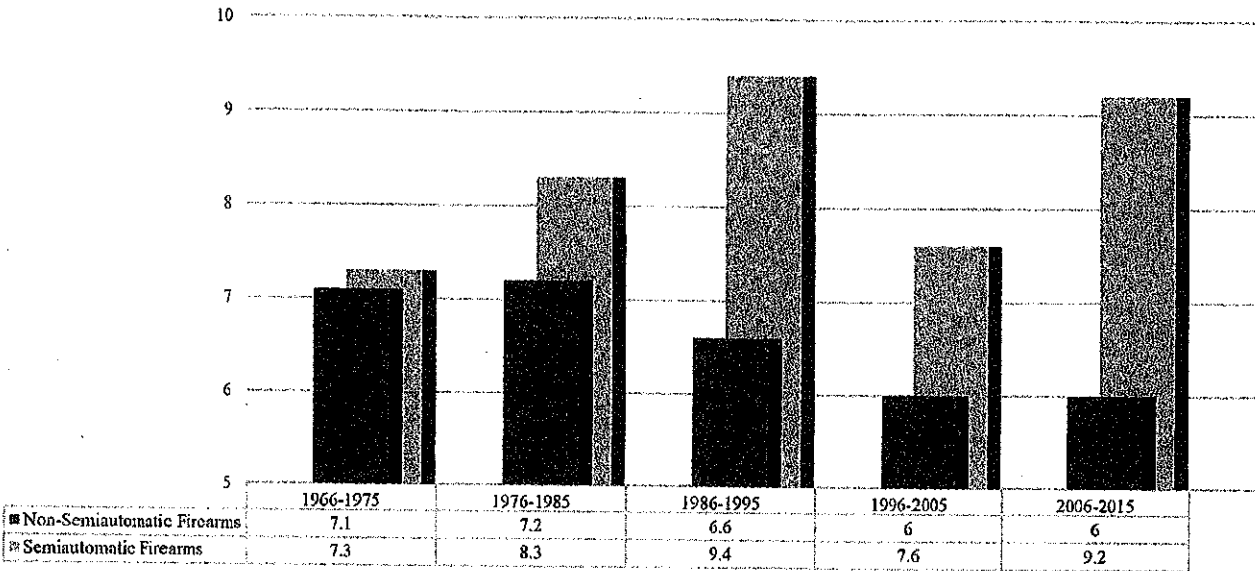


Fig. 6.3. Average Number of Deaths per Gun Massacre by Decade (Massacres Involving Semiautomatic Firearms versus Massacres Not Involving Semiautomatic Firearms).

Table 6.3. Gun-Massacre Incidents and Fatalities by Firearm Type.

	1966-1975	1976-1985	1986-1995	1996-2005	2006-2015	Total
All Gun Massacres						
Incidents	17	22	18	15	39	111
Deaths	122	173	149	111	349	904
Average Death Toll	7.2	7.9	8.3	7.4	8.9	8.1
Gun Massacres Not Involving Semiautomatics						
Incidents	9	9	7	2	3	30
Deaths	64	65	46	12	18	205
Average Death Toll	7.1	7.2	6.6	6.0	6.0	6.8
Gun Massacres Involving Semiautomatics						
Incidents	8	13	11	13	36	81
Deaths	58	108	103	99	331	699
Average Death Toll	7.3	8.3	9.4	7.6	9.2	8.6
Gun Massacres Involving Assault Weapons						
Incidents	3	6	6	3	10	28
Deaths	26	58	44	26	110	264
Average Death Toll	8.7	9.7	7.3	8.7	11.0	9.4
Gun Massacres Involving ECWs						
Incidents	3	5	9	9	26	52
Deaths	26	53	82	72	261	494
Average Death Toll	8.7	10.6	9.1	8.0	10.0	9.5
Gun Massacres Involving Polymer Guns						
Incidents	1	2	3	7	25	38
Deaths	6	19	38	61	253	377
Average Death Toll	6.0	9.5	12.7	8.7	10.1	9.9
Gun Massacres Involving Assault Weapons + ECWs						
Incidents	3	3	6	2	10	24
Deaths	26	40	44	20	110	240
Average Death Toll	8.7	13.3	7.3	10.0	11.0	10.0
Gun Massacres Involving ECWs + Polymer Guns						
Incidents	1	2	3	6	21	33
Deaths	6	19	38	52	226	341
Average Death Toll	6.0	9.5	12.7	8.7	10.8	10.3
Gun Massacres Involving Polymer Assault Weapons + ECWs						
Incidents	1	2	2	1	7	13
Deaths	6	19	15	13	87	140
Average Death Toll	6.0	9.5	7.5	13.0	12.4	10.8

Note: There is no separate category for polymer assault weapons without extended-capacity magazines (ECWs) as every gun massacre involving polymer assault weapons also involved ECWs.

in only 25 percent of all gun massacres from the past fifty years, and those incidents accounted for 29 percent of all gun-massacre fatalities. The bigger impact results from using polymer guns and high-capacity magazines. The former were employed in 34 percent of all gun massacres, yet those attacks accounted for 42 percent of all gun-massacre fatalities. That's an 8 percent differential. The latter resulted in an identical percentage differential (47 percent of all massacres and 55 percent of all fatalities), although the larger overall tallies provide reason to find the use of extended-capacity magazines even more disconcerting than the use of polymer firearms.

One of the impressions that someone might form after hearing critics fault assault weapons like the AR-15 is that these potent firearms are used fairly often to perpetrate gun massacres. The data, however, do not support such a conclusion. On the contrary, assault weapons were used in only a quarter of the gun massacres from the past fifty years (see tables 6.2 and 6.3). Even in the past ten years, they were used in only ten attacks (again roughly 25 percent of all attacks in the past decade).

The same can be said for polymer guns and extended-capacity magazines. They, too, were involved in less than half of all gun massacres from the past fifty years (see tables 6.2 and 6.3). Nonetheless, unlike assault weapons, high-capacity magazines and polymer guns stand apart in their prevalence of late. Assault weapons have only been used in roughly one-fourth of all gun massacres since 2006. Extended-capacity magazines and polymer guns, on the other hand, have been used in about two-thirds of all such gun massacres. Indeed, a comparison with the earliest and most recent ten-year periods of my data set shows that, while the use of assault weapons increased by a factor of nearly three, the use of large-capacity magazines has increased by a factor of nearly nine, and the use of polymer firearms has increased by a factor of twenty-five.

Another relationship worth investigating is the frequency and lethality of these three elements—assault weapons, extended-capacity magazines, and polymer firearms—when employed in combination. Again, across the entire fifty-year time frame, their use remains limited, but their impact lethal (see tables 6.2 and 6.3). This becomes indisputable when the different firearms are assessed by

the average number of fatalities that result when they are involved in gun massacres (see figure 6.4). In general, the average death toll since 1966 has been 8.1. When gunmen don't shoot their victims with semiautomatic firearms, this average falls 17 percent to 6.8 deaths per incident.¹¹² The employment of semiautomatic firearms makes the average death toll per incident rise 5 percent to 8.6. The jumps are more profound when the shootings are broken down into those involving assault weapons, extended-capacity magazines, and polymer guns. Each of these elements result in, respectively, 16 percent, 17 percent, and 22 percent increases. The largest growth in average death toll, however, results when mass shooters attack with polymer assault weapons armed with extended-capacity magazines—all three elements in one. Those instances result in an average of 10.8 deaths per attack—a 33 percent increase from the 8.1 baseline.

When the comparisons are limited to just the past decade—when gun massacres almost always involved semiautomatic firearms—the most lethal outcome again results from attacks involving all three elements: polymer assault weapons armed with extended-capacity magazines. In the past ten years, the increase from the baseline average of number deaths per incident soars from 8.9 to 12.8 (see figure 6.4). That's an enormous 39 percent upsurge in the average number of fatalities when all three elements are involved in a gun massacre—and at a time when modern medicine has drastically reduced the likelihood of dying from gunshot wounds, no less.

One final question worth addressing: Do gun massacres employing more than one firearm or involving more than one perpetrator result in higher death tolls? It makes sense that if you have more weapons, you can produce more bloodshed. And the data support such a conclusion as it pertains to high-fatality mass shootings (see table 6.4). The average death toll when a perpetrator is armed with only a single weapon is 6.9 fatalities per incident (see table 6.5). That number jumps to 9.2 fatalities per incident when a gunman is armed with multiple firearms. That's higher than the average death toll for all 111 incidents in the data set but less than the average death toll resulting from incidents involving assault weapons, extended-capacity magazines, or polymer firearms (compare tables 6.3 and 6.5). A breakdown of the data clearly establishes that, while mass shootings involving two or more guns often

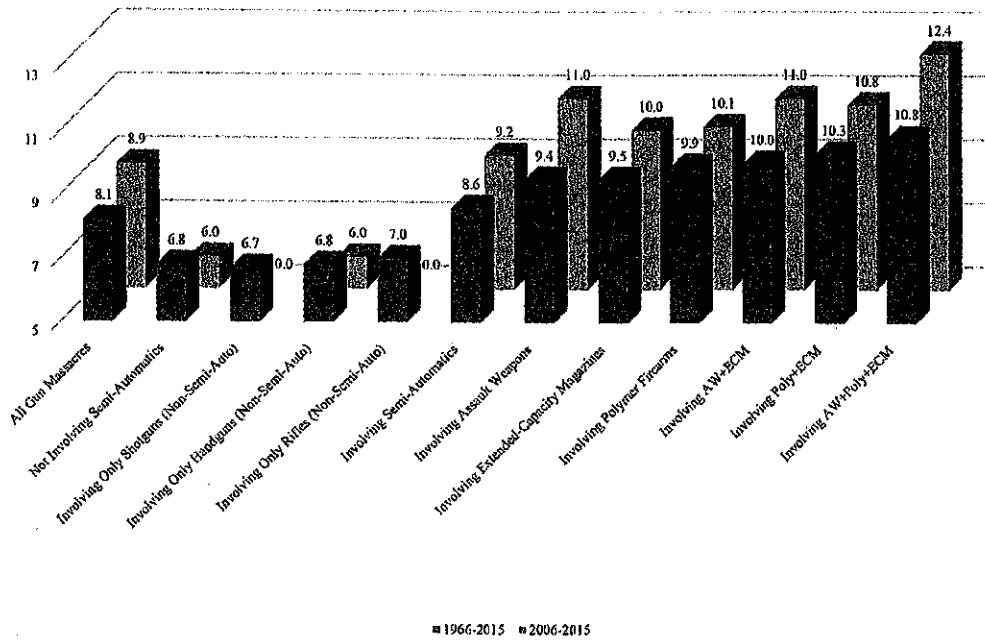


Fig. 6.4. Average Number of Fatalities per Gun Massacre by Firearm Type (1966–2015 Compared to 2006–2015).
 Note: There is no separate category for polymer assault weapons without extended-capacity magazines (ECMs) as every gun massacre involving polymer assault weapons also involved ECMs.

result in increased carnage, the impact is driven more by the use of enhanced weapons (especially polymer guns equipped with extended-capacity magazines) than by the use of multiple firearms.

Table 6.4. Percentage of Gun-Massacre Incidents and Cumulative Fatalities by Number of Firearms and Shooters.

Gun Massacres between 1966 and 2015	Percentage of All Incidents (N = 111)	Percentage of All Deaths (N = 904)	Difference (in Percentage)
... Involving Only One Gun	47	40	-7
... Involving Multiple Guns	53	60	+7
... Involving Only One Shooter	86	86	0
... Involving Multiple Shooters	14	14	0

Unlike the sizeable difference that results from using multiple weapons, gun massacres involving more than one shooter don't result in significantly more fatalities (see table 6.4). When gun massacres are perpetrated by more than one gunman, the increase in fatalities per incident increases only 2 percent—from 8.1 to 8.3 fatalities per incident (see table 6.6).¹¹³ Even more surprising, massacres involving two gunmen have produced higher average death tolls than those involving three or more gunmen. The former have claimed an average of 9.1 lives per attack, whereas the latter have claimed 6.3 lives per attack. This suggests that the number of perpetrators, *per se*, doesn't significantly impact the extent of the bloodshed.

☆☆☆

For those of you who are not data wonks, all of the statistics in the previous subsection might have left you a bit overwhelmed. The picture they paint is, nevertheless, pretty simple and straightforward. Most gun massacres involve semiautomatic firearms. The perpetrators of these murder sprees have not historically relied on assault rifles to pull off their attacks. Nor have they turned to polymer guns and large-capacity

Table 6.5. Gun-Massacre Incidents and Fatalities by Number of Firearms.

	Total
All Gun Massacres	111
Incidents	904
Deaths	8.1
Average Death Toll	
Gun Massacres Involving Only One Gun	52
Incidents	359
Deaths	6.9
Average Death Toll	
Gun Massacres Involving Multiple Guns	59
Incidents	545
Deaths	9.2
Average Death Toll	
Gun Massacres Involving Multiple Guns But Not Involving Semi-Automatics	13
Incidents	92
Deaths	7.1
Average Death Toll	
Gun Massacres Involving Multiple Guns and Semi-Automatics	46
Incidents	453
Deaths	9.8
Average Death Toll	
Gun Massacres Involving Multiple Guns and Assault Weapons	28
Incidents	204
Deaths	10.2
Average Death Toll	
Gun Massacres Involving Multiple Guns and ECWs	30
Incidents	336
Deaths	11.2
Average Death Toll	
Gun Massacres Involving Multiple Guns and Polymer Guns	22
Incidents	257
Deaths	11.7
Average Death Toll	
Gun Massacres Involving Multiple Guns and Assault Weapons + ECWs	16
Incidents	180
Deaths	11.3
Average Death Toll	
Gun Massacres Involving Multiple Guns and ECWs + Polymer Guns	19
Incidents	236
Deaths	12.4
Average Death Toll	
Gun Massacres Involving Multiple Guns and Polymer Assault Weapons + ECWs	9
Incidents	108
Deaths	12.0
Average Death Toll	

Note: There is no separate category for polymer assault weapons without extended-capacity magazines (ECWs) as every gun massacre involving polymer assault weapons also involved ECWs.

magazines. But—and this is a huge *but*—when they have utilized these types of guns, they have generated far greater bloodshed. The critical elements that seem to compound the carnage are, in particular, plastic weapons and large-scale ammunition-feeding devices. Assault weapons certainly contribute to the escalation of death tolls, but not quite as much as polymer guns and extended-capacity magazines do. That said, the most lethal outcomes tend to result, on average, when rampage gunmen use polymer assault weapons loaded with extended-capacity magazines. No doubt, James Holmes's decision to rely predominantly on a lightweight, ergonomically designed, high-capacity weapon made it extremely easy for him to achieve his self-professed goal of shooting "as many people as possible."¹⁴ As it turned out, this amounted to upwards of seventy people in under three minutes.

Table 6.6. Gun-Massacre Incidents and Fatalities by Number of Shooters.

	Total
All Gun Massacres	111
Incidents	904
Deaths	8.1
Average Death Toll	
Gun Massacres Involving Only One Shooter	96
Incidents	779
Deaths	8.1
Average Death Toll	
Gun Massacres Involving Multiple Shooters (Two or More Shooters)	15
Incidents	125
Deaths	8.3
Average Death Toll	
Gun Massacres Involving Exactly Two Shooters	10
Incidents	91
Deaths	9.1
Average Death Toll	
Gun Massacres Involving More Than Two Shooters	5
Incidents	34
Deaths	6.8
Average Death Toll	

The above vignettes illustrate that there is a preferred way of reducing threats to public safety: denying weapons to potential perpetrators. By preventing high-risk individuals from acquiring dangerous weapons or by hindering them from employing such weapons, government can keep its citizens safe.

In a way, homeland security is akin to George Orwell's *Animal Farm*. All strategies proposed by the trinity of violence are equal, but some are more equal than others. It's not that dissuasion and defense aren't valuable. They are. After all, we still criminalize bombings and erect barricades in front of important structures. But laws, on their own, often fail to dissuade homicidal and suicidal individuals. And blast barriers can't be erected everywhere. There are just too many potential perpetrators and targets for these strategies to be effective on their own. In open societies where resources are limited, securing public safety depends primarily on a strategy of denial to break the trinity of violence.

The success of the United States in countering aviation attacks and bombings by restricting access to, and use of, weapons raises an important question: If the deprivation of weapons works in these areas, couldn't it also serve as an effective strategy in reducing gun violence?

THE AMERICAN EXPERIENCE

The United States has been exemplary in safeguarding its citizenry from a host of deadly threats: accidents, environmental hazards, pandemics, hijackings, bombings, even weapons of mass destruction. Through successful regulation of hazardous products—almost all with little to no public controversy—the different levels of government all work hand in hand to keep us safe from a plethora of dangers.²⁶ But when it comes to protecting us from gun violence, the government's record has been abysmal.²⁷ In fact, the United States is

in a class all by itself. No other advanced, Western democracy experiences the magnitude of gun violence that presently afflicts American society.²⁸ This is particularly true when it comes to mass shootings.²⁹

- The United States does little to regulate firearms, especially at the federal level.³⁰ While it goes to great lengths to restrict access to WMDs and IEDs, the same can't be said for its efforts to keep firearms out of the hands of high-risk individuals. Indeed, the American experience with gun control nationwide is so limited that it can actually be chronicled in a few bullet points:
- The National Firearms Act of 1934: Heavily regulated machine guns, short-barrel rifles and shotguns, and silencers.
 - The Federal Firearms Act of 1938: Established a federal licensing system to regulate manufacturers, importers, and dealers of firearms.
 - The Omnibus Crime Control and Safe Streets Act of 1968: Prohibited anyone under twenty-one years of age from purchasing a handgun.
 - The Gun Control Act of 1968: Required that all interstate firearms transfers or sales be made through a federally licensed firearms dealer and prohibited certain categories of people—felons (indicted or convicted), fugitives, drug abusers, mentally ill persons (as determined by adjudication), illegal aliens, dishonorably discharged servicemen, US-citizenship renouncers, and domestic abusers—from possessing firearms.³¹
 - The Firearm Owners Protection Act of 1986: Barred the purchase or transfer of automatic weapons without government approval.
 - The Undetectable Firearms Act of 1988: Required that all firearms have at least 3.7 oz. of metal that can be detected by a metal detector.
 - The Gun-Free School Zones Act of 1990: Criminalized possession or discharge of a firearm in a school zone.
 - The Brady Handgun Violence Prevention Act of 1993: Required

- that anyone attempting to purchase a firearm from a federally licensed dealer pass a background check.³²
- The Federal Assault Weapons Ban of 1994: Banned the sale and possession of semiautomatic assault weapons and extended-capacity magazines not grandfathered prior to the enactment of the law.³³

Of all of these measures, the National Firearms Act of 1934 and the Assault Weapons Ban of 1994 (AWB) were the only ones instituted primarily in an effort to reduce the carnage of mass shootings. The former was passed in response to a series of bloody gangland executions, including the infamous 1929 St. Valentine's Day massacre in Chicago.³⁴ While there are still machine guns in circulation, the National Firearm Act, in conjunction with the Firearm Owners Protection Act of 1986, sharply cut the availability of machine guns, which likely explains the complete elimination of massacres perpetrated with such automatic-fire weapons.

Like the National Firearms Act, the AWB was introduced following several high-profile mass shootings in the early 1990s: the Luby's restaurant, 101 California Street office complex, and Long Island Railroad train car massacres.³⁵ Signed into law by President Bill Clinton, the AWB went into effect on September 13, 1994. At the insistence of the gun-rights lobby, however, the bill contained a ten-year sunset provision. As Congress never renewed the ban, it automatically expired on September 13, 2004.

The decade the law was in effect nonetheless resulted in a unique experiment, allowing us to discern what impact, if any, the ban had on gun violence in general and mass shootings in particular. As to the former, the academic consensus seems to be that the AWB had a minimal impact on reducing violent crime.³⁶ This hardly comes as a surprise. After all, most crimes don't involve assault weapons. The real test should be: Did it succeed in its intended purpose of reducing rampage violence? The answer is a resounding yes.

Let's take a closer look. The best way to assess the impact of something is to conduct what, in social science, we commonly refer to as a time-series analysis. Basically, that's a fancy name for a before-and-after test. Figures 7.1

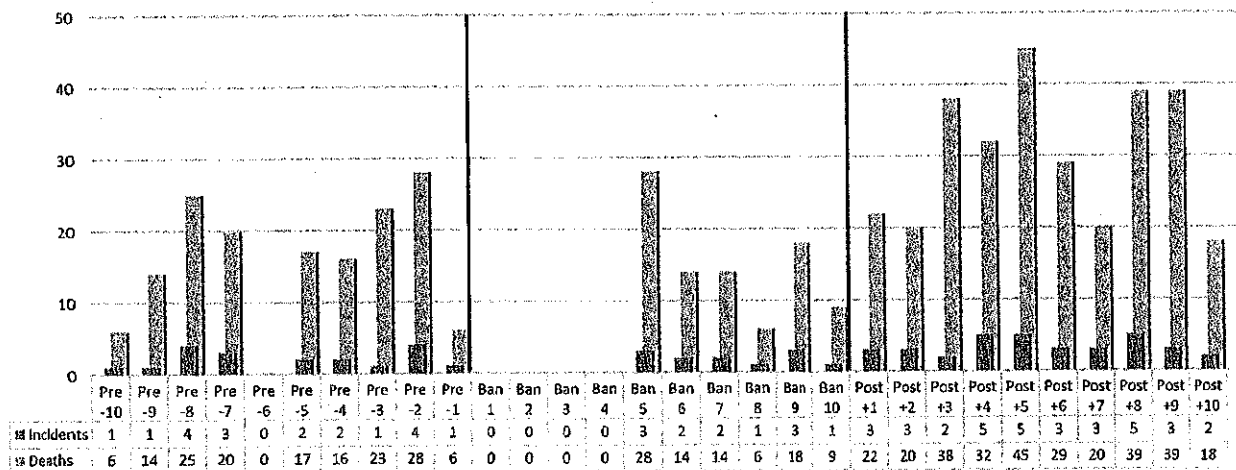


Fig. 7.1. Gun Massacres Before, During, and After the Assault Weapons Ban of 1994.

Note: The lines in the graph demarcate the start and end points of the Assault Weapons Ban, which was in effect from September 13, 1994, through September 12, 2004. The data are drawn from Table 3.2.

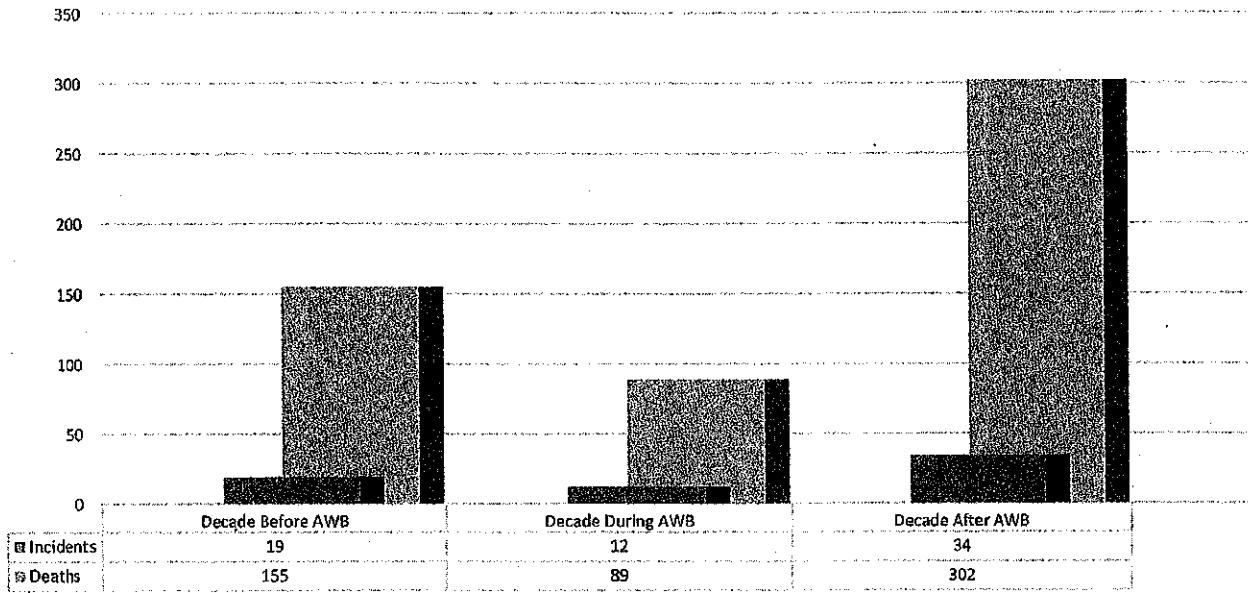


Fig. 7.2. Gun Massacres by Decade Before, During, and After the Assault Weapons Ban of 1994.
 Note: The Assault Weapons Ban was in effect from September 13, 1994, through September 12, 2004.
 The data are drawn from Table 3.2.

and 7.2 provide a look at the before-and-after pictures. In the decade prior to the enactment of the AWB, the United States experienced nineteen gun massacres that resulted in 155 cumulative deaths, for an average death toll of 8.2 fatalities per incident. During the ten-year period that the AWB was in effect, the numbers declined substantially, with only twelve gun massacres, resulting in eighty-nine deaths, for an average of 7.4 fatalities per incident.³⁷ What's particularly astounding about this time period is that during the first four and a half years of the ban, there wasn't a single gun massacre in the United States. Not one. This is unprecedented in modern American history.³⁸ Since 1966, the longest streaks without a gun massacre prior to era of the AWB were two instances of consecutive years (1969–1970 and 1979–1980).³⁹ Then, all of a sudden, from September 1994 to April 1999, the country experienced a long calm. As further evidence of the AWB's effectiveness, once it expired, rampages returned with a vengeance. In the ten years after the ban, the number of gun massacres nearly tripled to thirty-four incidents, sending the total number of deaths skyrocketing to 302, for an average of 8.9 fatalities per incident.⁴⁰ These numbers paint a clear picture: America's experiment, while short-lived, was also extremely successful.⁴¹

ZEROING OUT GUN MASSACRES

The biggest takeaway from America's experience with a ban on assault weapons and extended-capacity magazines is that gun-control legislation can save lives. But is there a way to get to zero? Is there a way to eliminate gun massacres once and for all? For that, we have to look overseas for insights.

One of the biggest obstacles to successful gun control is the ability to transport firearms across open, contiguous borders. In the United States, it's a problem that allows guns to flow freely from states with lax laws into states with strict laws. A common complaint frequently leveled by elected officials in places like California, Illinois, Maryland, New York, and Massachusetts is that people just need to drive across a state line and they can readily obtain firearms that they can then easily—if perhaps illegally—bring back into their jurisdictions.⁴² That

If history is a guide, then it seems likely that the attack on Sandy Hook is the start of the next major reform in gun safety. What is arguably the most disturbing shooting in American history kick-started a national dialogue on firearms and it prompted President Obama's *Now Is the Time* initiative for reducing the carnage of rampage violence. What we don't know is what will be the subsequent tragedy that jolts Congress out of its complacency. But sadly it will likely take another gun massacre on par with Newtown before change is enacted.

As those who fought for automobile and gun safety in the past cases attest, now might not be the time, but soon it will be.

THE WAY FORWARD

One of the criticisms that President Obama's *Now Is the Time* agenda continues to face is that, considering it was a plan occasioned by the Newtown massacre, its implementation would likely have not stopped Adam Lanza's attack.³⁵ Recalling the three main components of the initiative—universal background checks, an assault weapons ban, and a crackdown on illegal gun trafficking and straw purchases—opponents note that none of these would've kept Lanza from getting his hands on firearms. For starters, the guns used in the attack were all legally acquired by his mother after she passed a background check. Moreover, while an assault weapons ban might stem the manufacture of certain military-style rifles in the future, the president's current proposal (like the 1994 ban) would grandfather older models already in circulation, meaning that the AR-15 used by Lanza would have been legal. And, as the AR-15 was not straw-purchased for him, tighter enforcement of gun-trafficking laws also would have not prevented the Sandy Hook slayings.

The Obama administration's plan is a good starting point—especially for purposes of curbing gun violence in general. There are obviously scores of firearms that are employed by criminals that have been obtained without background checks or through illegal transactions.³⁶ In addition, while closing the gun-show loophole wouldn't have kept firearms out of Adam Lanza's hands, other rampage

gunmen like the Columbine killers, who exploited this loophole, would have been prevented from acquiring weapons.³⁷ Wanting to prevent another circumvention of the Brady Act is certainly a wise policy position. Furthermore, going forward, a ban on assault weapons—even one with gaping loopholes—is still likely to stem some of the bloodshed of rampage violence, as the 1994 AWB did. So, no matter how you see it, the president's proposals are, overall, solid ideas.

However, if the federal government is serious about addressing mass shootings, it must do more. That means instituting gun-safety measures that will go well beyond those that form the centerpiece of the *Now Is the Time* initiative. Toward this end, there are eight reforms that can be powerful forces in breaking the trinity of rampage violence through weapons deprivation.

1. *Banning and buying back all extended-capacity magazines.* Some gun-control advocates might envision an America where all assault weapons—and perhaps all polymer guns—are banned. Given that there's currently at least one gun in circulation for every American in the population, this is a pipe dream.³⁸ But there is one measure—controversial as it may be—that, if it were to be implemented, would sharply curtail rampage violence: a ban on extended-capacity magazines. Recall from chapter 6, the factor most associated with high death tolls in gun massacres is the use of a magazine holding more than ten bullets. If such magazines were completely removed from circulation, the bloodshed would be drastically reduced. Nothing facilitates a shooter's ability to spray people with bullets more than being armed with a firearm equipped with twenty, thirty, and, in the case of James Holmes, one hundred bullets. No one needs that kind of capability. Not even for self-defense.³⁹

To do this, however, would entail more than just a ban on extended-capacity magazines. It would require a mandatory buy-back program, like Australia's, that would recoup magazines that were not retrofitted to a ten-round cap. Bans are sub-optimal if prohibited items are grandfathered, allowing those already possessed by lawful owners to remain in circulation. At

usatoday.com/story/news/nation/2013/12/03/fbi-mass-killing-data-accurate/3666953 (accessed December 16, 2014).

02. Jason Kissner, "The Sandy Hook School Massacre and FBI Data Anomalies," *Global Research Newsletter*, September 27, 2014, <http://www.globalresearch.ca/sandy-hook-school-massacre-and-fbi-data-anomalies/5404658> (accessed April 30, 2015).

03. From 1976 to 2011, eighty-seven gun massacres resulting in the murder of sixty or more victims were cataloged in the SHR data sets. Of those, twenty-three were erroneous. That means only sixty-four of the high-fatality mass shootings in the SHR data sets were verifiable. That's an error rate of 26 percent. But that speaks only to erroneous incidents entered into the system. There were also nineteen gun massacres I documented in table 3.2 that were omitted from the SHR data sets. When those missing incidents are accounted for, the error rate jumps to 40 percent. In other words, the accuracy rate for gun massacres in the SHR data sets is only 60 percent. Similarly, *USA Today*, in its own examination of mass killings since 2006, found that the SHR data sets had an accuracy rate of only 57 percent. Meghan Hoyer, "In FBI Murder Data, Mass Killings Often Go Missing," *USA Today*, September 10, 2014, <http://www.usatoday.com/story/news/nation/2014/09/10/mass-killings-missing-data/12990815> (accessed December 16, 2014).

04. In all fairness, Fox has acknowledged the limitations of working with SHR data. Fox has introduced a few statistical corrections to the overall data set, but none of the techniques that he recommends for filling in the gaps can generate accurate numbers pertaining to gun massacres. James Alan Fox, "Missing Data Problems in the SHR: Impugning Offender and Relationship Characteristics," *Homicide Studies* 8 (August 2004): 214-54.

05. John Lott is certainly a polemic figure in the gun debate, often referred to as a "discredited scholar" and even accused of unethical conduct. For more on the controversies surrounding Lott, see chapter 5. Also, see Evan Defilippis and David Hughes, "Shooting Down the Gun Lobby's Favorite 'Academic': A Lott of Lies," *Armed with Reason*, December 1, 2014, <http://www.armedwithreason.com/shooting-down-the-gun-lobbys-favorite-academic-a-lot-of-lies> (accessed December 16, 2014).

06. The argument that an increase in gun ownership results in less crime is based predominantly on John Lott, *More Guns, Less Crime: Understanding Crime and Gun Control Laws*, 3rd ed. (Chicago: University of Chicago Press, 2000).

07. Lott's report utilized the same fatality threshold as the Everytown report: a minimum of four victims shot to death. John R. Lott Jr., *The Myths about Mass Public Shootings: Analysis*, Report of the Crime Prevention Research Center.

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October 9, 2014, p. 4, <http://crimepreventionresearchcenter.org/wp-content/uploads/2014/10/CPRC-Mass-Shooting-Analysis-Bloomberg2.pdf> (accessed October 27, 2014).

68. *Ibid.*, p. 5.

69. *Ibid.*, p. 19.

70. Beck also cites the research of criminologist Grant Duwe, who suggests that mass shootings might have actually decreased in the recent past. As the *Los Angeles Times* noted, "The 26 public shooting massacres [Duwe] tallied between 2000 and 2009 were significantly down from the 43 cases he counted in the 1990s." Matt Pearce, "2012 Is Tragic, but Mass Shootings Not Increasing, Experts Say," *Los Angeles Times*, December 18, 2012, <http://articles.latimes.com/2012/dec/18/nation/la-na-nn-mass-shootings-common-20121218> (accessed October 27, 2014). Unlike Fox, Duwe excludes certain mass shootings that were motivated by criminal enterprise or occurred in private, making his conclusions subject to some of the same limitations associated with the *Mother Jones* analysis.

71. "Findings of Fact, Conclusions of Law, and Order," *Colorado Outfitters Association et al. v. Hickenlooper*, Civil Action No. 13-cv-01300-MSK-MJW, US District Court for the District of Colorado, June 26, 2014, <http://michellawyers.com/wp-content/uploads/2013/05/Cooke-v-Hickenlooper-Findings-of-Fact-Conclusions-of-Law-and-Order.pdf> (accessed November 23, 2014).

72. "Reporter's Transcript: Trial to Court—Day Three," *Colorado Outfitters Association et al. v. Hickenlooper*, Civil Action No. 13-cv-01300-MSK-MJW, US District Court for the District of Colorado, April 2, 2014, p. 529, <http://michelawyers.com/wp-content/uploads/2013/05/Cooke-v-Hickenlooper-Reporters-Transcript-Trial-to-Court-Day-Three.pdf> (accessed November 23, 2014). Klack elaborated on his reasoning for opposing a ban on magazine capacity in a *Wall Street Journal* op-ed:

The availability of large-capacity magazines is certainly irrelevant to ordinary gun violence, which usually involves few or no shots fired, but it is even irrelevant to virtually all mass shootings, because the shooters either have multiple guns, making it easy to fire many rounds without reloading, or they have ample time and opportunity to reload because there is no one present willing to stop them while they reload. . . .

When there are willing interveners, it limits how much death and injury a shooter can inflict with the initial magazine; the smaller the magazine, the fewer the victims. Unfortunately, these conditions almost never prevail in mass shootings. . . .

Any restrictions that limit the availability of guns for criminal purposes

also limit their availability for self-protection. . . . Making guns unavailable for self-defense can therefore cost lives, and this cost must be taken into account when considering the possible slight benefit of measures that would prevent only the rarest of crimes.

83. Gary Kleck, "Mass Shootings Aren't the Real Gun Problem," *Wall Street Journal*, January 15, 2011, <http://www.wsj.com/articles/SB10001424052748708959104576081968062180664> (accessed November 23, 2014).

84. Kleck has served as an expert witness in at least five other gun rights cases: *Hall v. District of Columbia*, *Fyock v. Sunnyvale*, *San Francisco Veteran Police Officers Association v. San Francisco*, *Tandy v. O'Malley*, and *Shaw v. Malloy*. See "Reporter's Transcript: Trial to Court—Day Three," pp. 582–83.

85. Gary Kleck, *Targeting Guns: Firearms and Their Control* (Hawthorne, NY: Aldine de Gruyter, 1997), pp. 124–25.

86. "Reporter's Transcript: Trial to Court—Day Three," p. 529.

87. *Ibid.*

88. *Ibid.*, p. 580.

89. "Reporter's Transcript: Trial to Court—Day Five," *Colorado Outfitters Association et al. v. Hickenlooper*, Civil Action No. 13-cv-01300-MSK-MJW, US District Court for the District of Colorado, April 4, 2014, p. 975 (emphasis added), <http://michellawyers.com/wp-content/uploads/2013/05/Cooke-v-Hickenlooper-Reporters-Transcript-Trial-to-Court-Day-Five.pdf> (accessed November 23, 2014).

90. *Ibid.*, pp. 977–78.

91. The forty-five-minute time frame was reported in Megan Gallegos, "Data Questioned in Gun Control Trial," *Courthouse News Service*, April 6, 2014, <http://www.courthousenews.com/2014/04/06/66817.htm> (accessed November 23, 2014).

92. "Reporter's Transcript: Trial to Court—Day Five," p. 993.

93. *Ibid.*, p. 995.

94. "Findings of Fact, Conclusions of Law, and Order," p. 35. In fact, the judge's opinion upholding Colorado's law noted, "The General Assembly considered evidence that mass shootings occur with alarming frequency and often involve use of large-capacity magazines." *Ibid.*, p. 32. In March 2016, the US Court of Appeals for the Tenth Circuit vacated the district court's ruling on the grounds that the plaintiffs lacked standing to bring their legal action. The result was the same: the lawsuit was dismissed. *Colorado Outfitters Association et al. v. Hickenlooper*, Nos. 2:13-1290 and 14-1292, March 22, 2016, <https://www.ca10.uscourts.gov/pinions/14/14-1290.pdf> (accessed April 17, 2016).

95. Because research funding was not available to me, I didn't have the sources to search out and catalog every mass shooting—at least four people shot in

a single incident—that occurred in the United States since 1966. Just tracking down the mass shootings where five people were shot to death would have likely more than doubled my data set. USA Today found a similar pattern. Between January 1, 2006, and June 30, 2015, the newspaper identified 39 mass shootings resulting in six or more deaths. Shifting the baseline to five or more deaths increased the data set by more than double (42 additional incidents), to 81 such mass shootings. When the newspaper included shootings resulting in four or more deaths, the tally jumped by 130 incidents to 211 total mass shootings. The USA Today mass murder data set can be accessed at <http://www.usatoday.com/story/news/nation/2013/09/16/mass-killings-data-map/2820423> (accessed December 13, 2015).

85. As figure 3.1 illustrates, there were three quasi-flatline periods when total deaths in gun massacres were accumulating at a rate of zero or close to zero (1968–1972, 1977–1980, and 1993–1998). The past decade, however, has exhibited no such pattern.

86. The ten-year period 1996–2005 was the decade with the least number of gun massacres as well as the least number of cumulative deaths resulting from such attacks. A possible explanation for this decline is offered in chapter 7.

87. By "five-plus-shooting-year," I mean a calendar year with five or more gun massacres. Similarly, by "four-plus-shooting-year," I mean a calendar year with four or more gun massacres.

88. Gary Fields and Cameron McWhirter, "In Medical Triumph, Homicides Fall Despite Soaring Gun Violence," *Wall Street Journal*, December 8, 2012, <http://www.wsj.com/articles/SB10001424127887324712504578131560684277812> (accessed February 10, 2015).

89. Since 1973, the National Opinion Research Center at the University of Chicago has been surveying how many households have firearms. These gun-ownership rates are compiled roughly every two years by the General Social Survey. The data from 1973 to 2012 are available in Tom W. Smith, Faith Loken, and Jaesok Son, *Gun Ownership in the United States: Measurement Issues and Trends*, General Social Survey Methodological Report No. 123 (Chicago: National Opinion Research Center, 2014), <http://publicdata.norc.uchicago.edu/documents/MTRT/MR123%20Gun%20Ownership.pdf> (accessed March 17, 2015). The data for 2014 are reported in "Gun Ownership among Americans at a Record Low," Survey Finds," *Chicago Tribune*, March 10, 2015, <http://www.chicagotribune.com/news/local/breaking/chi-gun-ownership-record-low-20150310-story.html> (accessed March 17, 2015).

90. Since 1973, when the General Social Survey began probing household gun-ownership rates, the number of households in the United States has nearly doubled from 68 million to 124 million. Yet the absolute number of armed

households has remained fairly constant at an average of 40 million. The lowest number of households with guns was recorded in 1973 (approximately 33 million) and the highest number was recorded in 1989 (approximately 46 million). In 2014, the number of households in the United States with firearms is again roughly 40 million. Annual data on the number of households in the United States is drawn from "Number of Households in the U.S. from 1960 to 2013," *Statista*, <http://www.statista.com/statistics/138635/number-of-households-in-the-us> (accessed March 17, 2015). As the data only extends to 2013, the number of households in the United States in 2014 has been estimated to be 124 million, based on a projection from previous years. The absolute number of armed households was calculated by multiplying the number of households by the percentage of households that the General Social Survey found had guns at home.

91. Todd C. Frankel, "Why the CDC Still Isn't Researching Gun Violence, Despite the Ban Being Lifted Two Years Ago," *Washington Post*, January 14, 2015, <http://www.washingtonpost.com/news/storyline/wp/2015/01/14/why-the-cdc-still-isnt-researching-gun-violence-despite-the-ban-being-lifted-two-years-ago/> (accessed February 10, 2015).

92. The list of incidents is available online at massshootingtracker.org as well as the sub-Reddit [/t/GunsAreCool](http://t/GunsAreCool). Every incident listed in the Mass Shooting Tracker contains a link to a news media account that allows for verification of the shooting. The incidents—attacks involving four or more victims shot—include the gunmen in the number of people shot. Therefore, an unknown portion of these incidents actually involved three innocent people being shot alongside the perpetrator, for a total of four killed or wounded by gunfire.

93. National Weather Service, "How Dangerous Is Lightning?" <http://www.lightningsafety.noaa.gov/odds.htm> (accessed February 18, 2015).

94. In a December 2015 CBS News / *New York Times* poll conducted in the immediate aftermath of the terrorist attack in San Bernardino, respondents identified terrorism as the most important problem facing the United States. In addition, 79 percent of respondents indicated that they felt there would likely be another terrorist attack on American soil within the next few months. Anthony Salimano et al., "Poll: After San Bernardino Attacks, American Concern about Terror Threat Rises," CBS News, December 10, 2015, <http://www.cbsnews.com/news/poll-after-san-bernardino-attacks-american-concern-about-terror-threat-rises> (accessed December 13, 2015).

95. Klarer, "Trends in Terrorism," p. 80.

96. In the past decade, there have been seven lethal terrorist attacks perpetrated by jihadists on American soil. These seven attacks resulted in a total of forty-two fatalities: Louis Klarer, "Almost Every Fatal Terrorist Attack in America

Since 9/11 Has Involved Guns," *Vice*, December 4, 2015, <http://www.vice.com/read/almost-every-fatal-terrorist-attack-in-america-since-9-11-has-involved-guns-123> (accessed December 13, 2015). At a time when Americans are particularly concerned about becoming the victim of an ISIS-inspired act of terrorism, it's valuable to identify the odds of that happening. Basically, in any given year, the odds of being killed in an act of jihadist terrorism on American soil are around one in eighty million, an astronomically lesser chance than being killed in a mass shooting on American soil, which has a likelihood of about one in 700,000. These odds were calculated by dividing the current estimated population of the United States (320 million people) by the average number of people killed in the United States annually in jihadist terrorist attacks (four people) and mass shootings (433 people).

CHAPTER FOUR: UNSTABLE, ANGRY, ARMED MEN

1. Unless otherwise noted, all the information on the Virginia Tech massacre is drawn from Virginia Tech Review Panel, *Mass Shootings at Virginia Tech, April 16, 2007: Report of the Review Panel*, August 2007, <http://www.washingtonpost.com/wp-srv/metro/documents/vatechreport.pdf> (accessed May 2, 2015).

2. *Ibid.*, p. 34.
3. Quoted in *ibid.*, p. 35.
4. Quoted in *ibid.*, p. 37.
5. Quoted in *ibid.*, p. 42.
6. Quoted in *ibid.*, p. 50.
7. Quoted in *ibid.*, p. 50.
8. Quoted in *ibid.*, p. 47.
9. Quoted in *ibid.*, p. 48.
10. 18 USC § 922(g)(4).

11. Of the sixty-two occupants in the four classrooms Cho breached, only thirteen avoided being shot; ten of them as a result of jumping from the second-floor window and the other three presumably by playing dead.

12. Six more students were hurt as a result of jumping out of the windows in Professor's Librescu's classroom.

13. "Killer's Manifesto: 'You Forced Me into a Corner,'" CNN, April 18, 2007, <http://edition.cnn.com/2007/US/04/18/tech.shooting/index.html> (accessed May 2, 2015).

14. *Ibid.* See also M. Alex Johnson, "Gunman Sent Package to NBC News," NBC News, April 19, 2007, <http://www.nbcnews.com/id/18195423#V4C-Mymqkqk> (accessed May 2, 2015).

104. Ibid., p. 11. See also Paul Scarlata, "Shootout! Polymer Police Pistols," *Arizona Handguns*, September 24, 2010, http://www.handgunsmag.com/view_featured_handguns_pjosh_032707 (accessed July 26, 2015).
105. Barrett, *Glock*, p. 86.
106. Ibid., p. 14.
107. Ibid., p. 263.
108. Scarlata, "Shootout!"
109. Barrett, *Glock*, p. 32.
110. Ibid., pp. 56, 142-43.
111. Ibid., p. 192.
112. Ibid., p. 56.
113. Polymer has brought such distinct advantages to firearms that gun makers have begun manufacturing polymer revolvers. See Dick Meicall, "Polymer Revolution," *Shooting Times*, January 3, 2011, http://www.shootingtimes.com/articles/handgun_reviews_st_polymer_evo_201005 (accessed July 26, 2015).
114. Typically, .38-caliber revolvers hold five or six bullets in the cylinder.
115. Massad Ayoub, "Maximizing Semi-Auto Handgun Performance," *Daily Caller*, September 23, 2014, <http://dailycaller.com/2014/09/23/massad-ayoub-maximizing-semi-auto-handgun-performance> (accessed July 29, 2015). Ayoub takes an important point that, when calculating firing rates and reload times, one should not use best-case scenarios and world-record times. We should use reasonable, average times. As he notes, "World Champion Jerry Miculek is on record firing six shots from his 45 revolver, reloading with a moon clip, and firing six in an incredible 2.99 seconds overall. There is only one Jerry Miculek. Most folks take longer to recharge a wheel gun." Ibid.
116. Stokes, "AR-15 Is More Than a Gun."
117. This subsection has benefited from the thoughts of Kevin J. Ashton, including correspondence between us on his now-defunct blog. See Kevin Ashton, "The Physics of Mass Killing," January 24, 2013, archived at <http://web.archive.org/web/20150110031240/http://kevinjashton.com/2013/01/24/the-physics-of-mass-killing> (accessed July 29, 2015).
118. The details of the Tucson massacre are drawn from Gabrielle Giffords and Mark Kelly, *Enough: Our Fight to Keep America Safe from Gun Violence* (New York: Scribner, 2014), pp. 47-74.
119. Ibid.
120. "Mark Kelly Makes Case against High-Capacity Gun Magazines," ABC News, January 30, 2013, <http://abcnews.go.com/Politics/video/mark-kelly-makes-case-high-capacity-gun-magazines-18356932> (accessed July 29, 2015).
121. Giffords and Kelly, *Enough*, p. 68.

104. Reload time is calculated as beginning the moment the final bullet is fired and ending the moment the first reloaded bullet is chambered and fired.

105. The calculations in this section are informed by Ayoub, "Maximizing Semi-Auto Handgun Performance." See also Jim Wilson, "The Revolver Speed Load," *American Rifleman*, February 10, 2012, <http://www.americanrifleman.org/articles/2012/2/10/the-revolvers-speed-load> (accessed July 29, 2015); and Kenan Flasowski, "Semi-Automatic Handgun Reloading," *Shooting Illustrated*, October 25, 2012, <http://www.shootingillustrated.com/articles/2012/10/25/semi-automatic-handgun-reloading> (accessed July 29, 2015). For an article that suggests faster rates of fire than most firearms experts seem to endorse, see Brian Palmer, "How Many Times Can You Shoot a Handgun in Seven Minutes? More Than a Thousand," *Slate*, November 9, 2009, http://www.slate.com/articles/news_and_politics/explainer/2009/11/how_many_times_can_you_shoot_a_handgun_in_seven_minutes.html (accessed July 29, 2015).

106. Lynn Bartels, Kurtis Lee, and Joey Bunch, "Colorado Senate President John Morse, State Sen. Angela Giron Ousted," *Denver Post*, September 10, 2013, http://www.denverpost.com/breakingnews/ci_24066168/colorado-senate-president-john-morse-recalled-angela-giron (accessed July 31, 2015).

107. Eli Stokols, "Herpin Explains Why It Was a 'Good Thing' Holmes Had Large Ammo Magazine," *KVDR*, February 14, 2014, <http://kdr.com/2014/02/12/herpin-a-good-thing-that-james-holmes-had-100-round-magazine> (accessed July 31, 2015). See also Kurtis Lee, "Sen. Bernie Herpin Says 'Maybe a Good Thing' Aurora Theater Gunman Had 100-Round Magazine," *Denver Post*, February 12, 2014, <http://blogs.denverpost.com/thespot/2014/02/12/sen-bernie-herpin-says-maybe-good-thing-aurora-theater-gunman-100-round-magazine/105925> (accessed July 31, 2015). Herpin's repeal was defeated by the committee. Marc Stewart and Phil Tenser, "State Sen. Herpin That 'Maybe a Good Thing' That James Holmes Had a 100-Round Magazine," *KMGH*, February 12, 2014, <http://www.thedenverchannel.com/news/politics/state-sen-herpin-suggests-it-was-maybe-a-good-thing-that-james-holmes-had-a-100-round-magazine> (accessed July 31, 2015).

108. James Holmes discussed his shooting abilities in an interview with court-appointed psychiatrist Dr. William Reid. That conversation, which was videotaped, was played for the jury during Holmes's trial. See Jordan Steffan, "Aurora Theater Shooting Trial, the Latest from Day 22," *Denver Post*, June 1, 2015, http://www.denverpost.com/theater-shooting-trial/ci_28927922/aurora-theater-shooting-trial-latest-from-day-22 (accessed July 31, 2015).

109. Shortly after his gaffe, Herpin apologized to the victims' families: "There's nothing I can say to relieve their pain; I certainly didn't intend to add to their pain." Megan Schrader, "Republican Sen. Bernie Herpin Apologizes for

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'Insensitive' Gun Remark," *Gazette*, February 14, 2014, <http://gazette.com/republican-sen-bernie-herpin-apologizes-for-insensitive-gun-remark/article/1514605> (accessed July 31, 2015).

110. The use of the term *average* in this section is a reference to the mean average.

111. To the best of my knowledge, the impact of different types of firearms is rarely a topic of study. One notable exception is D. C. Reedy and C. S. Koper, "Impact of Handgun Types on Gun Assault Outcomes: A Comparison of Gun Assaults Involving Semiautomatic Pistols and Revolvers," *Injury Prevention* 9 (June 2003): 151-55. The Reedy and Koper article, while insightful, examines all types of criminal gun attacks that took place in one municipality: Jersey City, New Jersey. As such, its findings do not really apply to mass shootings.

112. The use of only revolvers produces an identical average. The use of only rifles results in an average seven deaths per incident. And the use of only shotguns results in the lowest recorded average of 6.7 deaths per incident.

113. Out of the 111 gun massacres since 1966, ninety-six were perpetrated by only one gunman and fifteen were perpetrated by multiple gunmen. Of those fifteen incidents, ten involved two shooters, one involved three shooters, three involved four shooters, and one involved more than four shooters.

114. Quoted in Stefan, "Aurora Theater Shooting Thal, the Latest from Day 22."

CHAPTER SEVEN: BREAKING THE TRINITY

1. The audio of Pacific Air Lines Flight 773's final transmission to Oakland Air Traffic Control is available at "Pacific Air Lines Flight 773 ATC Recording May 7, 1964," YouTube video, 0:35, posted by "starwastandude," March 29, 2013, <https://www.youtube.com/watch?v=L1WYLAeuq4w> (accessed December 11, 2015).

2. Civil Aeronautics Board, *Aircraft Accident Report: Pacific Air Lines, Inc., Fairchild F-27, N277OR, Near San Ramon, California, May 7, 1964*, November 2, 1964, [http://dolibrary.specialcollection.net/Document?db=DOTFAIRPLANE&ACCIDENTS&query=\(select+773\)](http://dolibrary.specialcollection.net/Document?db=DOTFAIRPLANE&ACCIDENTS&query=(select+773)) (accessed December 11, 2015).

3. *Ibid*.

4. One of the principal investigators of the crash of Pacific Air Lines Flight 773, Darrol Davison, in a KTYU "Second Look" news segment discussed how, in 1964, security provisions didn't exist to prohibit guns from being brought aboard airplanes. The news segment is available at "Pacific Air Lines Flight 773," YouTube video, 7:07, posted by "Tom Bailey," September 20, 2012, <https://www.youtube.com/watch?v=fpQu4Tjh-8Q> (accessed December 11, 2015).

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5. Jane Engle, "U.S. Aviation Security Timeline," *Los Angeles Times*, June 12, 2011, <http://articles.latimes.com/2011/jun/12/travel/la-tr-aviation-safety-timeline-20110612> (accessed December 11, 2015). See also Bryan Gardiner, "Off with Your Shoes: A Brief History of Airport Security," *Wired*, June 14, 2013, http://www.wired.com/2013/06/fa_planehijackings (accessed December 11, 2015).

6. Gun owners recall that in 1968 regulations were changed to prohibit carrying a firearm aboard an airplane, requiring that the weapon be checked in cargo-hold luggage. See, for example, "When Did Carrying Become Forbidden on Airplanes?" *High Road*, September 7, 2010, <http://www.thehighroad.org/archive/index.php/t540773.html> (accessed December 11, 2015).

7. Civil Aeronautics Board, *Aircraft Accident Report*.

8. "Investigations: Death Wish," *Time*, November 6, 1964, <http://content.time.com/time/magazine/article/0,9171,876374,00.html> (accessed December 11, 2015).

9. *Ibid*.

10. Wallace Turner, "Pilot Reported Calling, 'I've Been Shot,' Before Crash that Killed 44 on Coast," *New York Times*, May 6, 1964, <http://www.nytimes.com/1964/05/09/pilot-reported-calling-i-ve-been-shot-before-crash-that-killed-44-on-coast.html> (accessed December 11, 2015).

11. Civil Aeronautics Board, *Aircraft Accident Report*.

12. "Investigations: Death Wish."

13. Civil Aeronautics Board, *Aircraft Accident Report*.

14. For an excellent introduction to strategy, including a review of how discussion, defense, and disarmament relate to each other, see Thomas C. Schelling, *Arms and Influence*, rev. ed. (New Haven, CT: Yale University Press, 2008).

15. Keith B. Payne, *Deterrence in the Second Nuclear Age* (Lexington: University of Kentucky Press, 1996), p. 86. See also Michael Howard, "Lessons of the Cold War," *Survival* 36 (Winter 1994-95): 166.

16. Tom Walsh, "How's the Air up There?" *Barr's Monthlier Times Argus*, October 14, 2015, <http://www.timesargus.com/article/20151014/OPINION02/151019749> (accessed December 11, 2015).

17. Larry Pratt, "Strange Priorities," Gun Owners of America, October 2001, <http://www.gunowners.org/op0136.htm> (accessed December 11, 2015).

18. "Packing Heat on Planes," Fox News, February 8, 2007, <http://www.foxnews.com/story/2007/02/08/packing-heat-on-planes.html> (accessed December 11, 2015); Joe Sharkey, "Owners Argue Merits of Firearms on Airplanes," *New York Times*, January 2, 2012, <http://www.nytimes.com/2012/01/03/business/arguing-the-merits-of-guns-on-airplanes.html> (accessed December 11, 2015); Robert Farago, "As a Pilot, I Don't Understand the Reason Why We Can't Have

21. "Guns and Knives on Planes," Truth about Guns, February 1, 2012, <http://www.hertraboutguns.com/2012/02/robert-farago/as-a-pilot-i-don%E2%80%99t-stand-the-reason-why-we-can%E2%80%99t-have-firearms-and-knives-on-planes/> (accessed December 11, 2015); and Robert Farago, "U.S. Air Marshal System's Complete Disaster," Truth about Guns, August 18, 2015, <http://www.hertraboutguns.com/2015/08/robert-farago/u-s-air-marshal-system-a-complete-disaster> (accessed December 11, 2015).

22. Engle, "U.S. Aviation Security Timeline."

23. Lou Michel and Dan Herbeck, *American Terrorist: Timothy McVeigh and the Wichita City Bombing* (New York: Harper, 2001).

24. John Mueller and Mark G. Stewart, *Chasing Ghosts: The Policing of Terrorism* (New York: Oxford University Press, 2016), pp. 98–100.

25. National Forensic Science Technology Center, "A Simplified Guide to Explosives Analysis: Principles of Explosives Analysis," A Simplified Guide to Forensic Science, 2013, <http://www.forensicsciencesimplified.org/explosives/fingeres.html> (accessed December 11, 2015).

26. Louis Klarevas, "The Idiot Jihadist Next Door," *Foreign Policy*, December 1, 2011, <http://foreignpolicy.com/2011/12/01/the-idiot-jihadist-next-door> (accessed December 11, 2015).

27. Jana Winter, "Anatomy of a Bomb: An Inexpensive and Deadly Mishmash of Ingredients," Fox News, May 3, 2010, <http://www.foxnews.com/us/2010/05/03/anatomy-bomb.html> (accessed December 11, 2015); "Timeline—From Making a Car Bomb to Catching a Plane," *Reuters*, May 4, 2010, <http://www.reuters.com/article/timesquare-investigation-idUSN0411707720100504> (accessed December 11, 2015); and Peter Grier, "Times Square Bomb: Did Pakistan Taliban and Us 'C' Team?" *Christian Science Monitor*, May 10, 2010, <http://www.csmonitor.com/USA/2010/0510/Times-Square-bomb-Did-Pakistan-Taliban-send-its-C-team> (accessed December 11, 2015).

28. Louis Klarevas, "Bombing on the Analysis of the Times Square Bomb of," *Huffington Post*, May 25, 2011, http://www.huffingtonpost.com/louis-klarevas/bombing-on-the-analysis-o_b_565428.html (accessed December 11, 2015).

29. David Hemenway, *While We Were Sleeping: Success Stories in Injury and Violence Prevention* (Berkeley: University of California Press, 2009).

30. Daniel W. Webster and Jon S. Vernick, eds., *Reducing Gun Violence in America: Informing Policy with Evidence and Analysis* (Baltimore, MD: Johns Hopkins University Press, 2013), <http://home.uchicago.edu/judwigi/papers/Impact%20of%20Brady%20Act%202013.pdf> (accessed December 11, 2015).

31. Erin G. Richardson and David Hemenway, "Homicide, Suicide, and

Unintentional Firearm Fatality: Comparing the United States with Other High-Income Countries, 2003," *Journal of Trauma* 70 (January 2011): 238–43.

29. Sarah Kaplan, "American Exceptionalism and the 'Exceptionally American' Problem of Mass Shootings," *Washington Post*, August 27, 2015, <https://www.washingtonpost.com/news/morning-mix/wp/2015/08/27/american-exceptionalism-and-the-exceptionally-american-problem-of-mass-shootings> (accessed December 11, 2015).

30. David Hemenway, *Private Guns, Public Health* (Ann Arbor: University of Michigan Press, 2006).

31. The Gun Control Act of 1968 does not apply to "antique firearms" manufactured prior to 1899. For the statutory definition of "antique firearm," see 18 USC § 921(a)(16).

32. The Brady Handgun Violence Prevention Act of 1993 does not apply to "antique firearms" manufactured prior to 1899. For the statutory definition of "antique firearm," see 18 USC § 921(a)(16).

33. Hemenway, *Private Guns, Public Health*, pp. 209–12.

34. Bureau of Alcohol, Tobacco, Firearms, and Explosives, "National Firearms Act," ATF November 9, 2015, <https://www.atf.gov/rules-and-regulations/national-firearms-act> (accessed December 11, 2015).

35. Bruce H. Kobayashi and Joseph E. Olson, "In Re: 101 California Street: A Legal and Economic Analysis of Strict Liability for the Manufacture and Sale of 'Assault Weapons,'" *Stanford Law and Policy Review* 8 (Winter 1997): 41–51.

36. Christopher S. Koper, "America's Experience with the Federal Assault Weapons Ban, 1994–2004: Key Findings and Implications," in *Reducing Gun Violence in America: Informing Policy with Evidence and Analysis*, ed. Daniel W. Webster and Jon S. Vernick (Baltimore, MD: Johns Hopkins University Press, 2013), pp. 157–71, <http://home.uchicago.edu/judwigi/papers/Impact%20of%20Brady%20Act%202013.pdf> (accessed December 11, 2015).

37. Out of the twelve gun massacres that occurred while the AWB was in effect, three involved assault weapons and six involved extended-capacity magazines. I have been unable to uncover any evidence that any of these instruments were illegal under the AWB. In fact, most were grandfathered, meaning that they were exempted by the ban because they were legally in circulation prior to the AWB's enactment.

38. When viewed in terms of full calendar years, the massacre-free period ran five consecutive years, from 1994 to 1998, although it must be noted that the AWB was not in effect for most of 1994. There were also no gun massacres in 2001. When 2001 is combined with the four-and-a-half-year period without a high-fatality mass shooting from September 13, 1994, through April 20, 1999, we see that over half of the decade that the AWB was in effect was massacre-free.