

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

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Alan Kachalsky, Christina Nikolov, and :  
Second Amendment Foundation, :

Plaintiffs, :

-against- :

Susan Cacace, Jeffrey A. Cohen, and :  
County of Westchester, :

Defendants. :

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**Civil Action Number:  
10-cv-5413**

**(Hon. Cathy Seibel)**

**DECLARATION OF  
FRANKLIN E. ZIMRING**

Franklin E. Zimring, declares and states as follows, under penalties of perjury:

1. I am the William G. Simon Professor of Law, Wolfen Distinguished Scholar and Chair of the Criminal Justice Research Program at the University of California, Berkeley.

2. I have been studying the relationship between firearms and violence, strategies of firearms control, and patterns of gun commerce and civilian gun usage since 1967. I have served as director of research of the task force on firearms of the National Commission on the Causes and Prevention of Violence in 1968-1969 and as a firearms and federal criminal law expert for the National Commission on Reform of Federal Criminal Laws. I have published several empirical studies of firearms and violence and on gun control, and I have co-authored three books with firearms issues at their center, in 1969, 1986 and 1997. I was elected a Fellow of the American Academy of Criminology in 1993 and to the American Academy of Arts and Sciences in 1990. I have served as an expert on two topics: (1) the relationship between firearms and violence and (2) the

design and evaluation of firearms control. This declaration is on both topics. A full curriculum vitae is annexed hereto as Exhibit A.

3. I make this declaration in support of the State Defendants' cross-motion for summary judgment.

4. This declaration will summarize the empirical evidence and my expert opinions concerning the special risks of handguns and the external dangers of concealed weapons in public spaces.

**The Special Risks of Handguns.**

5. All forms of firearms are dangerous to life if they are used in assaults and robberies, but the handgun is the major hazard, particularly in big cities, because handguns are much more likely to be used in criminal violence than shotguns and rifles. Handguns are slightly more than one-third of all firearms owned by civilians in the United States, but they are used in more than 75% of all gun killings and in even larger portions of robberies. The handgun is small, easy to carry and conceal, and deadly at short range. Handguns are the priority concern of law enforcement everywhere.<sup>1</sup>

6. Most firearms assaults and almost all firearms robberies take place outside the offender's home, so that using a firearm in crime requires transporting it outside the home. But carrying a loaded shotgun to a commercial location for a robbery or to somebody else's home or on the street while looking for a target is a warning to potential

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<sup>1</sup> Zimring, Franklin E. and Gordon Hawkins, Crime Is Not the Problem: Lethal Violence in America, New York: Oxford University Press (1997), Chapters 1, 3 and 7. See also Zimring, Franklin E. and Gordon Hawkins, The Citizen's Guide to Gun Control, New York: McMillan (1986), at Chapter 5, p. 38.

victims and a red flag to passersby and to any law enforcement personnel that the armed pedestrian is not on an ordinary errand. Other pedestrians and motorists can avoid the visibly armed person and police can ask questions and subject the visibly armed person to identity checks and surveillance.

7. The person with a concealed handgun in his pocket generates no special notice until the weapon appears at his criminal destination. The robber or assaulter looks no different from any other user of common public spaces. And this ability to escape special scrutiny is the advantage that makes the concealed handgun into the dominant weapon of choice for gun criminals and a special danger to government efforts to keep public spaces safe and secure.

8. The necessity of carrying guns to crime sites without detection is one reason why the National Violence Commission research reported that 86% of all the firearms used in all assaults were handguns and an astonishing 96% of all firearms robberies were committed with handguns in the ten large cities the task force surveyed.<sup>2</sup> What that robbery percentage means is that the problem of gun robbery in American cities is almost exclusively a problem of concealable handguns.

9. The special dangers of handgun use in violence have produced a wide variety of different legal strategies to minimize the rate of handgun misuse. Many nations attempt to restrict both the number of such firearms owned by citizens and reasons why citizens might be permitted to own them. New York, outside New York City, allows most competent adults to own handguns if they have no major record of criminal conviction or mental health-related disqualification. Because New York does not restrict

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<sup>2</sup> Newton, George and Franklin E. Zimring (1969), *Firearms and Violence in American Life*, at Figure 8-1, p. 49.

eligibility of most citizens to own handguns or the volume of guns owned, the state's first line of defense against the use of such weapons in street crime is a series of restrictions on the time, place and manner of handgun use.

10. New York law prohibits the carrying of concealed handguns without a license. The state law delegates the authority to establish standards and make individual decisions to county licensing officials who, throughout most of the state are state court judges. The goal of this and other such provisions is to distinguish uses of handguns that do not pose a special threat to the public (such as storage and use in the owner's home) from uses that pose greater threats to public safety (such as the carrying of concealed weapons in streets and public places). The special danger of a hidden handgun is that it can be used against persons in public robbery and assault. The concealment of a handgun means that other citizens and police don't know it is in their shared space until it is brandished.

11. Not all of those carrying concealed handguns intend to use them as instruments of public harm. But the existence of a loaded handgun in public is a hidden danger which New York attempts to address by controlling the number of guns carried and screening those who are licensed to carry handguns in public. A critical dimension of the policy is restricting the population of hidden guns.

**The External Dangers of Concealed Weapons in Public Spaces.**

12. The right of home possession announced by the Supreme Court does not require citizens to purchase and own handguns in their houses but rather confers on individuals the right to decide for themselves if the benefits of gun possession in the home outweigh the risks. So the Second Amendment liberty announced in Heller puts the

homeowner in a position of power to determine what risks to take. As long as the guns owned in the home stay there, Mr. Smith's gun is no risk to his neighbors. But the presence of loaded and concealed guns in public spaces is an act where Mr. Smith's decision will generate risks to others who use the streets, and go to public accommodations. And if the guns are concealed, the people who are exposed to the public place risks won't have notice or any ability to avoid the armed persons they may confront.

13. This extension of hidden guns into shared public environments means that the implications of concealed carrying are spread over the community of users of public space, and the best method of deciding policy is a collective determination of whether concealed weapon carrying should be allowed and under what circumstances.

14. So government must be involved in public space regulation in a way that is not necessary in the privacy of individual homes. When armed citizens carry guns in public, they alter the public environment for all other users. This is why concealed weapons laws are the oldest form of legal regulation of gun use and the most common. There is a public choice that must be made about whether to reduce the number of persons carrying concealed weapons by limiting licenses. Without a definitive rule on the standards for licenses, there is no way that public preferences for or against high rates of hidden guns in public can be translated into a regulatory framework.

I declare under penalty of perjury that the forgoing is true and correct.

Executed at New York, N.Y., this 25<sup>th</sup> day of January, 2011.

  
FRANKLIN E. ZIMRING



**FRANKLIN E. ZIMRING**

13 October 2008

**PERSONAL** Born 1942, Los Angeles, California; married; two adult children.

**EDUCATION** Los Angeles Public Schools; B.A. with Distinction, Wayne State University (1963); J.D. *cum laude*, University of Chicago (1967).

**PRESENT POSITION** **WILLIAM G. SIMON PROFESSOR OF LAW; WOLFEN DISTINGUISHED SCHOLAR** and **CHAIR**, Criminal Justice Research Program, Institute for Legal Research (formerly the Earl Warren Legal Institute), Boalt Hall School of Law, University of California, Berkeley.

**OTHER WORK** **DIRECTOR**, Earl Warren Legal Institute (1983-2002).

**FACULTY OF LAW**, University of Chicago (1967-85): **KARL N. LLEWELLYN PROFESSOR OF JURISPRUDENCE** (1982-85) and **DIRECTOR**, Center for Studies in Criminal Justice (1975-85).

**MEMBER**, MacArthur Foundation Research Program on Adolescent Development and Juvenile Justice (1997-2007).

**FELLOW**, Center for Advanced Studies in the Behavioral Sciences, Stanford, California (1979-80).

**RAPPORTEUR**, Task Force on Sentencing Policy for Young Offenders, Twentieth Century Fund (1978).

**VISITING PROFESSOR OF LAW**, University of California, Irvine (2004), University of South Africa (1993), University of California, Berkeley (1983-85), Yale University (1973), and University of Pennsylvania (1972).

**DIRECTOR OF RESEARCH**, Task Force on Firearms, National Commission on the Causes and Prevention of Violence (1968-69).

**CONSULTANT**: American Bar Foundation, Police Foundation, National Commission on Reform of Federal Criminal Laws, Institute for Defense Analysis, Department of Justice, Rand Corporation, Abt Associates, Federal Parole Commission, Federal Bureau of Prisons, Federal Bureau of Investigation, General Accounting Office, Canadian Institute for Advanced Studies, States of Alaska, California, Nebraska, Illinois, Virginia, and Washington, Cities of Chicago, New York and San Francisco.

**ADVISORY POSTS** **CURRENT**: Campaign for Youth Justice (2007-); California Attorney General's Office (2001-); National Policy Committee, American Society of Criminology (1989-91 and 1993-); Board of Directors, Illinois Youth Services Association (Honorary) (1977-); Advisory Committee, National Pre-Trial Services Association (1975-).

**PAST**: Asian Pacific Violence Prevention Center, National Council on Crime and Delinquency (2001-2005); Advisory Committee, Sentencing Project, American Law Institute (2001-2003); Criminal Justice Policy Group, Advisory Board, National Campaign Against Youth Violence (2000-2002); Expert Panel Member, U.S. Department of Transportation, National Highway Traffic Safety Administration Panel on Crash Risk of Alcohol-Involved Driving (1994-2002); Expert Panel Member, U.S. Department of Education Panel on Safe, Disciplined, and Drug-Free Schools (1998-2001); National Research Council Panel on Juvenile Crime: Prevention, Intervention, and Control (1998-2001); Advisory Board, Center on Crime, Communities, and Culture, Open Society Institute (1998-2000); Affiliated Expert, Center for Gun Policy and Research, Johns Hopkins University (1995-98); Gun Violence Advisory Group, American College of Physicians (1995-98); Advisory Committee, Violent and Serious Juvenile Offender Project, National Council on Crime and Delinquency (1994-1997); Panel on NIH Research on Anti-Social, Aggressive, and Violence-Related Behaviors and their Consequences (1997-); Task Force on Future Directions for the National

Archive of Criminal Justice Data, Bureau of Justice Statistics, Department of Justice (1995); Panel on Antisocial, Aggressive, and Violence-Related Behaviors and Their Consequences, National Institute of Health (1993-94); Panel on Understanding and Control of Violent Behavior, National Research Council, National Academy of Sciences (1989-91); Research Advisory Committee, California Attorney General (1983-1990); Law Enforcement Committee, California Governor's Policy Council on Drug and Alcohol Abuse (1989-91); National Research Council, Working Group Crime and Violence (1985-88); Internal Revenue Service, Advisory Group Taxpayer Compliance Research (1983-87); Board of Directors, Eisenhower Foundation for the Prevention of Violence (1981-84); U.S. Secret Service Advisory Committee on Protection of the President (1981-82); Assembly of Behavioral and Social Sciences, National Academy of Sciences (1977-80); Executive Committee, Illinois Academy of Criminology (1968-71, 1977-78); Advisory Committee, Assessment Center for Alternatives to Juvenile Courts (1977-78) (chairman); Advisory Committee, Law and Social Science Program, National Science Foundation (1976-77); Advisory Committee, Vera Institute of Justice, Court Employment Project Evaluation (1976-77) (chairman); Panel on Deterrence and Incapacitation, National Academy of Sciences (1975-77); Legal Committee, American Civil Liberties Union, Illinois Branch (1967-70).

**EDITORIAL  
BOARDS**

CURRENT: Punishment and Society (1998-); Crime and Justice: An Annual Review of Research (1979-90, 1998-); Western Criminology Review (1997-); Buffalo Criminal Law Review (1996-); Homicide Studies (1996-); The Prison Journal (1992-); Journal of Research in Crime and Delinquency (1976-84, 1990-); Federal Sentencing Reporter (1988-); Studies in Crime and Justice (1980-); Journal of Criminal Justice (1978-).

PAST: Law and Society Review (1988-1998); British Journal of Criminology (1988-1996); Journal of Quantitative Criminology (1984-1989); Ethics, (1985-87); Encyclopedia of Crime and Justice (1979-83); Evaluation Quarterly (1976-84); Law and Behavior (1976-85).

**HONORS**

Edwin H. Sutherland Award, American Society of Criminology (2007); August Vollmer Award, American Society of Criminology (2006); Notable Book of the Year, *The Economist* (2003); Society of Research on Adolescence, Biannual Book Award (2002); Pass Award, National Council on Crime and Delinquency (1999); Donald Cressey Award, National Council on Crime and Delinquency (1995); Choice, Outstanding Academic Book Citation (1995 and 1982); Paul Tappan Award, Western Society of Criminology (1994); Fellow, American Society of Criminology (1993); Distinguished Alumni Award, Wayne State University (1989); Bustin Prize for Legal Research, University of Chicago (1981); Cooley Lecturer, University of Michigan Law School (1980); National Distinguished Alumnus Award, Delta-Sigma-Rho (1977); Ten Law Professors Who Shape the Future, *Time Magazine* (1977); Civilian Award of Merit for 1975, Chicago Crime Commission; Gavel Award Certificate of Merit, American Bar Association (1973).

**MEMBER**

American Academy of Arts and Sciences (1990-); California Bar Association (1968-); Order of the Coif (1967-); Phi Beta Kappa (1964-).

**BOOKS AND MONOGRAPHS**

(Chinese translation) *The Contradictions of American Capital Punishment*, Shanghai Joint Publishing (2008; English version 2003)).

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(with George P. Newton) *Firearms and Violence in American Life*, Task Force Report to the National Commission on the Causes and Prevention of Violence, Washington, D.C.: U.S. Government Printing Office (1969).

#### SCHOLARLY ARTICLES

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(with Gordon Hawkins) Is American Violence a Crime Problem?, *Duke Law Journal* 46:43 (1996); also in Edward Rubin, ed., *Minimizing Harm as a Goal for Crime Policy in California*, California Policy Seminar Policy Research Program Report (1997).

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(with Gordon Hawkins) Toward a Principled Basis for Federal Criminal Legislation, *The Annals of the American Academy of Political and Social Science* 543:15 (1996).

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