

BEFORE HONORABLE DANA M. SABRAW, JUDGE PRESIDING

DEFENDANTS.

SAN DIEGO, CALIFORNIA  
FEBRUARY 10, 2023  
1:30 P.M. CALENDAR

**MOTION HEARING**

LEE ANN PENCE,  
OFFICIAL COURT REPORTER  
UNITED STATES COURTHOUSE  
333 WEST BROADWAY, ROOM 1393  
SAN DIEGO, CALIFORNIA 92101

COUNSEL APPEARING:

FOR PLAINTIFF:

BENBROOK LAW GROUP, PC  
BY: BRADLEY A. BENBROOK, ESQ.  
701 UNIVERSITY AVENUE SUITE 106  
SACRAMENTO, CALIFORNIA 95825

FOR DEFENDANT:

ATTORNEY GENERAL  
STATE OF CALIFORNIA  
OFFICE OF THE ATTORNEY GENERAL  
BY: GABRIELLE D. BOUTIN, ESQ.  
600 WEST BROADWAY SUITE 1800  
SAN DIEGO, CALIFORNIA 92101

**SAN DIEGO, CALIFORNIA - FRIDAY, FEBRUARY 10, 2023 - 1:30 P.M.**

\* \* \*

**THE CLERK:** CALLING NO. 17 ON THE CALENDAR, CASE NO 20CV2910, RENNA ET AL V BECERRA ET AL.

**THE COURT:** GOOD AFTERNOON. MAY I HAVE APPEARANCES, PLEASE?

**MR. BENBROOK:** GOOD AFTERNOON, YOUR HONOR. BRADLEY BENBROOK FOR THE RENNA PLAINTIFFS.

**THE COURT:** THANK YOU.

**MS. BOUTIN:** GOOD AFTERNOON, YOUR HONOR. GABRIELLE BOUTIN ON BEHALF OF THE ATTORNEY GENERAL.

**THE COURT:** GOOD AFTERNOON.

I HAVE READ EVERYTHING, I APPRECIATE THE BRIEFING. I HAVE A COUPLE OF PRELIMINARY QUESTIONS.

PRELIMINARY INJUNCTION VERSUS SUMMARY JUDGMENT. I UNDERSTAND THE PLAINTIFFS WOULD BE CONTENT TO GO EITHER WAY. YOUR POSITION IS THERE ARE REALLY NO DISPUTED FACTS. THE COURT CAN TAKE THIS PRELIMINARY INJUNCTION, COLLAPSE THE HEARING INTO A PERMANENT INJUNCTION HEARING TODAY, OR TREAT IT AS A RULE 56 MOTION AND ENTER SUMMARY JUDGMENT.

**MR. BENBROOK:** THAT'S RIGHT, YOUR HONOR. THAT IS OUR POSITION. AND I AM HAPPY TO EXPAND ON WHY IT IS APPROPRIATE TO GO TO THE MERITS RIGHT NOW, IF YOU ARE READY FOR THAT, OR I CAN WAIT.

**THE COURT:** LET ME INQUIRE OF DEFENSE COUNSEL.

1           WHAT ARE THE DISPUTED FACTS? YOU HAD MENTIONED THAT  
2 IF IT IS CONVERTED TO A RULE 56 MOTION YOU WOULD NEED  
3 ADDITIONAL TIME FOR EXPERT TESTIMONY AND HERE --

4           **MS. BOUTIN:** ONLY POSSIBLY, YOUR HONOR. I MEAN, WE  
5 BELIEVE THAT, AS A MATTER OF LAW, THEIR CLAIM FAILS. SO FOR  
6 THAT REASON WE CERTAINLY DON'T THINK THAT THEY ARE ENTITLED TO  
7 PRELIMINARY INJUNCTION.

8           SO THERE IS ESSENTIALLY A TWO-PRONG TEST IN BRUEN.  
9 WE BELIEVE THIS SHOULD BE DECIDED AS A MATTER OF LAW ON THE  
10 FIRST PRONG. ON THE SECOND PRONG WE ALSO BELIEVE WE SHOULD  
11 PREVAIL ON THE MOTION.

12           BUT IF YOUR HONOR BELIEVES THAT THE STATE HAS NOT  
13 SHOWN ENOUGH EVIDENCE, IN THAT EVENT WE WOULD ASK FOR  
14 ADDITIONAL TIME FOR MORE EXPERT DISCOVERY. AND WE WOULD BE  
15 PREPARED TO TALK ABOUT WHY THAT WOULD BE NECESSARY.

16           **THE COURT:** WHAT WOULD THAT EXPERT DISCOVERY LOOK  
17 LIKE? BECAUSE I HAVE THE DECLARATIONS NOW, A VERY THOROUGH  
18 ONE FROM PROFESSOR CORNELL.

19           **MS. BOUTIN:** SURE. YOUR HONOR, I WOULD IMAGINE THAT  
20 IT WOULD LOOK LIKE A MORE IN-DEPTH REPORT FROM PROFESSOR  
21 CORNELL. HE CERTAINLY IS IN-DEPTH IN TERMS OF PROVIDING  
22 BACKGROUND AS TO SPECIFIC LAWS, HE SIMPLY DIDN'T HAVE ENOUGH  
23 TIME TO DO AS THOROUGH RESEARCH AS HE WOULD HAVE LIKED FOR US  
24 TO GATHER ALL OF THE LAWS. WE WOULD BE HAPPY TO FILE A  
25 COMPENDIUM.

1           AND, IN ADDITION, IN MANY OF THESE CASES A LOT OF  
2       TIMES THERE IS MORE THAN ONE EXPERT INVOLVED IN THESE MATTERS  
3       AND THERE IS MORE THAN ONE -- THERE IS MORE THAN ONE HISTORIAN  
4       THAT OPINES ON THESE MATTERS. YOU KNOW, I THINK, IN OTHER  
5       CASES BEFORE DISTRICT COURTS RIGHT NOW, THERE MIGHT BE FIVE OR  
6       SIX EXPERTS. SO THESE ARE NOT SIMPLE ISSUES.

7           IF YOU LOOK AT THE BRUEN DECISION ITSELF, THE AMOUNT  
8       OF THE DECISION THAT IS TAKEN UP BY AN INCREDIBLY IN-DEPTH AND  
9       COMPLEX HISTORICAL ANALYSIS IS PRETTY IMPRESSIVE.

10          AND I THINK -- YOU KNOW, THERE IS ALSO A DIFFERENCE,  
11       I THINK, BETWEEN -- I MEAN, ESSENTIALLY HERE THE MOTION WAS  
12       FILED A LITTLE BEFORE THE HOLIDAYS. SO THERE IS THAT AMOUNT  
13       OF TIME. AND THEN OUR -- THEN OUR OPPOSITION WAS DUE JUST A  
14       COUPLE OF WEEKS AGO. SO THERE WAS REALLY A LITTLE OVER A  
15       MONTH. AND SO YOU DO WHAT YOU CAN IN A MONTH BUT YOU DON'T  
16       CREATE A PLAN FOR WHAT THE FULL SCALE WOULD LOOK LIKE.

17          SO IT IS NOT -- YOU KNOW, EVEN IF WE WERE TO GET,  
18       YOU KNOW, ANOTHER TWO MONTHS, THAT WOULDN'T BE THE SAME AS  
19       HAVING THREE MONTHS OUT OF THE GATE. SO IT IS JUST A MATTER  
20       OF AS -- AS JUDGE WU SAID IN HIS OPINION IN DEFENSE  
21       DISTRIBUTED, YOU KNOW, IT IS NOT -- I MEAN, THAT IS NOT REALLY  
22       POSSIBLE FOR THE STATE TO DO IN 30 DAYS, MUCH LESS, I THINK HE  
23       SAID, 56 DAYS, GIVEN THE COMPLEXITY OF WHAT IS REALLY INVOLVED  
24       IN THE ANALYSIS.

25               **THE COURT:** THE SEARCH REALLY WOULD BE FOR ANALOGOUS

1 REGULATIONS, AND MAKING THE ARGUMENT THAT THE REGULATIONS YOU  
2 FIND ARE HISTORICALLY CONSISTENT WITH THE UHA.

3 **MS. BOUTIN:** THAT'S RIGHT, YOUR HONOR.

4 **THE COURT:** HASN'T THERE BEEN, WITH ALL OF THESE  
5 PENDING CASES, I KNOW OTHER JUDGES HAVE ORDERED ALL OF THE  
6 LAWS.

7 **MS. BOUTIN:** THAT WOULD DEFINITELY HELP, YOUR HONOR.  
8 BUT I DO THINK WHEN YOU ARE TALKING ABOUT ANALOGOUS LAWS YOU  
9 HAVE TO LOOK AT WHAT TYPE OF LAW ARE YOU TRYING TO ANALOGIZE  
10 TO. SO THERE ISN'T -- AREN'T NECESSARILY THE SAME ANALOGOUS  
11 LAWS OUT THERE.

12 IF WE ARE TALKING ABOUT IN THIS CASE, WHERE WE ARE  
13 TALKING ABOUT PREVENTING ACCIDENTS DUE TO FIREARM COMPONENTS  
14 AND HOW THEY ARE STORED, AS OPPOSED TO A CASE WHERE YOU ARE  
15 TALKING ABOUT, YOU KNOW, ASSAULT WEAPONS AND WHERE YOU CAN BAN  
16 DANGEROUS UNUSUAL WEAPONS, AND WHAT THE HISTORY OF THOSE LAWS  
17 IS.

18 SO IT IS CERTAINLY -- THERE IS CERTAINLY -- AND I  
19 KNOW DR. CORNELL WOULD SPEAK TO THIS. THERE IS CERTAINLY A  
20 LOT MORE RESEARCH TO BE DONE. ALTHOUGH HE IS CONTINUING RIGHT  
21 NOW, YOU KNOW, HE ALREADY -- HE HAS COMPILED A MUCH LENGTHIER  
22 LIST OF GUNPOWDER LAWS.

23 AND I DON'T WANT TO GET TOO MUCH -- INTO TOO MUCH  
24 DETAIL RIGHT HERE, BUT THIS ALSO -- THIS DOES BRING ME ALSO TO  
25 A POINT THAT I HOPE YOUR HONOR IS AWARE OF, THE BONTA CASE

1 HAPPENING RIGHT NOW IN THE CENTRAL DISTRICT. THAT ALSO IS  
2 CHALLENGING PROVISIONS OF THE UNSAFE HANDGUN ACT. AND THERE  
3 IS ALSO A MOTION FOR PRELIMINARY INJUNCTION PENDING IN THAT  
4 CASE RIGHT NOW. I WANTED TO MAKE SURE THAT WAS ON YOUR RADAR.

5 **THE COURT:** I WASN'T AWARE OF THAT CASE. WHAT'S THE  
6 CHALLENGE THERE?

7 **MS. BOUTIN:** IT IS TO -- THE CASE IS A LITTLE BIT  
8 SIMILAR TO THIS ONE IN THAT IN THEIR PAPERS THEY APPEAR TO  
9 CHALLENGE A WIDE SWATH OF PROVISIONS. IN THEIR -- AT THEIR  
10 PRELIMINARY INJUNCTION HEARING I BELIEVE THEY NARROWED IT DOWN  
11 TO CHALLENGING THE CHAMBER LOAD INDICATOR, MAGAZINE DISCONNECT  
12 MECHANISM, AND MICROSTAMPING REQUIREMENTS IN THAT CASE.

13 **THE COURT:** HOW COME THEY ARE BEING HEARD IN TWO  
14 DIFFERENT DISTRICTS?

15 **MS. BOUTIN:** THIS CASE WAS FILED FIRST, AND THEN THE  
16 OTHER PLAINTIFF, IT IS A SEPARATE GROUP OF PLAINTIFFS. SO NO  
17 OVERLAP ON THAT SIDE WITH THE PARTIES, I UNDERSTAND. SO THAT  
18 IS HOW.

19 **THE COURT:** IS THERE POTENTIAL FOR INCONSISTENT  
20 RULINGS? WHAT DO YOU KNOW ABOUT THAT OTHER CASE?

21 **MR. BENBROOK:** THERE ARE OVERLAPPING CLAIMS.  
22 I AM NOT INVOLVED IN THAT. MY FIRM IS NOT INVOLVED.  
23 THERE ARE NO OVERLAPPING PLAINTIFFS, I AM CONFIDENT  
24 OF THAT.

25 AND SO, YES, WE WERE FILED BEFORE AND WE ARE

1 PRESSING AHEAD.

2           **THE COURT:** IS THERE THE IDEA OF A MOTION TO  
3 TRANSFER OR STAY, OR DO YOU KNOW?

4           **MR. BENBROOK:** THERE HASN'T BEEN ONE FILED.

5           **THE COURT:** ALL RIGHT.

6           AND THAT CASE IS PENDING BEFORE JUDGE WU?

7           **MS. BOUTIN:** NO. THAT CASE IS PENDING BEFORE JUDGE  
8 CARNEY, I BELIEVE.

9           **THE COURT:** OKAY.

10          **MR. BENBROOK:** AND IF I JUST -- I BELIEVE THERE IS  
11 STILL FURTHER BRIEFING TO BE DONE IN THAT CASE.

12          **THE COURT:** YES.

13          **MR. BENBROOK:** THEY ARE BEHIND US IN TERMS OF THE  
14 SCHEDULING.

15          **THE COURT:** SO ANOTHER -- JUST SPEAKING  
16 HYPOTHETICALLY. IF THE COURT WERE TO GRANT PRELIMINARY  
17 INJUNCTION, IT COULD SET A HEARING FOR A PERMANENT INJUNCTION  
18 AND ADDITIONAL RESEARCH, EXPERT TESTIMONY COULD BE GATHERED  
19 BETWEEN NOW AND THEN.

20          **MS. BOUTIN:** THAT'S RIGHT, YOUR HONOR.

21          **THE COURT:** OKAY.

22          **MR. BENBROOK:** YOUR HONOR, MAY I TALK A LITTLE BIT  
23 ABOUT THE MILLER CASE?

24          **THE COURT:** YES.

25          **MR. BENBROOK:** IT IS WORTH EMPHASIZING. I DON'T



1 THINK IT IS FAIR TO SAY THAT IS AN ENTIRELY SEPARATE EXERCISE.

2 THE STATE CATALOGED, ON JANUARY 11, A MASSIVE  
3 COMPILATION OF LAWS THAT THEY CONTEND ARE POTENTIALLY RELEVANT  
4 TO THE ASSAULT WEAPONS BAN. 95 PAGES OF SMALL PRINT  
5 IDENTIFYING 316 LAWS.

6 I WOULD RESPECTFULLY SUBMIT, IF THERE WAS A LAW  
7 THAT -- OUT THERE THAT THE STATE THOUGHT COULD SUPPORT THEIR  
8 THEORY HERE, IN ADDITION TO WHAT THEY HAVE ALREADY IDENTIFIED,  
9 IT WOULD HAVE BEEN ON THAT LIST AND WOULD HAVE BEEN -- WOULD  
10 HAVE BEEN CITED HERE.

11 I MEAN, THE STATE HAS BEEN DIGGING INTO HISTORY IN  
12 MULTIPLE CASES SINCE THE DAY AFTER BRUEN WAS DECIDED. AND  
13 WHAT COUNSEL -- AND COUNSEL AFFIRMS THAT. IN ALL OF THESE  
14 CASES THE HISTORY IS BEING DUG UP, AND I THINK THAT CUTS  
15 AGAINST THE STATE HERE.

16 **THE COURT:** ALL RIGHT.

17 DIFFERENT QUESTION HERE.

18 I WENT ON THE WEBSITE, THE ATTORNEY GENERAL'S  
19 WEBSITE, YESTERDAY AND FOUND IT SAYS RECENTLY ADDED HANDGUN  
20 MODELS TO THE ROSTER. AND THERE ARE TWO OF THEM?

21 **MS. BOUTIN:** I HAVE NOT LOOKED RECENTLY, BUT I WOULD  
22 ASSUME THOSE ARE MOST LIKELY EITHER -- THOSE ARE MOST LIKELY  
23 EITHER NOT SEMIAUTOMATIC PISTOLS, SO EITHER REVOLVERS OR  
24 SINGLE-SHOT PISTOLS, OR THEY ARE WHAT THEY CALL SIMILARS,  
25 WHICH IS WHERE THERE IS ONLY A COSMETIC DIFFERENCE.

1           **THE COURT:** THEY APPEAR TO BE SEMIAUTOMATIC. ONE IS  
2 A FRANKLIN ARMORY 9MMX19 PISTOL, 3.9-INCH BARREL. THE MODEL  
3 IS CA320. AND THEN THERE IS A P320 9MM PISTOL, 3.9-INCH  
4 BARREL.

5           MOST OF THESE 9 MILLIMETERS ARE SEMIAUTOS.

6           THE FIRST ONE, FRANKLIN, IT SAYS DATE ADDED FEBRUARY  
7 3 OF THIS YEAR. THE OTHER ONE IS MANUFACTURER SECOND  
8 AMENDMENT, P320, ADDED JANUARY 18 THIS YEAR.

9           SO JUST LOOKING AT THIS, DOES THAT MEAN THAT THERE  
10 ARE TWO MODELS THAT MANUFACTURERS HAVE COMPLIED WITH THE THREE  
11 FEATURES?

12          **MS. BOUTIN:** NOT NECESSARILY, YOUR HONOR.

13          MODELS CAN ALSO BE ADDED TO THE ROSTER IF THEY ARE  
14 WHAT IS CALLED A, QUOTE, SIMILAR; WHICH MEANS ITS DIFFERENCES  
15 WITH A MODEL ALREADY ON THE ROSTER ARE -- ARE MERELY COSMETIC.

16          **THE COURT:** THAT IS PROBABLY THE CASE.

17          **MS. BOUTIN:** YES.

18          **MR. BENBROOK:** YES. AND THE EVIDENCE, I BELIEVE,  
19 ESTABLISHES HERE THERE IS NO GUN ON THE MARKET THAT HAS ALL  
20 THREE OF THOSE FEATURES.

21          **THE COURT:** RIGHT.

22          SO WITH THESE TWO NEW GUNS BEING ADDED, THAT MEANS  
23 DOJ WILL DROP SIX OFF. NO?

24          **MS. BOUTIN:** NO, YOUR HONOR.

25          THE ONLY TIME THEY DROP OFF MODELS IS WHEN THERE IS

1 A SEMIAUTOMATIC PISTOL ADDED THAT DOES HAVE ALL THREE.

2 **THE COURT:** THAT'S RIGHT. OKAY. THANK YOU.

3 SO I THINK WHEN I LOOKED AT THIS I -- YOU HAVE  
4 ANSWERED MY QUESTIONS. IT IS PROBABLY NOT WHAT IT APPEARED TO  
5 BE.

6 IT IS NOT DISPUTED THAT THERE ARE NO NEW MODELS OF  
7 GUNS THAT HAVE BEEN ADDED TO THE ROSTER SINCE 2013. IS THAT  
8 RIGHT?

9 **MS. BOUTIN:** THERE HAVE BEEN MODELS OF HANDGUNS -- I  
10 GUESS -- IS YOUR QUESTION IT IS NOT DISPUTED THERE HAVE BEEN  
11 NO MODELS ADDED THAT HAVE THE THREE SAFETY FEATURES WE HAVE  
12 BEEN TALKING ABOUT?

13 **THE COURT:** YES.

14 **MS. BOUTIN:** YES, I BELIEVE THAT IS CORRECT.

15 YOUR HONOR, MAY I POINT OUT SOMETHING --

16 **THE COURT:** YES.

17 **MS. BOUTIN:** -- THAT I THINK IS IMPORTANT THAT IS  
18 RELATED TO THAT, THOUGH?

19 **THE COURT:** YES.

20 **MS. BOUTIN:** WE POINTED OUT IN OUR BRIEF THAT IT IS  
21 IMPORTANT TO LOOK AT THE VARIOUS PROVISIONS OF THE UHA  
22 SEPARATELY. WE CAN CALL THEM THE UHA, BUT IT HAS BEEN A  
23 SERIES OF ENACTMENTS. WE ARE NOT TALKING ABOUT ONE ENACTMENT,  
24 SO IT IS NOT EVEN TECHNICALLY ABOUT SEVERABILITY AMIDST ONE  
25 ENACTMENT.

1           AND I THINK IT IS IMPORTANT TO NOTE, I THINK EVEN  
2 ONE OF THE PLAINTIFFS' DECLARATIONS TALKED ABOUT HE BELIEVES  
3 AT ONE POINT THE ROSTER HAD AROUND 1300 MODELS ON IT.

4           AND, I APOLOGIZE, I WOULD BE WILLING TO -- I WOULD  
5 BE HAPPY TO SUBMIT A SUPPLEMENTAL DECLARATION. BUT OUR  
6 WITNESS, THE SPECIAL AGENT SUPERVISOR SAL GONZALEZ OF THE  
7 BUREAU OF FIREARMS, TOOK A LOOK. AND I THINK IT IS IMPORTANT  
8 TO NOTE THAT --

9           BACKING UP ONE MOMENT.

10          OVER TIME, VARIOUS PROVISIONS WERE ADDED TO THE ACT.  
11 THE CLI AND MDM REQUIREMENTS WENT INTO PLACE IN 2006, 2007.  
12 THE MICROSTAMPING REQUIREMENT BECAME EFFECTIVE IN 2010.

13          AND BETWEEN THAT TIME APPROXIMATELY -- THE NUMBER OF  
14 MODELS ON THE ROSTER ROSE APPROXIMATELY FROM ABOUT 1,000 TO  
15 1300.

16          SO WHEN WE ARE TALKING ABOUT LOOKING AT WHICH  
17 PROVISION MIGHT BE CAUSING ANY NUMBER OF HANDGUNS TO GO DOWN  
18 WHICH -- WE DON'T -- WE DON'T BELIEVE YOU HAVE TO GET TO THAT  
19 STEP.

20          BUT IF, TO THE EXTENT THAT THAT MATTERS, THE NUMBERS  
21 CONTINUED TO RISE EVEN ONCE THE CLI AND MDM REQUIREMENTS WENT  
22 IN -- AND IT IS UNDISPUTED THAT THERE ARE SOME HANDGUNS WITH  
23 THOSE FEATURES ON THERE.

24          SO I THINK WHEN WE LOOK AT EACH REQUIREMENT IT IS  
25 IMPORTANT TO LOOK AT WHAT THE POSSIBLE -- WHAT HAS BEEN

1 ACTUALLY SHOWN BY THE PLAINTIFFS AS FAR AS CAUSATION GOES WITH  
2 THE HANDGUN -- THE NUMBER OF HANDGUNS ON THE ROSTER.

3 **THE COURT:** IT IS NOT DISPUTED THAT SINCE 2013 THERE  
4 WERE APPROXIMATELY 1300 HANDGUNS; NOW THERE ARE JUST OVER 800.  
5 BUT YOU ARE SAYING THAT IS FOR A VARIETY OF REASONS.

6 **MS. BOUTIN:** RIGHT. BUT -- BUT -- AND MY POINT IS  
7 JUST THAT PRIOR TO -- THAT -- THAT -- THAT DATE THAT YOU ARE  
8 LOOKING AT SINCE IT HAS GONE DOWN IS WHEN MICROSTAMPING WENT  
9 INTO PLACE. BEFORE THAT OTHER PROVISIONS OF THE UHA WERE IN  
10 PLACE, AND THE ROSTER NUMBERS HAD CONTINUED TO GROW.

11 SO THAT IS WHY IT IS IMPORTANT TO LOOK AT, OKAY,  
12 WHICH PROVISION ARE WE TALKING ABOUT COULD ACTUALLY BE CAUSING  
13 THE NUMBER OF HANDGUNS ON THE ROSTER TO DECREASE.

14 WE CAN'T -- YOU KNOW, PRETTY MUCH ALL SEMIAUTOMATIC  
15 PISTOLS HAVE, YOU KNOW, A SAFETY OR, YOU KNOW, THE ONES THAT,  
16 YOU KNOW, MY UNDERSTANDING IS THEY GENERALLY PASS THE LAB  
17 TESTING REQUIREMENTS BECAUSE, YOU KNOW, THEY ARE IMPORTANT  
18 REQUIREMENTS.

19 YOU KNOW, THOSE -- THERE HAS BEEN NO SHOWING THAT  
20 THOSE CAUSE ANY HANDGUNS NOT TO MAKE IT ONTO THE ROSTER. AND  
21 BECAUSE IF YOU LOOK AT THE NUMBERS, THE CLI AND THE MDM  
22 REQUIREMENTS ALSO FALL INTO THAT BUCKET OF THERE SIMPLY HAS  
23 BEEN NO SHOWING THAT THOSE PROVISIONS HAVE CAUSED PLAINTIFFS  
24 NOT TO BE ABLE TO KEEP AND BEAR ANY PARTICULAR HANDGUN MODEL.

25 **THE COURT:** THE STATE CHARACTERIZES THE CLI AND MDM

1 AS SAFETY FEATURES, AND THE MICROSTAMPING AS INVESTIGATIVE,  
2 PROMOTING LAW ENFORCEMENT INVESTIGATION.

3 **MS. BOUTIN:** YES, I THINK THAT RIGHT -- THAT IS  
4 RIGHT. I THINK THEY ALL FALL INTO, YOU KNOW, THE BROADER  
5 CATEGORY OF PUBLIC SAFETY.

6 BUT WHEN WE ARE TALKING ABOUT WHAT MAKES A  
7 PARTICULAR HANDGUN SAFER, THE CLI AND MDM FALL IN THAT  
8 CATEGORY. AND MICROSTAMPING IS JUST A LITTLE BIT DIFFERENT  
9 BECAUSE IT HAS TO DO WITH AIDING LAW ENFORCEMENT WHEN THERE  
10 HAS BEEN A SHOOTING CRIME.

11 **THE COURT:** AND DO YOU DISPUTE THAT THE UHA, TAKING  
12 ALL OF THE PROVISIONS, PROHIBITS THE SALE OF HUNDREDS OF  
13 MODELS OF HANDGUNS THAT ARE IN COMMON USE IN THE UNITED  
14 STATES?

15 **MS. BOUTIN:** FRANKLY, YOUR HONOR, THAT'S AN ISSUE  
16 THAT, ONE, I DON'T THINK IS RELEVANT BECAUSE THE ISSUE OF  
17 COMMON USE IS A LIMITATION ON THE RIGHT TO OWN WEAPONS. SO I  
18 DO NOT THINK THAT IS RELEVANT.

19 BUT IF ONE WERE TO THINK THAT IS RELEVANT, I WOULD  
20 SAY THAT THERE HAS BEEN NO PRIMA FACIE SHOWING OF COMMON USE  
21 BY PLAINTIFFS. THEY HAVE THE BURDEN OF PERSUASION, THEY HAVE  
22 THE BURDEN OF PRODUCTION ON THIS ISSUE IF IT WERE RELEVANT.

23 SO, YOU KNOW, ON ONE HAND PLAINTIFFS SAY THE MODEL  
24 OF HANDGUN MATTERS BECAUSE THEY ARE SO DIFFERENT FROM ONE  
25 ANOTHER THAT THERE IS A DIFFERENCE IN HOW -- HOW WELL THEY CAN

1 BE USED FOR SELF DEFENSE; BUT THEN, ON THE OTHER HAND, THEY  
2 DON'T WANT TO HAVE TO MAKE THE SHOWING AS TO WHICH MODELS ARE  
3 ACTUALLY IN COMMON USE. THEY ARE JUST TRYING TO SAY THAT  
4 THERE -- THERE ARE LOTS OF ADDITIONAL MODELS THAT ARE IN  
5 COMMON USE, AND JUST KIND OF MAKE THAT SUFFICIENT FOR THEIR  
6 SHOWING.

7 SO, AGAIN, TO SUM UP, WE DON'T THINK THE COMMON USE  
8 ISSUE IS RELEVANT HERE BECAUSE IT IS A LIMITATION ON THE  
9 SECOND AMENDMENT RIGHT. IT IS NOT -- IT DOESN'T -- IT'S NOT  
10 SUFFICIENT TO SATISFY THE RIGHT. BUT WE CERTAINLY DON'T THINK  
11 THEY HAVE MET THEIR BURDEN ON THAT ISSUE ANYWAY.

12 **THE COURT:** WHAT ABOUT THE DECLARATION THAT WAS  
13 PROVIDED. SO IN THAT THE DECLARANT STATES, FOR EXAMPLE, THAT  
14 THERE ARE HUNDREDS OF MODELS THAT ARE IN COMMON USE THROUGHOUT  
15 THE UNITED STATES THAT ARE PROHIBITED FROM SALE IN CALIFORNIA  
16 UNDER THE UHA.

17 AND THEN SPECIFICALLY HE TALKS ABOUT THE GLOCK F43,  
18 THE SIG 320, AND THE SPRINGFIELD HELLCAT, THAT THESE ARE IN  
19 COMMON USE THROUGHOUT THE REST OF THE NATION. IS THAT  
20 DISPUTED?

21 **MS. BOUTIN:** I THINK THE MORE GENERAL STATEMENT  
22 ABOUT ALL -- WELL, THERE ARE SEVERAL PARTS TO THAT, SO PLEASE  
23 LET ME KNOW IF I MISSED A PART.

24 I WILL SAY FOR THE -- FOR THE SPECIFIC HANDGUNS, I  
25 WOULD SAY I DON'T THINK THAT REACHES THE LEVEL OF PRIMA FACIE

1 EVIDENCE. I THINK THAT IS A VERY CONCLUSORY STATEMENT THAT IS  
2 NOT BACKED UP BY SALES OR ANY OTHER KIND OF NUMBERS BY  
3 PLAINTIFF. AND I THINK IF YOU LOOK, I BELIEVE IN OUR RESPONSE  
4 TO SEPARATE STATEMENT WE HAD CASE LAW CITATIONS OF WHAT  
5 CONSTITUTES SUFFICIENT PRIMA FACIE EVIDENCE.

6 AND AS FAR AS THE MORE GENERAL STATEMENTS MADE, I  
7 MEAN, I THINK WE HAVE -- THERE IS CERTAINLY -- THERE HAS JUST  
8 CERTAINLY BEEN NO DISCOVERY. AND, AGAIN, NOTHING -- NO  
9 REPRESENTATION ON NUMBERS OF WHAT CONSTITUTES COMMON USE.

10 ARE THERE A NUMBER OF HANDGUNS THAT ARE SOLD IN  
11 OTHER STATES AND MAYBE -- MAYBE WIDELY USED? PROBABLY. BUT I  
12 DON'T KNOW WHICH ONES AND I DON'T KNOW WHAT THE NUMBERS ARE.

13 AND, AGAIN, I ALSO THINK IT IS IMPORTANT IN THIS  
14 CASE -- YOU KNOW, AGAIN, WE HAD ONLY A LITTLE OVER A MONTH TO  
15 RESPOND, BUT THERE IS NO SCHEDULING ORDER IN THIS CASE. THERE  
16 HAS BEEN NO NOTICE AS TO WHAT OUR DEADLINES ARE IN ORDER TO  
17 CONDUCT THAT DISCOVERY.

18 SO, AGAIN, I DON'T THINK COMMON USE IS A RELEVANT  
19 ISSUE IN THIS CASE. BUT IF THIS COURT WERE TO FIND THAT IT  
20 WERE, WE CERTAINLY WOULD WANT TO PROBE AND UNDERSTAND WHAT  
21 THEIR EVIDENCE OF COMMON USE IS.

22 **THE COURT:** AND IF COMMON USE IS RELEVANT, ISN'T  
23 THAT SOMETHING THE COURT COULD PERHAPS EVEN JUDICIALLY NOTICE?  
24 I MEAN, ANYONE CAN RESEARCH AND GO TO ARIZONA AND LOOK AT THE  
25 SIG 320, LOOK AT HOW MANY HAVE BEEN SOLD. AND DETERMINING



1 WHETHER, GEE, THAT SOUNDS LIKE A LOT, IS --

2 **MS. BOUTIN:** YEAH. I THINK, YOUR HONOR, I THINK --  
3 I THINK WHAT WOULD -- IF THIS WERE -- IF THIS WERE RELEVANT WE  
4 WILL TAKE THAT AS AN UMBRELLA -- UMBRELLA PREFACE TO THESE  
5 STATEMENTS.

6 IF THEY WERE RELEVANT I THINK THE PROPER WAY TO  
7 HANDLE IT WOULD BE FOR PLAINTIFFS TO SUBMIT THE RAW DATA AS  
8 FAR AS SALES GO, AND ANY OTHER -- YOU KNOW, POTENTIALLY THERE  
9 MIGHT BE OTHER METRICS THAT ARE RELEVANT AS WELL, FOR THEM TO  
10 PRESENT THE DATA.

11 PERHAPS THAT CAN BE STIPPED. THE DATA ITSELF, YOU  
12 KNOW, WE MAY NOT CHALLENGE.

13 AND THEN, OF COURSE, THERE IS THE ISSUE OF WHAT  
14 CONSTITUTES COMMON USE BECAUSE, YOU KNOW, A RAW NUMBER OF  
15 SALES, HOW DOES THAT COMPARE TO TOTAL NUMBER OF SALES. IS  
16 THERE DATA ABOUT HOW MANY -- WHAT GUNS ARE ACTUALLY USED AS  
17 OPPOSED TO JUST PURCHASED.

18 YOU KNOW, IT IS NOT NECESSARILY A MATTER OF ONE  
19 FIGURE, YOU KNOW, THIS MODEL SOLD 1,000 UNITS LAST YEAR. OH,  
20 WELL, THAT SOUNDS LIKE -- THAT SOUNDS LIKE A LOT OF SALES,  
21 THEREFORE THEY MUST BE IN COMMON USE.

22 I MEAN, OBVIOUSLY IT IS JUST MUCH MORE COMPLICATED  
23 THAN THAT.

24 SO I THINK AS FAR AS THE -- YOU KNOW, CERTAIN RAW  
25 DATA IS CONCERNED, I DON'T THINK THAT NECESSARILY HAS TO BE

1 DISPUTED. BUT I THINK, ONE, THERE HASN'T BEEN ANY PRESENTED  
2 AT THIS STAGE. AND, TWO, I CAN'T -- YOU KNOW, I CAN'T SAY  
3 THAT IF THEY PRESENTED RAW DATA WE WOULD NECESSARILY BE ABLE  
4 TO SAY, OKAY, YES, THAT SHOWS COMMON USE.

5 **THE COURT:** YOUR VIEW IS THE DECLARATION SUBMITTED  
6 IS NOT SUFFICIENT.

7 **MS. BOUTIN:** THAT'S RIGHT, YOUR HONOR.

8 **THE COURT:** WHY NOT?

9 **MS. BOUTIN:** WELL, I THINK IF YOU LOOK AT THE  
10 STANDARD FOR WHAT IS PRIMA FACIE EVIDENCE, I THINK IT IS --  
11 AND AGAIN, YOUR HONOR, IF YOU WERE TO FIND THAT IT WAS  
12 SUFFICIENT PRIMA FACIE EVIDENCE WE WOULD SIMPLY JUST ASK FOR  
13 MORE TIME IF THIS WERE FOUND TO BE RELEVANT. BUT --

14 PARDON ME, YOUR HONOR. THERE ARE A LOT OF DOCUMENTS  
15 IN THIS CASE.

16 **THE COURT:** YES.

17 **MS. BOUTIN:** SO IT IS IN OUR RESPONSE TO OUR  
18 SEPARATE STATEMENT WE CITED CASES SAYING WHEN THE MOVING PARTY  
19 HAS THE BURDEN OF PROOF ON AN ISSUE, E.G., WHEN A PLAINTIFF  
20 SEEKS SUMMARY JUDGMENT ON A CLAIM FOR RELIEF, THE MOVING  
21 PARTY'S SHOWING MUST BE SUFFICIENT FOR THE COURT TO HOLD THAT  
22 NO REASONABLE FACT FINDER COULD FIND OTHER THAN FOR THE MOVING  
23 PARTY.

24 AND I THINK HERE A REASONABLE FACT FINDER CERTAINLY  
25 COULD. THEY COULD SEE A DECLARATION THAT SAYS, WITH RESPECT

1 TO THAT -- I THINK THE ONE OR TWO GUNS THAT WERE SPECIFICALLY  
2 ADDRESSED, HE JUST SAID THEY WERE TOP SELLING AND IN COMMON  
3 USE. I DON'T THINK IT WOULD BE UNREASONABLE TO FIND THAT THAT  
4 IS NOT SUFFICIENT EVIDENCE TO FIND COMMON USE.

5 AND THEN THE OTHER DECLARATION AS TO ALL OTHER  
6 MODELS DOESN'T DISTINGUISH ONE MODEL FROM ANOTHER. THERE  
7 COULD BE A HANDGUN -- A PARTICULAR HANDGUN MODEL THAT WAS SOLD  
8 THAT WAS -- THERE WAS ONE MADE. THAT IS NOT NECESSARILY  
9 COMMON USE. SO THERE IS -- THAT -- WHY SHOULD THAT WEAPON,  
10 MAYBE IT IS A PARTICULARLY DANGEROUS WEAPON, IT DOES -- HAS NO  
11 SAFETY FEATURES, WHY SHOULD THAT BE PERMITTED. YOU KNOW, THAT  
12 WOULD -- THAT WOULD MAKE IT DANGEROUS AND UNUSUAL, PERHAPS.

13 SO -- SO, YOU KNOW, FOR THOSE REASONS I DON'T THINK  
14 THEY MADE AN ADEQUATE SHOWING.

15 **THE COURT:** THE STATE RELIES FAIRLY HEAVILY ON PENA,  
16 AS DID THIS COURT IN ITS ORDER DENYING THE MOTION TO DISMISS.

17 DO YOU CONTEND THAT PENA IS STILL VALID, IN ANY WAY,  
18 FOLLOWING BRUEN?

19 **MS. BOUTIN:** YOUR HONOR, IN CERTAIN WAYS I THINK IT  
20 IS -- STATEMENTS REGARDING THE ESTABLISHED EFFECTIVENESS AND  
21 IMPORTANCE OF THE SAFETY FEATURES IS ACTUALLY RELEVANT, NOT TO  
22 ANY KIND OF MERITS BALANCING AS FAR AS LIKELIHOOD TO SUCCEED,  
23 BUT CERTAINLY AS TO THE OTHER WINTER FACTORS FOR AN  
24 INJUNCTION; SO PUBLIC INTEREST AND BALANCE OF THE EQUITIES. I  
25 THINK CERTAINLY RELEVANT FOR THAT.

1 I THINK THERE ARE PROBABLY OTHER ONES.

2 YOU KNOW, WE WERE -- WE TRIED TO BE CAREFUL WITH OUR  
3 BRIEFING. WE TRIED NOT TO LOOK AT, YOU KNOW, THE SECTION  
4 OF -- OF THE PENA DECISION THAT DID GO TO THAT INTERMEDIATE  
5 SCRUTINY BALANCING. WE TRIED NOT TO CITE IT FOR THE PURPOSE  
6 OF BALANCING, OF MERITS BALANCING, I SHOULD SAY.

7 SO I THINK WHERE WE CITED IT IN THE BRIEF IS WHERE  
8 WE BELIEVED IT WAS RELEVANT.

9 **THE COURT:** ALL RIGHT.

10 IF WE COULD GO TO BRUEN, AND INITIALLY THE FIRST  
11 PRONG, THE TEXTUAL ARGUMENT.

12 BOTH PARTIES CITE BRUEN AND HELLER. THE PLAINTIFFS  
13 ARGUE THAT BRUEN STATES THAT HELLER STATES, QUOTE -- WELL,  
14 THAT HELLER, QUOTE, FOUND IT FAIRLY SUPPORTED BY THE  
15 HISTORICAL TRADITION OF PROHIBITING THE CARRYING OF DANGEROUS  
16 AND UNUSUAL WEAPONS. THAT THE SECOND AMENDMENT PROTECTS THE  
17 POSSESSION AND USE OF WEAPONS THAT ARE IN COMMON USE AT THE  
18 TIME.

19 SO ISN'T BRUEN SAYING IF A WEAPON, AN ARM, IS IN  
20 COMMON USE AT THE TIME, TODAY, THAT THE SECOND AMENDMENT  
21 PROTECTS IT?

22 **MS. BOUTIN:** I THINK YOU HAVE TO LOOK -- I THINK  
23 THERE -- YOU HAVE TO LOOK AT THAT STATEMENT FROM HELLER IN  
24 EVERY CONTEXT IN WHICH IT COMES UP: IN HELLER, IN THE  
25 MCDONALD CASE, WHICH IS INTERVENING, AND IN BRUEN.

1 THE PASSAGE CITED BY PLAINTIFFS WAS THE ONLY TIME  
2 WHERE IT LOOKS MAYBE ARGUABLY MAYBE A LITTLE BIT AMBIGUOUS.  
3 EVERY OTHER INSTANCE -- AND WE CITED -- WE ATTEMPTED TO CITE  
4 THEM ALL IN OUR BRIEF.

5 EVERY OTHER INSTANCE, IF YOU GO TO THAT PAGE AND YOU  
6 LOOK AT THE PARAGRAPH IT IS IN, IT IS VERY CLEAR THAT THE  
7 ISSUE COMES UP IN THE CONTEXT OF, WHAT ARE THE CATEGORIES THAT  
8 THE SECOND AMENDMENT DOES NOT COVER. SO THE DANGEROUS AND  
9 UNUSUAL WEAPONS, COMMERCIAL SALE OF FIREARMS.

10 IN HELLER IT LISTS OUT THOSE CATEGORIES AND IT SAYS  
11 ANOTHER LIMITATION TO THE SECOND AMENDMENT IS. AND THEN IT  
12 SAYS WEAPONS THAT ARE NOT IN COMMON USE.

13 AND IT SAYS THIS IS FAIRLY SUPPORTED BY THE  
14 DANGEROUS AND UNUSUAL WEAPONS.

15 AND EVERY OTHER -- EVERY OTHER INSTANCE IN WHICH  
16 THAT QUOTATION COMES UP, OTHER THAN THE ONES CITED BY  
17 PLAINTIFFS, IT IS CLEAR THAT THAT IS MEANT TO BE A LIMITATION.

18 THERE IS ANOTHER INSTANCE IN THE MAJOR -- I SHOULD  
19 SAY THE PLURALITY -- I BELIEVE IT IS THE PLURALITY OF THE  
20 BRUEN OPINION IN WHICH THAT IS MORE CLEAR. AND ALSO IN THE  
21 CONCURRENCE BY JUSTICE KAVANAUGH, HE ALSO REITERATES THE  
22 LARGER STATEMENT FROM HELLER MAKING CLEAR THAT THESE ARE THE  
23 CATEGORIES -- THESE -- THIS IS A NONEXHAUSTIVE LIST OF  
24 CATEGORIES THAT IS NOT AFFECTED BY BRUEN AS FAR AS CHANGING  
25 THE FACT THAT THESE ARE OUTSIDE THE SCOPE OF THE SECOND

1 AMENDMENT.

2 AND IT LISTS THOSE CATEGORIES AND IT SAYS,  
3 ANOTHER -- ANOTHER LIMITATION TO THE SECOND AMENDMENT'S  
4 PROTECTION IS WEAPONS THAT ARE NOT IN COMMON USE.

5 SO, AGAIN, IF YOU LOOK AT WHAT IS BEING QUOTED, IF  
6 YOU LOOK AT EVERY ONE BUT ARGUABLY ONE CITATION TO IT, IT IS  
7 CLEAR THAT THAT COMMON USE IS MEANT TO BE NECESSARY FOR A  
8 WEAPON, OR FOR KEEPING AND BEARING A PARTICULAR WEAPON, FOR  
9 THAT TO BE PROTECTED. BUT IT IS CERTAINLY NOT SUFFICIENT. IT  
10 IS NOT THAT ANY WEAPON IN COMMON USE IS PROTECTED.

11 **THE COURT:** ALL RIGHT. SO MORE WITH BRUEN.

12 BRUEN ALSO SAYS -- WELL, FIRST, THE CONDUCT AT ISSUE  
13 HERE IS THAT PLAINTIFFS WISH TO ENGAGE IN KEEPING AND BEARING  
14 ARMS NOT LISTED ON THE ROSTER FOR SELF-DEFENSE. AND THEY CITE  
15 BRUEN. AND THE ARGUMENT IS THAT ARMS, AT ISSUE, ARE COVERED  
16 AS THE SECOND AMENDMENT, QUOTE, EXTENDS TO ALL INSTRUMENTS  
17 THAT CONSTITUTE BEARABLE ARMS, END QUOTE.

18 THAT IS BRUEN.

19 AND THEN THEY ARGUE THAT ARMS, ACCORDING TO BRUEN,  
20 QUOTE, COVERS MODERN INSTRUMENTS THAT FACILITATE ARMED  
21 SELF-DEFENSE. CITING BRUEN AT PAGE 2132.

22 AND THE ARGUMENT IS, THE TEXTUAL ARGUMENT, THAT  
23 SINCE THESE ARE BEARABLE ARMS, AND THEY ARE CERTAINLY MODERN  
24 INSTRUMENTS THAT FACILITATE SELF-DEFENSE, THAT THEY FALL  
25 WITHIN THE PLAIN TEXT OF THE SECOND AMENDMENT. AND THEN WE

1 ARE INTO PRONG TWO.

2 HOW DO YOU RESPOND TO THAT? DOESN'T BRUEN REALLY  
3 MAKE THE STATE'S POSITION HERE VERY DIFFICULT, GIVEN THE  
4 LANGUAGE WITHIN BRUEN ITSELF, THAT THIS UHA DOESN'T FALL  
5 WITHIN THE PLAIN TEXT OF THE SECOND AMENDMENT OR IS NOT  
6 COVERED BY THE SECOND AMENDMENT?

7 **MS. BOUTIN:** NOT AT ALL, YOUR HONOR. OUR POSITION  
8 IS THAT THESE PROVISIONS DO NOT KEEP PLAINTIFFS FROM KEEPING  
9 AND BEARING HANDGUNS. THERE ARE A MULTITUDE OF HANDGUNS, AND  
10 WE ARE TALKING ABOUT MINOR DIFFERENT -- VERY MINOR DIFFERENT  
11 VERSIONS OF THEM. IN THE BOLAND CASE MR. GONZALEZ TALKED  
12 ABOUT THIS BEING LIKE THE DIFFERENCE BETWEEN AN IPHONE 13 AND  
13 AN IPHONE 14.

14 YOU KNOW, ANOTHER WAY -- ANOTHER IMPORTANT ASPECT OF  
15 HOW TO LOOK AT THIS IS THE UHA ALSO ISN'T BANNING ANY  
16 PARTICULAR MODEL, PER SE. FOR THESE PARTICULAR MODELS IF  
17 THE -- IF THE MANUFACTURER WERE TO ADD THE FEATURES THAT WERE  
18 REQUIRED, AGAIN, THEY WOULD NOT BE BANNED.

19 I THINK THE SCOPE OF THE ALTERNATIVE APPROACH TO SAY  
20 THAT ANY TIME -- ANY TIME THERE IS ANY REQUIREMENT AS TO THE  
21 ARM WHATSOEVER THAT'S UNCONSTITUTIONAL, I MEAN, I THINK THAT  
22 GETS INTO A LITTLE BIT OF BROAD TERRITORY. THEY ARE  
23 CHALLENGING THE REQUIREMENT FOR HANDGUNS THAT THEY HAVE A  
24 SAFETY. SO, YOU KNOW, THAT RAISES THE QUESTION, IN THEORY,  
25 IS, YOU KNOW, WOULD THAT NOT BE VIABLE.

1           HERE I DON'T THINK THAT IS AS MUCH OF AN ISSUE  
2 BECAUSE, AGAIN, THEY HAVE NOT PROVIDED ANY EVIDENCE WHATSOEVER  
3 THAT A SAFETY THAT THE LAB TESTING -- AND THAT THE CLI AND MDM  
4 REQUIREMENTS ACTUALLY DO PREVENT THEM FROM HAVING ANY  
5 PARTICULAR MODEL OF HANDGUN. SO I DON'T THINK CERTAINLY --  
6 FRANKLY, THERE HAS BEEN NO SHOWING FOR ANYTHING EXCEPT  
7 MICROSTAMPING.

8           SO I DO THINK IT IS IMPORTANT, ONCE AGAIN, TO CIRCLE  
9 BACK, THAT EVEN IF YOU WERE TO ACCEPT THE INTERPRETATION THAT  
10 YOU SET FORWARD A MOMENT AGO, THAT STILL WOULDN'T APPLY TO,  
11 YOU KNOW, 90 PERCENT OF THE -- MORE THAN THAT OF THE  
12 PROVISIONS THAT THEY ARE CHALLENGING. BECAUSE, AGAIN, THEY  
13 HAVEN'T SHOWN THAT THE PROVISION, WHETHER IT IS A REQUIREMENT  
14 FOR SAFETY, WHETHER IT IS A REQUIREMENT FOR DROP SAFETY  
15 TESTING IN A LAB, HAS PREVENTED THEM FROM KEEPING OR BEARING  
16 ANY MODEL OF HANDGUN.

17           **THE COURT:** ISN'T THAT A CHOICE ARGUMENT, THOUGH.  
18 SO THAT IF THE PLAINTIFFS HAVE A CHOICE, YOU ARE SAYING IF THE  
19 UHA ELIMINATES A CHOICE OF A CERTAIN KIND OF HANDGUN THAT  
20 DOESN'T FALL WITHIN THE PLAIN TEXT OF THE SECOND AMENDMENT  
21 BECAUSE THEY CAN STILL BUY THESE 800 ON THE ROSTER.

22           **MS. BOUTIN:** YES, I THINK THAT IS PROBABLY ACCURATE  
23 TO SAY. ALTHOUGH IT IS ALSO WORTH EMPHASIZING THERE ARE  
24 NUMEROUS EXCEPTIONS, INCLUDING BUYING IN A PRIVATE -- IN A  
25 PRIVATE --



1           **THE COURT:** PRIVATE SALE.

2           **MS. BOUTIN:** -- TRANSACTION.

3           SO IF IT IS YOUR PREFERENCE YOU CAN STILL OBTAIN IT.  
4 IT IS -- LIKE I SAID, IT IS NOT -- IT IS NOT A BAN.

5           **THE COURT:** IT IS BANNING THE SALE, THOUGH, OF GUNS,  
6 EFFECTIVELY SINCE 2013. SO THESE NEWER MODEL GUNS HAVE BEEN  
7 BANNED BY THE UHA. AND WHAT'S ON THE ROSTER ARE PRE-2013  
8 GUNS, FOR THE MOST PART.

9           **MS. BOUTIN:** I THINK THERE IS -- THERE IS -- I THINK  
10 WHAT YOU ARE TALKING ABOUT IN EFFECT THAT HAPPENING, I DON'T  
11 COMPLETELY DISPUTE THAT. BUT I DO THINK IT IS IMPORTANT TO  
12 NOTE THAT THERE IS -- THERE IS -- THERE IS KIND OF A MISSING  
13 STEP OF CAUSATION THERE. WE DON'T KNOW WHY THE MANUFACTURERS  
14 AREN'T MAKING -- AREN'T ADDING THESE DEVICES TO THEIR  
15 FIREARMS.

16           AND, AGAIN, WE ALSO DON'T KNOW IF THE MICROSTAMPING  
17 REQUIREMENT WEREN'T IN PLACE IT -- MAYBE THEY WOULD ALL ADD  
18 THESE OTHER REQUIREMENTS TO THE -- SORRY.

19           MAYBE THEY WOULD ADD CLI'S, MDM'S TO ALL OF THE  
20 OTHER HANDGUNS BECAUSE THEN THEY COULD GET THEM ALL IN  
21 CALIFORNIA BECAUSE THEY HAVE BEEN CLAIMING THAT IT IS NOT  
22 POSSIBLE TO DO MICROSTAMPING.

23           SO MAYBE IT IS ONLY MICRO -- I MEAN, AGAIN, THIS IS  
24 HYPOTHETICAL. BUT THIS IS JUST TO POINT OUT THE CAUSATION  
25 PROBLEM WE HAVE HERE BECAUSE THERE IS A MISSING STEP OF WHY

1 ARE MANUFACTURERS NOT ADDING THESE FEATURES, RIGHT.

2 SO IF WE SAW THAT THE ROSTER WAS GOING UP, UP, UP,  
3 UNTIL MICROSTAMPING, YOU KNOW, I DON'T KNOW HOW WE SAY THAT  
4 THE OTHER SAFETY MECHANISMS ARE WHAT IS CAUSING MANUFACTURERS  
5 TO NOT INCLUDE THE SAFETY DEVICES ON THEIR HANDGUNS -- I  
6 SHOULD SAY ON THEIR SEMIAUTOMATIC PISTOLS.

7 **THE COURT:** THE ARGUMENT THAT THE STATE MAKES,  
8 THOUGH, ABOUT PLAINTIFFS STILL HAVE A RIGHT TO BUY CERTAIN  
9 KINDS OF HANDGUNS, THIS CHOICE ARGUMENT, HOW IS THAT A TEXTUAL  
10 ARGUMENT. BECAUSE BRUEN INSTRUCTS THAT THE FIRST OBLIGATION  
11 OF THIS COURT IS TO DETERMINE WHETHER THE REGULATION AT ISSUE  
12 IS COVERED BY THE SECOND AMENDMENT, AND CHOICE DOESN'T HAVE  
13 ANYTHING TO DO WITH THAT.

14 **MS. BOUTIN:** WELL, THE PLAIN TEXT IS IS THAT, YOU  
15 KNOW, THE STATE CANNOT INFRINGE KEEPING -- THE RIGHT TO KEEP  
16 AND BEAR ARMS. AND WE DON'T INFRINGE THE RIGHT TO KEEP AND  
17 BEAR HANDGUNS. THEY CAN -- AND THE -- AS THE SUPREME COURT  
18 SAYS, THE HANDGUN IS THE QUINTESSENTIAL SELF-DEFENSE WEAPON.

19 AND I THINK ANOTHER THING THAT IS IMPORTANT IS THERE  
20 HAS BEEN NO -- WHEN WE ARE TALKING ABOUT CHOICE, OKAY, LET'S  
21 SAY, ONE, THE MODELS THAT ARE OFF THE ROSTER ARE, YOU KNOW,  
22 TEN TIMES BETTER AT SELF-DEFENSE THAN THE ONES THAT ARE ON THE  
23 ROSTER. LET'S SAY THAT WERE THE CASE. OKAY. MAYBE THAT  
24 WOULD BE A CLOSER CALL.

25 BUT THERE HAS BEEN NO SHOWING OF ANY REAL MATERIAL

1 DIFFERENCE. AND THE CORE -- AS THE SUPREME COURT SAID, THE  
2 CORE OF THE SECOND AMENDMENT RIGHT IS THE ABILITY TO DEFEND  
3 YOURSELF, THE ABILITY TO DEFEND YOURSELF IN THE HOME AND TO  
4 BEAR A GUN IN PUBLIC. AND IT DOES NOT KEEP PEOPLE FROM --  
5 KEEP -- PREVENT PEOPLE FROM KEEPING AND BEARING HANDGUNS IN,  
6 YOU KNOW, IN YOUR HOME OR IN PUBLIC.

7 AND I THINK IF YOU LOOK AT BRUEN AND HELLER, WHICH  
8 INVOLVED COMPLETE BANS WHICH, AS THE COURT POINTED OUT, WAS ON  
9 AN ENTIRE CLASS OF ARMS, YOU ARE JUST TALKING ABOUT AN  
10 ENTIRELY DIFFERENT SITUATION.

11 **THE COURT:** AS PLAINTIFFS ARGUE IT, THOUGH, IT IS A  
12 COMPLETE BAN ON ALL OF THE NEW GUNS SINCE 2013, BASICALLY. SO  
13 IT IS NOT A BAN ON HANDGUNS, BUT IT IS A BAN ON A CLASS OR  
14 GROUP OF HANDGUNS, THE NEWER MODELS SINCE 2013.

15 **MS. BOUTIN:** BUT, AGAIN, I THINK -- I THINK -- I  
16 UNDERSTAND THE POINT YOU ARE MAKING. AND, AGAIN, I WOULD JUST  
17 POINT TO THE FACT WHEN WE SAY IT -- IT -- IT IS A BAN, ALL OF  
18 THE PROVISIONS ARE NOT -- IT IS NOT A BAN.

19 IT -- IF ONE WERE TO TAKE -- TAKE THE PLAINTIFFS'  
20 POINT OF VIEW I THINK IT WOULD BE FAIR TO SAY MANUFACTURERS  
21 CHOOSE NOT TO INCLUDE THESE -- INCLUDE THESE SAFETY DEVICES  
22 WITH THE CERTAIN MODELS THEY MANUFACTURE. AND AS A RESULT OF  
23 THAT CHOICE THEN THOSE GUNS ARE NOT AVAILABLE TO BE, YOU KNOW,  
24 PURCHASED IN CALIFORNIA. I THINK THAT IS FAIR.

25 BUT, AGAIN, WHEN WE SAY IT IS A BAN I THINK IT IS

1 REALLY IMPORTANT THAT WE KNOW WHAT LAW WE ARE TALKING ABOUT.  
2 ARE WE TALKING ABOUT THE REQUIREMENT THAT A HANDGUN HAVE A  
3 SAFETY? NO. ARE WE TALKING ABOUT -- YOU KNOW, WHAT ARE WE  
4 TALKING ABOUT, BECAUSE WE CAN'T TAKE ABOUT THE UHA AS ONE LAW  
5 BECAUSE IT IS NOT ONE LAW. CERTAINLY IT IS VERY CLEAR IN THE  
6 CONTEXT OF INJUNCTIONS IT HAS TO BE AS NARROWLY TAILORED AS  
7 POSSIBLE.

8 AND THESE WERE VARIOUS ENACTMENTS OVER TIME THAT, AS  
9 WE KNOW FROM THE NUMBERS, HAD DIFFERENT AFFECTS ON -- ON THE  
10 NUMBER ON THE ROSTER.

11 SO I DO THINK IT IS IMPORTANT WHEN WE TALK ABOUT  
12 SOMETHING, YOU KNOW, CAUSING AN AFFECT ON THE SECOND  
13 AMENDMENT.

14 **THE COURT:** DON'T ALL OF THESE LAWS THAT COME IN AT  
15 DIFFERENT TIMES, THOUGH, COME TOGETHER. BECAUSE THE  
16 PLAINTIFFS' ARGUMENT IS THAT WHEN YOU LOOK AT THEM ALL  
17 COLLECTIVELY, AND THEN UNDER THE ROSTER PROVISION, CALIFORNIA  
18 IS BANNING THE SALE OF THESE HANDGUNS UNLESS THEY HAVE THESE  
19 THREE CRITERIA MET, AND THEN IT GOES INTO THE THREE-FOR-ONE  
20 ROSTER. SO IT SEEMS TO PULL THE WHOLE THING TOGETHER.

21 **MS. BOUTIN:** I THINK THERE ARE KIND OF TWO LEVELS OF  
22 ANSWER TO YOUR QUESTION.

23 ONE IS, I THINK YOU ARE REFERRING TO THE MAGAZINE  
24 DISCONNECT MECHANISM, CHAMBER LOAD INDICATOR, AND  
25 MICROSTAMPING AS A BUBBLE. THEY ARE ALSO CHALLENGING NUMEROUS

1 OTHER STATUTES AND SUBSECTIONS OF STATUTES THAT ARE WITHIN THE  
2 UHA.

3 SO I THINK THOSE NEED TO BE KIND OF TAKEN OUT OF THE  
4 EQUATION BECAUSE, AGAIN, THERE HAS BEEN NO SHOWING OF  
5 CAUSATION THAT ANY OF THOSE CAUSE HANDGUNS NOT TO BE ON THE  
6 ROSTER.

7 BUT THEN, AGAIN, WHEN YOU LOOK AT THESE THREE, DO WE  
8 KNOW FOR SURE THAT ALL OF THEM ARE CAUSING HANDGUNS NOT TO BE  
9 ADDED TO THE ROSTER; OR, YOU KNOW, COULD IT BE THAT  
10 MANUFACTURERS JUST DON'T WANT TO PRODUCE ONE OF THEM.

11 THEY HAVE NOT PROVEN THAT IT IS ALL THREE,  
12 ESPECIALLY WHEN YOU LOOK AT WHAT THE NUMBERS ARE.

13 **THE COURT:** ALL RIGHT.

14 SO PERHAPS I CAN TURN TO YOU, MR. BENBROOK.

15 IT IS NOT REALLY A SEVERABILITY ARGUMENT, BUT I  
16 THINK THE STATE IS FAIRLY ASKING FOR PRECISION AS TO WHAT  
17 WOULD THE INJUNCTION BE FOCUSED ON, EACH OF THESE VARIOUS  
18 PROVISIONS COLLECTIVELY, OR HOW WOULD THIS WORK.

19 **MR. BENBROOK:** YES, YOUR HONOR. AND IF I MAY  
20 ADDRESS THAT, AND THEN GO BACK TO SOME OF THE THINGS YOU HAVE  
21 BEEN SPEAKING ABOUT.

22 **THE COURT:** YES.

23 **MR. BENBROOK:** SO YOUR HONOR IS RIGHT. WE DO  
24 CHALLENGE THE UHA AS A WHOLE. ALL OF THESE PROVISIONS WORK  
25 TOGETHER TO BAN GUNS IN COMMON USE FROM BEING AVAILABLE FOR

1 SALE AT LICENSED FIREARM DEALERS.

2 THE WAY FOR THE STATE TO TRY TO SAVE SOME OF THOSE  
3 PROVISIONS IS THROUGH THE SECOND STEP IN BRUEN. IF THEY  
4 WANTED TO TRY TO ANALOGIZE TO SOME OF THE PARTICULAR  
5 PROVISIONS AND SAY, WELL, PERHAPS THAT -- I MEAN, PERHAPS THAT  
6 IS A WAY FOR THEM TO GO ABOUT IT. WHETHER YOU CALL IT UNDER A  
7 SEVERABILITY UMBRELLA OR NOT, YOU FIT IT WITHIN BRUEN, IF THE  
8 STATE WERE TO SAY, WELL, THERE IS -- THERE IS A  
9 WELL-ESTABLISHED TRADITION OF THIS TYPE OF REGULATION SO THIS  
10 PART OF THE UHA SHOULD SURVIVE.

11 BUT, UNDER BRUEN, WE HAVE -- WE HAVE TO SHOW THAT  
12 THE OPERATION OF THIS LAW HAS -- HAS IMPACTED THE CONDUCT WE  
13 WANT TO ENGAGE IN AS COVERED BY THE -- BY THE SECOND  
14 AMENDMENT.

15 THE CONDUCT WE WANT TO ENGAGE IN, AS YOUR HONOR  
16 QUOTED FROM OUR PAPERS, IS PURCHASE, KEEPING, AND BEARING ARMS  
17 THAT ARE CURRENTLY BANNED BY THE ROSTER.

18 AND THE ROSTER PROHIBITS GUNS FOR ALL KINDS OF --  
19 FOR MANY OF THESE REASONS. SO THAT CAN'T BE DISPUTED.

20 **THE COURT:** A NARROW FOCUS WOULD BE ON THE ROSTER  
21 PROVISION, THE MOST RECENT ONE WHICH BANS, IN CONJUNCTION  
22 PERHAPS WITH ANOTHER STATUTE, BANS THE SALE OF HANDGUNS IN  
23 CALIFORNIA UNLESS IT HAS THOSE THREE FEATURES.

24 **MR. BENBROOK:** WELL, TO BE FAIR, YES, THAT  
25 CLEARLY -- I DON'T THINK IT CAN BE DISPUTED THAT THAT HAS THE

1 LARGEST IMPACT ON THE HUGE NUMBER OF HANDGUNS THAT AREN'T  
2 AVAILABLE FOR SALE. BUT I DON'T THINK THE STATE PUBLICIZES  
3 REASONS WHY EACH ONE ISN'T ON THE ROSTER.

4 AND SO THE POINT, THE THRUST OF THE ARGUMENT, THE  
5 THRUST OF OUR CASE IS, BANNING GUNS IN COMMON USE, FOR  
6 WHATEVER REASON, VIOLATES THE SECOND AMENDMENT.

7 AND IT IS UP TO THE STATE TO JUSTIFY THE BAN BY  
8 POINTING TO HISTORY, A WELL-ESTABLISHED TRADITION OF ANALOGOUS  
9 REGULATION.

10 **THE COURT:** SO WHETHER IT IS MICROSTAMPING OR CLI OR  
11 MDM, THE ARGUMENT IS GUNS THAT DON'T HAVE ANY ONE OF THOSE  
12 THREE ARE IN COMMON USE THROUGHOUT. AND UNDER THE PLAIN TEXT  
13 THEY ARE COVERED BY THE SECOND AMENDMENT, AND NOW THE STATE  
14 HAS TO JUSTIFY ANY ONE OF THESE PROVISIONS.

15 **MR. BENBROOK:** EXACTLY. YES.

16 SO CAN I TALK FOR A LITTLE WHILE ABOUT COMMON USE?

17 **THE COURT:** YES.

18 **MR. BENBROOK:** BECAUSE I THINK A LOT OF THE THREADS  
19 THAT ARE -- THAT WERE BEING DISCUSSED EARLIER KIND OF  
20 CONGREGATE AROUND COMMON USE, AND THE ANSWERS WILL BECOME  
21 CLEAR ON A NUMBER OF THESE POINTS.

22 SO, WE STATED IN THE COMPLAINT, IN THE BRIEFING AND  
23 IN THE PHILLIPS DECLARATION, THAT OFF-ROSTER HANDGUNS ARE IN  
24 COMMON USE.

25 WE DID NOT NEED TO DO THAT BECAUSE HELLER

1 ESTABLISHES THAT HANDGUNS, AS A CATEGORY, ARE IN COMMON USE,  
2 AT 554 U.S. AT 629.

3 BRUEN REAFFIRMS THIS POINT, 142 SUPREME COURT AT  
4 2143.

5 AND HELLER SHOWS THAT HANDGUNS IN COMMON USE CANNOT  
6 BE BANNED.

7 NOW, AND THIS GETS TO THE DISCUSSION ABOUT  
8 LIMITATION. IT SPRINGS FROM HELLER'S STATEMENT THAT THE  
9 SECOND AMENDMENT IS NOT UNLIMITED. IT DOESN'T CARRY -- IT  
10 DOESN'T COVER -- IT DOESN'T CREATE THE RIGHT TO KEEP AND CARRY  
11 ANY WEAPON WHATSOEVER IN ANY MANNER WHATSOEVER AND FOR  
12 WHATEVER PURPOSE. BUT IT FOLLOWED UP IMMEDIATELY WITH THE  
13 STATEMENT THAT THE SORTS OF WEAPONS PROTECTED BY THE SECOND  
14 AMENDMENT WERE THOSE IN COMMON USE AT THE TIME THE SECOND  
15 AMENDMENT WAS ADOPTED. AND THEN THERE IS A SEPARATE  
16 DISCUSSION ABOUT THAT MEANS IT STILL APPLIES TO WEAPONS IN  
17 COMMON USE TODAY.

18 SO WHAT HELLER IS SAYING IS, IF IT IS IN COMMON USE  
19 IT IS PROTECTED BY THE SECOND AMENDMENT AND IT CAN'T BE  
20 BANNED.

21 THE LIMITATION IS A LIMITATION ON THE SCOPE OF THE  
22 SECOND AMENDMENT AND SO WHAT THAT PASSAGE THAT COUNSEL  
23 CITES -- SUPPORTS OUR CASE. IT SAYS THE WEAPONS PROTECTED BY  
24 THE SECOND AMENDMENT ARE THOSE IN COMMON USE; THAT MEANS IT IS  
25 WITHIN THE PROTECTION OF THE SECOND AMENDMENT. AND FOR THAT



1 PROPOSITION IT CITES MILLER, THE MACHINE GUN CASE. SO IF IT  
2 IS COMMON THEY ARE PROTECTED.

3 AND SO THIS SPILLS OVER, THEN, INTO THE STATE'S  
4 DISCUSSION ABOUT SUGGESTING THAT MORE EVIDENCE IS NEEDED AS TO  
5 WHETHER OFF-ROSTER HANDGUNS ARE IN COMMON USE.

6 WE DON'T NEED TO INTRODUCE ANY EVIDENCE ABOUT THAT.  
7 THIS CASE DOESN'T TURN ON HOW MANY OF A SINGLE GUN OR 50 GUNS  
8 OR 200 GUNS ARE SOLD IN 47 OTHER STATES. HANDGUNS, AS A  
9 CATEGORY, ARE IN COMMON USE. OFF-ROSTER HANDGUNS ARE  
10 HANDGUNS, AND HELLER ESTABLISHES THAT THEY ARE IN COMMON USE  
11 AND THEREFORE CAN'T BE BANNED.

12 AND SO JUST TO POINT OUT HOW THIS REALLY IS AN  
13 EFFORT TO DELAY, THEY REALLY DON'T ACTUALLY, IN THEIR PAPERS,  
14 DISPUTE THAT OFF-ROSTER HANDGUNS ARE IN COMMON USE THROUGHOUT  
15 THE 47 OTHER STATES.

16 AND I WOULD NOTE, JUST AS A TECHNICAL MATTER, THERE  
17 HASN'T BEEN COMPLIANCE WITH RULE 56 TO SAY, WE NEED DISCOVERY  
18 INTO THIS BECAUSE WE THINK WE ARE GOING TO FIND A, B, AND C.

19 THEY DON'T DISPUTE THAT THESE GUNS, THESE OFF-ROSTER  
20 HANDGUNS, ARE IN COMMON USE. AND IF YOU GET DOWN IN THE WEEDS  
21 AND LOOK AT THE THIRD-AMENDED COMPLAINT AND THE ANSWER, IT IS  
22 ANOTHER REASON WHY THIS ARGUMENT DOESN'T WORK.

23 I MEAN, HELLER IS THE ULTIMATE REASON WHY IT DOESN'T  
24 WORK, BUT THIS IS A TECHNICAL LOGISTICAL MATTER HERE AMONG  
25 THE -- IN THE LITIGATION.

1           PARAGRAPHS 80 TO 83 OF THE THIRD-AMENDED COMPLAINT  
2 GO THROUGH THE DIFFERENT FEATURES REQUIRED BY THE LAW AND SAY  
3 HANDGUNS WITHOUT THOSE FEATURES ARE STILL IN COMMON USE.

4           PARAGRAPH 109, THIRD-AMENDED COMPLAINT, SUMS IT ALL  
5 UP AND SAYS THIS FUNDAMENTAL INDIVIDUAL RIGHT TO KEEP AND BEAR  
6 FIREARMS INCLUDES THE RIGHT TO ACQUIRE MODERN HANDGUNS IN  
7 COMMON USE FOR LAWFUL PURPOSES. INDEED, ARMS THAT ARE  
8 LAWFULLY SOLD AND POSSESSED THROUGHOUT THE UNITED STATES, SUCH  
9 AS THOSE THE HANDGUN BAN PREVENTS THE COMMON LAW-ABIDING  
10 CITIZENS FROM PURCHASING.

11           SO LOOK AT THE STATE'S ANSWER TO THESE ALLEGATIONS.  
12 IN EACH CASE, PARAGRAPHS 80 TO 83 AND PARAGRAPH 109, THE STATE  
13 SAYS THE ALLEGATION CONSISTS OF LEGAL ARGUMENTS AND/OR  
14 CONCLUSIONS THAT DO NOT REQUIRE ADMISSION OR DENIAL. TO THE  
15 EXTENT DENIAL IS REQUIRED, DEFENDANTS DENY THE ALLEGATIONS.

16           IF THIS WAS REALLY SUBJECT TO DISPUTE, LIKE AN  
17 ADJUDICATED FACT THAT WOULD BE SUBJECTED TO EVIDENCE, YOU CAN  
18 BE ASSURED THE STATE WOULD HAVE DISPUTED IT. IT IS NOT  
19 SUBJECT TO DISPUTE BECAUSE IT IS A LEGISLATIVE FACT THAT  
20 HELLER ALREADY ESTABLISHED.

21           IF YOUR HONOR WOULD LIKE, I CAN PUT A LITTLE MORE  
22 MEAT ON THE BONE ABOUT HOW HELLER DID THAT.

23           **THE COURT:** THAT'S OKAY.

24           **MR. BENBROOK:** SO, LET'S SEE.

25           THE SHORT ANSWER, OR THE SHORT SORT OF SUM-UP TO

1 THAT TALK PART, IS MORE TIME IS NOT NEEDED TO GET INTO COMMON  
2 USE ISSUES.

3 AND THE -- ONE THING I HAVE TO RESPOND TO IS THIS --  
4 THIS CAUSATION ARGUMENT. I AM NOT FOLLOWING HOW THAT COULD  
5 POSSIBLY WORK.

6 THE SUGGESTION IS THAT WE DON'T KNOW WHY THE  
7 MANUFACTURERS AREN'T PRODUCING GUNS THAT COMPLY WITH OUR LAW  
8 AND THEREFORE WE CAN'T SHOW THE LAW IS CAUSING IT?

9 THE REALITY IS, THE LAW EXISTS, THE LAW BANS THE  
10 GUNS THAT ARE BEING MANUFACTURED; AND THAT'S THE END OF THE  
11 DISCUSSION.

12 **MS. BOUTIN:** CAN I RESPOND THAT THAT POINT JUST  
13 BEFORE I FORGET MY THOUGHTS ON THAT?

14 **THE COURT:** YES.

15 **MS. BOUTIN:** THERE HAS BEEN NO SHOWING OF WHICH  
16 FEATURES OF THE GUNS DON'T COMPLY WITH THE UHA. THERE IS NO  
17 SHOWING OF DO THE GUNS NOT ON THE ROSTER NOT HAVE A SAFETY.  
18 COULD THEY NOT COMPLY WITH THE DROP SAFETY REQUIREMENTS.

19 SO TO SAY THAT THEY DON'T -- THAT THEY DON'T COMPLY  
20 WITH THE PROVISIONS AS A WHOLE, MAYBE THEY WOULD -- MAYBE WHEN  
21 IT COMES TO DO THEY HAVE A SAFETY, MAYBE THEY ALL HAVE  
22 SAFETIES. AGAIN, WE DON'T KNOW.

23 YOU ARE LUMPING TOGETHER ALL OF THESE REQUIREMENTS  
24 AND SAYING IT IS ONE THING, BUT THEY ARE SEPARATE  
25 REQUIREMENTS. AND JUST BECAUSE THEY ARE IN THE SAME PART OF

1 THE PENAL CODE DOESN'T MEAN YOU CAN SAY THEY COLLECTIVELY  
2 PREVENT THIS WHOLE SET OF FIREARMS FROM BEING LEGAL IN  
3 CALIFORNIA TO BE SOLD.

4 I AM SORRY. I DON'T WANT TO INTERRUPT SINCE YOU ARE  
5 STILL GOING, SO PLEASE PROCEED.

6 **MR. BENBROOK:** YEAH. I HAVE ALREADY ADDRESSED THAT,  
7 YOUR HONOR.

8 THE GUNS THAT AREN'T ON THE ROSTER ARE IN COMMON USE  
9 AND THEREFORE CAN'T BE BANNED. SO THAT'S THE SHOWING WE NEED  
10 TO MAKE, WHICH WE HAVE DONE. AND SO, THEREFORE, THE QUESTION  
11 THEN COMES TO THE HISTORICAL ANALYSIS, WHICH THE STATE ALSO  
12 HAS NOT BEEN ABLE TO CARRY ITS BURDEN.

13 **THE COURT:** GUNS THAT ARE IN COMMON USE CAN BE  
14 BANNED IF THE STATE MEETS THE SECOND PRONG. WOULD THAT BE  
15 FAIR? IF SHOWING --

16 **MR. BENBROOK:** WELL --

17 **THE COURT:** -- HISTORICAL ANALOG.

18 **MR. BENBROOK:** ACTUALLY, NO. I DON'T WANT TO  
19 SUGGEST THAT BECAUSE WE STATE, AND THE STATE DOESN'T  
20 ADEQUATELY RESPOND TO IT, HELLER ESTABLISHES THAT BECAUSE --  
21 HELLER'S HISTORICAL ANALYSIS ESTABLISHES THAT THE DANGEROUS  
22 AND UNUSUAL LIMITATION ON THE SCOPE ESTABLISHES THAT GUNS THAT  
23 ARE IN COMMON USE ARE PROTECTED BY THE SECOND AMENDMENT; AND,  
24 IN OTHER WORDS, CAN'T BE BANNED. I MEAN, THAT'S -- THAT'S OUR  
25 SORT OF TOP-LINE ARGUMENT.

1           **THE COURT:** WHAT ABOUT HELLER'S --

2           **MR. BENBROOK:** BUT EVEN IF YOU DON'T ACCEPT THAT  
3 ARGUMENT WE GO THROUGH THE STEPS.

4           **THE COURT:** HELLER ALSO SETS OUT OTHER LIMITATIONS  
5 TO THE SECOND AMENDMENT, INCLUDING FELONS, MENTAL HEALTH  
6 ISSUES, SENSITIVE PLACES, DANGEROUS AND UNUSUAL, AND IT  
7 MENTIONS CONDITIONS ON THE COMMERCIAL SALE OF ARMS.

8           SO, IN SOME WAYS I THINK THE STATE IS ARGUING, OR  
9 MAYBE IT IS DIRECTLY ARGUING, THAT THE UHA OPERATES AS  
10 CONDITIONS ON THE COMMERCIAL SALE OF ARMS, AND HELLER WOULD  
11 ALLOW FOR SOME CONDITIONS. THESE ARE GOOD CONDITIONS, THEY  
12 PROMOTE SAFETY.

13           HOW DO YOU RESPOND TO THAT ARGUMENT?

14           **MR. BENBROOK:** I RESPOND THAT YOUR HONOR CONSIDERED  
15 A VERY SIMILAR ARGUMENT IN THIS CASE BEFORE BRUEN AND REJECTED  
16 IT AT THE MOTION TO DISMISS STAGE. THAT IS DOCKET NO. 17,  
17 PAGES 9 THROUGH 12.

18           THAT ANALYSIS WAS DONE EVEN BEFORE BRUEN CAME OUT.  
19 AND BRUEN, OF COURSE, ELABORATED AND CLARIFIED ON HELLER WITH  
20 THE TEXT AND HISTORY TEST.

21           THE SHORTEST, AND I THINK BEST, ANSWER TO YOUR  
22 QUESTION IS THE LANGUAGE IN HELLER THAT SAYS WE DON'T CALL  
23 INTO QUESTION LONGSTANDING REGULATIONS AND -- BUT  
24 COMMERCIAL -- CONDITIONS AND QUALIFICATIONS ON COMMERCIAL SALE  
25 OF ARMS, BECAUSE THERE MAY HAVE BEEN SOME LONGSTANDING

1 QUALIFICATIONS IT DOESN'T MEAN ANY NEW QUALIFICATION IS  
2 PRESUMPTIVELY LAWFUL. AND THIS PLAINLY IS A VERY NEW STYLE OF  
3 REGULATION.

4 SO I THINK THAT'S THE SHORTEST AND BEST ANSWER.

5 **THE COURT:** ALL RIGHT.

6 ANY OTHER RESPONSES OR COMMENTS TO THE COURT'S  
7 INITIAL QUESTIONS OF THE STATE?

8 **MR. BENBROOK:** NOT THAT I FEEL LIKE I NEED TO COVER  
9 RIGHT NOW.

10 **THE COURT:** ALL RIGHT.

11 SO IF WE ASSUME THAT THE UHA, ITS VARIOUS  
12 PROVISIONS, ARE COVERED BY THE SECOND AMENDMENT, THEN WE GO  
13 INTO THE SECOND PRONG WHERE THE BURDEN IS ON THE STATE TO  
14 IDENTIFY A REGULATION THAT IS CONSISTENT -- OR TO SHOW THAT  
15 THIS REGULATION, THE UHA AND ITS VARIOUS PROVISIONS, ARE  
16 CONSISTENT WITH THIS NATION'S HISTORICAL TRADITION OF FIREARM  
17 REGULATION.

18 AND HERE, THE STATE HAS COME FORWARD WITH TWO  
19 PRINCIPAL KINDS OF REGULATIONS. ONE HAS TO DO, I THINK, WITH  
20 THE 1805 LAW IN MASSACHUSETTS DEALING WITH HAVING THE GUN  
21 TESTED TO MAKE SURE IT DISCHARGES, IT IS OPERABLE. AND THEN  
22 IT GETS STAMPED OR SERIALIZED.

23 AND THEN THE SECOND BATCH OF LAW RELATES TO 19TH  
24 CENTURY FIRE SAFETY REGULATIONS ALLOWING OR PROHIBITING  
25 GUNPOWDER, I THINK ALLOWING FOR SEARCH AND INSPECTION, THAT

1 KIND OF THING.

2 AND THE PLAINTIFFS' ARGUMENT IS THAT IS NOT PRECISE  
3 ENOUGH. THAT ONE HAS TO DO WITH PREVENTING FIRES WHEN THERE  
4 WERE A LOT OF WOODEN HOMES AND CANDLES, AND DOESN'T HAVE  
5 ANYTHING TO DO WITH HANDGUN SAFETY. AND THEN THE  
6 MASSACHUSETTS LAW HAS TO DO WITH OPERABILITY, MAKING SURE IT  
7 WORKS, IT FIRES, BUT IT IS NOT REQUIRING CERTAIN SAFETY  
8 FEATURES OR NOT NEARLY THAT NARROW SO THAT THEY ARE GENERALLY  
9 OFF TOPIC.

10 HOW DO YOU RESPOND TO THOSE ARGUMENTS?

11 **MS. BOUTIN:** SURE, YOUR HONOR.

12 JUST HAVING TO DO WITH YOUR LAST POINT, I THINK WHEN  
13 WE ARE GETTING INTO THE NUANCES OF THE LAW AND ALSO WHEN WE  
14 ARE TALKING ABOUT THEIR JUSTIFICATION AND THEIR PURPOSE,  
15 BECAUSE BRUEN TELLS US WE LOOK TO WHETHER THERE IS COMPARABLE  
16 JUSTIFICATION FOR THE LAW COMPARED TO TODAY'S LAW AND WHETHER  
17 THERE IS COMPARABLE PURPOSE.

18 I THINK WHAT THIS GOES TO SHOW IS THAT IT IS A MORE  
19 COMPLICATED ANALYSIS THAN JUST LOOKING AT THE PLAIN TEXT OF A  
20 LAW AND WHERE IT WAS AND WHAT YEAR, AND IT IS WHY HAVING  
21 HISTORIANS TAKE A LOOK AT IT AND HAVING HISTORIANS INVOLVED TO  
22 BE ABLE TO INTERPRET THE LAWS AND WHAT WAS BEHIND THEM AND  
23 WHAT THE BURDEN WAS AND WHAT THE PURPOSE WAS. AND I THINK  
24 THAT THAT -- IT SHOWS WHY THAT IS IMPORTANT AND IT SHOWS WHY  
25 THIS IS A VERY COMPLEX AND TIME-CONSUMING UNDERTAKING.

1           BUT TO TAKE A STEP BACK FURTHER. I THINK -- I THINK  
2 YOUR UNDERSTANDING OF WHERE PLAINTIFF IS COMING FROM IS  
3 CORRECT. AND I THINK WHAT IS IMPORTANT TO LOOK AT HERE IS,  
4 AGAIN, THE WAY THAT BRUEN TELLS US TO LOOK FOR THESE  
5 ANALOGIES.

6           AS BRUEN SAYS, YOU ARE LOOKING FOR HISTORICAL  
7 ANALOGS, NOT HISTORICAL TWINS. THAT IS THE PHRASE THAT THE  
8 COURT USES. AND IT KIND OF SETS FORTH TWO WAYS IN WHICH AN  
9 ANALOGY MAY BE BROAD, AND BROADER THAN WAS THE CASE IN BRUEN  
10 BECAUSE THE COURT SAID IN BRUEN THESE -- THESE TWO THINGS DID  
11 NOT APPLY. ONE IS THAT THERE ARE TECHNOLOGICAL ADVANCEMENTS  
12 SINCE THE HISTORICAL TIMES IN QUESTION; AND, TWO, IF THERE ARE  
13 CHANGES IN SOCIETAL CONCERNS. AND BOTH OF THOSE APPLY HERE  
14 AND ALLOW FOR BROAD ANALOGY.

15           IN THE CASE OF TECHNOLOGY, IF WE ARE TALKING ABOUT  
16 THE CLI, MDM, AND MICROSTAMPING, AND PERHAPS TO SOME EXTENT IF  
17 WE ARE TALKING ABOUT SOME OF THE OTHER TECHNOLOGICAL FEATURES,  
18 YOU KNOW, THAT WAS NOT -- THAT WAS NOT TECHNOLOGICALLY  
19 FEASIBLE, CERTAINLY AT THE TIME OF THE FOUNDING AND IN MOST  
20 TIMES IN HISTORY.

21           YOU KNOW, HANDGUNS WERE NOT EVEN WIDESPREAD UNTIL  
22 THE 1800'S, SO CERTAINLY HAVING THOSE TECHNICAL FEATURES ON  
23 THE GUNS WAS NOT HAPPENING DURING MUCH OF HISTORY. AND  
24 BECAUSE THEY WERE NOT AS WIDESPREAD THERE WASN'T AS MUCH OF A  
25 SOCIETAL CONCERN ABOUT ACCIDENTAL DISCHARGES AND WHEN IT COMES



1 TO CHILDREN.

2 SO THOSE TWO METRICS SET FORTH BY THE COURT ALLOW  
3 FOR A BROADER ANALOGY.

4 AND THESE GUNPOWDER LAWS THAT WE ARE TALKING ABOUT,  
5 IN PARTICULAR, WERE EXTREMELY WIDESPREAD. I THINK WE ONLY  
6 SUBMITTED AS EXHIBITS TWO, BUT AS DR. CORNELL SAYS IN HIS  
7 DECLARATION, THEY ARE INCREDIBLY PREVALENT. AND HE HAS  
8 ALREADY IDENTIFIED MANY MORE, AND MANY MORE HAVE BEEN LISTED  
9 IN THE MILLER CASE AND IN OTHER CASES. SO THIS IS A QUESTION  
10 OF MANY, MANY WIDESPREAD REGULATIONS OF HOW GUNPOWDER IS  
11 STORED.

12 AND WE ARE TALKING ABOUT -- SO WHAT WE ARE TALKING  
13 ABOUT IS LAWS THAT REGULATED HOW YOU KEPT FIREARMS AND THEIR  
14 COMPONENTS FROM CREATING ACCIDENTS AND FROM BEING SAFE. THAT  
15 IS WHAT WE ARE TALKING ABOUT AS FAR AS ANALOGY.

16 OF COURSE WE ARE NOT GOING TO HAVE MICROSTAMPING  
17 BACK IN 1776. RIGHT? OF COURSE WE ARE NOT GOING TO HAVE, YOU  
18 KNOW, MAGAZINE DISCONNECT MECHANISM BACK IN 1776.

19 SO I THINK A BROADER ANALOGY TOWARDS PREVENTING  
20 ACCIDENTS FROM LOADED FIREARMS, WHETHER IT IS, OKAY, YES, THEY  
21 CAUSE FIRES OR IS IT ACCIDENTAL DISCHARGE, I MEAN, FRANKLY, IT  
22 PROBABLY -- STORAGE OF GUNPOWDER PROBABLY HELPED BOTH  
23 PROBLEMS. BUT, EITHER WAY, WE ARE TALKING ABOUT ACCIDENTS  
24 THAT HAPPEN FROM LOADED GUNS.

25 SO I THINK THAT KIND OF ANALOGY IS FINE, IT DOESN'T

1 HAVE TO BE A HISTORICAL TWIN TO BE JUSTIFIED.

2 AND, AGAIN, THEN THAT NEXT STEP. I SPOKE BEFORE  
3 ABOUT COMPARABLE BURDENS AND COMPARABLE JUSTIFICATIONS, AGAIN,  
4 THE JUSTIFICATION IS -- IS COMPARABLE. WE ARE TALKING ABOUT  
5 KEEPING WEAPONS AND PEOPLE WHO HAVE WEAPONS IN THEIR HOMES  
6 SAFE.

7 AS FAR AT THE BURDEN GOES, AGAIN, WE ARE TALKING  
8 ABOUT HAVING 800 DIFFERENT MODELS OF IPHONES 13'S AVAILABLE AS  
9 OPPOSED TO ALSO HAVING SOME IPHONE 14'S AVAILABLE. SO IT IS  
10 GENUINELY NOT A LARGE BURDEN TO THE CORE SECOND AMENDMENT  
11 RIGHT OF SELF-DEFENSE.

12 **THE COURT:** THE GUNPOWDER LAWS, DID IT RELATE TO  
13 ARMS THAT WERE LOADED, OR WAS THE FOCUS MORE ON GUNPOWDER.  
14 BECAUSE THEN, AT THAT TIME, YOU HAD TO PUT POWDER DOWN THE  
15 MUSKET AND YOU HAD TO STORE POWDER. SO WEREN'T THEY FOCUSED  
16 MORE ON THE --

17 **MS. BOUTIN:** THERE IS SO MANY --

18 **THE COURT:** -- PREVALENCE OF POWDER?

19 **MS. BOUTIN:** THERE IS SO MANY DIFFERENT KINDS OF  
20 LAWS, I DON'T WANT TO MAKE A REPRESENTATION THAT ISN'T  
21 ACCURATE ON THAT.

22 I DON'T KNOW, WITH CERTAINTY. THERE MAY WELL  
23 HAVE BEEN -- I AM SURE THAT -- I KNOW FOR A FACT SOME HAVE TO  
24 DO WITH STORING, YOU KNOW, LARGER QUANTITIES. THAT IS TRUE.  
25 BUT I DON'T KNOW, SITTING HERE TODAY, HOW MANY OF THEM HAD TO

1 DO WITH WHETHER OR NOT YOU CAN KEEP GUNPOWDER IN THE ACTUAL  
2 GUN.

3 **THE COURT:** AND WHAT ABOUT THE 1805 MASSACHUSETTS  
4 LAW DEALING WITH TESTING TO SEE IF THE GUN DISCHARGES, AND  
5 THEN IS STAMPED. HOW IS THAT ANALOGOUS?

6 **MS. BOUTIN:** SO THAT'S CERTAINLY ANALOGOUS TO, I  
7 THINK, SEVERAL OF THE LAWS HAVING TO DO WITH SAFETY. I MEAN,  
8 YOU ARE MAKING SURE A GUN WORKS PROPERLY. YOU ARE INSPECTING  
9 IT, YOU ARE TESTING IT, AND YOU ARE GIVING IT THE GOVERNMENT  
10 AND THE -- AND I AM GOING TO SAY IT WRONG -- IMAPREMATURE  
11 [PH.] TO SAY, YES, THE GOVERNMENT APPROVES OF THIS WEAPON,  
12 THIS WEAPON IS LEGAL FOR SALE BECAUSE IT PASSES OUR SAFETY  
13 TEST.

14 SO THAT IS A VERY, VERY CLOSELY ANALOGOUS LAW TO  
15 WHAT WE ARE TALKING ABOUT HERE.

16 **THE COURT:** ARE THERE ANY OTHER LAWS OR REGULATIONS,  
17 OTHER THAN THESE TWO GENERAL CATEGORIES?

18 **MS. BOUTIN:** AT THIS TIME THOSE CATEGORIES ARE THE  
19 ONES WE HAVE BEEN ABLE TO IDENTIFY. BUT, AS I HAVE SAID  
20 BEFORE, WE WOULD LIKE ADDITIONAL TIME TO CONTINUE THE  
21 RESEARCH.

22 **THE COURT:** ALL RIGHT.

23 IF I CAN INVITE YOUR RESPONSE.

24 **MR. BENBROOK:** THANK YOU, YOUR HONOR.

25 SO, IT IS CORRECT THAT BRUEN DOES NOT REQUIRE THE

1 ANALOGICAL TWIN. THE REASON -- PART OF THE REASON WHY IT EVEN  
2 CONSIDERS ANALOGY IS TO ADDRESS THE ADVANCEMENTS THAT COUNSEL  
3 SPOKE ABOUT IN TECHNOLOGY AND OTHER THINGS. BUT BRUEN  
4 CAUTIONED THAT, NOTWITHSTANDING THAT, WHEN YOU ARE DOING THIS  
5 HISTORICAL ANALYSIS TO LOOK FOR AT LEAST AN ANALOGOUS  
6 TRADITION. IT HAS TO BE WELL-ESTABLISHED AND REPRESENTATIVE.

7 AND TO BE SUFFICIENTLY ANALOGOUS IT HAS TO HAVE A  
8 SIMILAR HOW AND WHY, AS THE -- AS THE COURT SAID. REGULATE IN  
9 A SIMILAR WAY FOR SIMILAR REASONS. AND THE BURDEN, IT  
10 STRESSED, NEEDS TO BE COMPARABLE.

11 SO THE WHY HERE IS VERY IMPORTANT. THE STATE IS  
12 VERY CANDID THAT THE MAIN REASON IT HAS THIS LAW IS TO CHANGE  
13 THE GUN MARKET, TO CHANGE THE WAY MANUFACTURERS OFFER  
14 FIREARMS, OFFER HANDGUNS.

15 BUT, IN ANY EVENT, LET'S JUST LOOK AT WHAT THEY PUT  
16 UP --

17 ACTUALLY, BEFORE WE DO THAT, TO RETURN TO THE  
18 QUESTION OF TIME.

19 PROFESSOR CORNELL IS NOT BASHFUL ABOUT TALKING ABOUT  
20 HIS QUALIFICATIONS AND KNOWLEDGE OF THE HISTORY OF GUN  
21 REGULATIONS. SO THEY HAVE HIRED A PROFESSOR WHO HOLDS HIMSELF  
22 OUT AS AN EXPERT ON THE HISTORY OF GUN REGULATIONS.

23 AND THAT'S HIS -- THAT'S WHAT HE DOES FOR A LIVING.  
24 HE SUBMITS DECLARATIONS ALL AROUND THE COUNTRY IN SECOND  
25 AMENDMENT CASES. SO HE IS -- HE KNOWS WHAT THE REGULATIONS

1 ARE, IS WHAT I AM GETTING AT. AND SO WE DON'T NEED MORE TIME.

2 BUT, IN ANY EVENT, WE HAVE ADDRESSED THE PROVER LAW,  
3 THE 1805 LAW IN MASSACHUSETTS. BUT JUST TO REITERATE, IT  
4 CAN'T BE A WELL-ESTABLISHED TRADITION BECAUSE IT IS ONE LAW IN  
5 ONE STATE. IT IS A TOTALLY DIFFERENT KIND OF REGULATION. IT  
6 TESTED FIRING AT TWO DIFFERENT ANGLES TO MAKE SURE THE GUNS  
7 ACTUALLY WORKED AS INTENDED.

8 IT DID NOT REQUIRE ANY FEATURES OF HANDGUNS, MUCH  
9 LESS SAFETY FEATURES, AS COUNSEL IS CLAIMING. IT IS NOT A  
10 SAFETY LAW, IT IS A LAW -- THE TESTING IS TO SEE IF AT TWO  
11 DIFFERENT ANGLES THE GUN FIRED A SPECIFIED NUMBER OF FEET.  
12 AND IT DIDN'T SAY, WE ARE NOT GOING TO TEST GUNS THAT DON'T  
13 HAVE CERTAIN FEATURES.

14 ANY GUN -- AND HERE IS ANOTHER IMPORTANT LIMITATION.  
15 IT IS NOT ANY GUN MANUFACTURED IN MASSACHUSETTS, IT IS ANY GUN  
16 MANUFACTURED IN MASSACHUSETTS, OTHER THAN GUNS AT THE  
17 SPRINGFIELD ARMORY, WHICH PROFESSOR CORNELL SAYS WAS BY FAR  
18 THE LARGEST MANUFACTURER IN THE STATE. SO IT DOESN'T EVEN  
19 COVER ALL OF MASSACHUSETTS.

20 **THE COURT:** WHY DID THEY IMPLEMENT THAT LAW? AT  
21 THAT TIME THE GOVERNMENT WAS REALLY ENCOURAGING THE  
22 MANUFACTURE OF MUSKETS AND OTHER THINGS. AND WAS THERE FRAUD  
23 ON THE MARKET, A LOT OF JUNK GUNS, OR DO YOU KNOW?

24 **MR. BENBROOK:** I DON'T KNOW THE ANSWER TO THAT.  
25 WHAT IT REALLY SMACKS OF IS ALMOST PROTECTING THE MARKET OF

1 THE SPRINGFIELD ARMORY FROM COMPETITION, POTENTIALLY.

2 **THE COURT:** OR THE SPRINGFIELD ARMORY COULD BE KNOWN  
3 AS A RELIABLE GUN MANUFACTURER.

4 **MR. BENBROOK:** YES, THAT IS POSSIBLE AS WELL.

5 AND THE STAMPING REQUIREMENT THERE CANNOT POSSIBLY  
6 BE ANALOGIZED TO THE MICROSTAMPING FEATURE HERE. IF A GUN  
7 PASSED THE TEST UNDER THE 1805 MASSACHUSETTS LAW, THE PROVER  
8 WOULD STAMP HIS INITIALS ON THE BARREL OF THE GUN WITH  
9 ORDINARY ENGRAVING TOOLS OF THE TIME.

10 HERE, THE PURPOSE OF THE MICROSTAMPING REQUIREMENT,  
11 AS HAS BEEN STATED AND IS STATED IN THE BRIEFING, IS TO HELP  
12 SOLVE CRIMES. IT IS NOT ABOUT SAFETY OR OPERABILITY OF GUNS.

13 AND THERE WAS SOME SUGGESTION THAT THE GUNPOWDER  
14 STORAGE LAWS WERE -- FELL IN THE CATEGORY OF LAWS TO, QUOTE,  
15 KEEP FIREARMS SAFE AND TO PREVENT ACCIDENTS FROM LOADED GUNS.

16 THAT CAN'T BE THE CASE WITH GUNPOWDER LAWS.  
17 GUNPOWDER LAWS, SUCH AS THE ONE CITED IN EXHIBIT 5 TO  
18 PROFESSOR CORNELL'S DECLARATION, IS JUST SIMPLY A LIMIT ON THE  
19 AMOUNT OF GUNPOWDER THAT YOU CAN KEEP IN YOUR HOUSE. AS YOUR  
20 HONOR STATED, THAT IS PLAINLY A FIRE SAFETY REGULATION.

21 THE SEPARATE ONE THAT WAS CITED, THE MASSACHUSETTS  
22 LAW PROHIBITING STORING LOADED WEAPONS IN BOSTON HOUSES,  
23 HELLER ALREADY TALKED ABOUT THAT AND SAID IT IS NOT ABOUT  
24 SAFETY IT IS ABOUT ASSISTING FIREFIGHTERS AND PREVENTING  
25 FIRES. AND THE TEXT OF THE LAW SAYS IT RIGHT ON ITS FACE IT

1 IS ABOUT FIRE SAFETY.

2 SO THESE -- THESE LAWS ARE NOT SUFFICIENTLY  
3 ANALOGOUS TO SAVE THE UHA, YOUR HONOR.

4 **THE COURT:** AND IF THAT IS CORRECT, TELL ME AGAIN  
5 WHAT IS THE SCOPE OF THE INJUNCTION, WHAT IS ENJOINED.  
6 BECAUSE IN THE ARGUMENT IN THE BRIEFING THE PLAINTIFFS CABINED  
7 TOGETHER ALL OF THE VARIOUS PROVISIONS, AND THEN CHARACTERIZE  
8 IT AS A HANDGUN BAN. BUT ANY INJUNCTION HAS TO BE SPECIFIC.

9 **MR. BENBROOK:** WELL, YES. WE ARE ASKING TO PREVENT  
10 THE OPERATION OF EACH OF THESE FEATURES TO PREVENT -- THAT  
11 PREVENT GUNS FROM BEING AVAILABLE FOR SALE -- GUNS IN COMMON  
12 USE ELSEWHERE IN THE COUNTRY FROM BEING AVAILABLE FOR SALE IN  
13 CALIFORNIA.

14 THE NOTICE ASKS FOR AN INJUNCTION ENJOINING  
15 ENFORCEMENT OF THE STATE OF CALIFORNIA'S PROHIBITION ON THE  
16 RETAIL SALE OF HANDGUNS THAT ARE NOT LISTED ON THE ROSTER.  
17 THAT'S THE SCOPE.

18 **THE COURT:** THAT WOULD INCLUDE ALL OF THESE VARIOUS  
19 PROVISIONS.

20 **MR. BENBROOK:** YES.

21 **THE COURT:** BECAUSE IN SOME WAY, SHAPE, OR FORM THEY  
22 ARE REGULATING GUNS IN COMMON USE; WHICH THEY CANNOT DO, THE  
23 ARGUMENTS YOU HAVE MADE.

24 **MR. BENBROOK:** THAT'S RIGHT, YOUR HONOR.

25 **THE COURT:** THEN GIVE ME YOUR SPECIFIC ARGUMENT AS

1 TO THE ROSTER. THAT IS, OF COURSE, A SEPARATE PROVISION, THE  
2 THREE-TO-ONE.

3 **MR. BENBROOK:** WELL, SO, RESPECTFULLY, THAT'S  
4 REFERRED TO AS THE ROSTER REMOVAL PROVISION.

5 **THE COURT:** RIGHT.

6 **MR. BENBROOK:** AS OPPOSED TO THE ROSTER.

7 AND IF THE -- IF WE ARE SUCCESSFUL AS TO OUR THEORY,  
8 THAT WOULD NECESSARILY GO AWAY BECAUSE THE ROSTER GOES AWAY.

9 AT SOME POINT I WANT TO TALK ABOUT THE OTHER  
10 PRELIMINARY INJUNCTION FACTORS, UNDERSTANDING THAT I -- THAT  
11 OUR HOPE IS THAT YOUR HONOR IS -- WILL BE PREPARED TO ADDRESS  
12 THIS AS A SUMMARY JUDGMENT MOTION. BUT I DON'T WANT TO JUMP  
13 THE -- JUMP THE GUN. PARDON ME FOR SAYING THAT. BUT WHEN THE  
14 TIME IS RIGHT, PLEASE ALLOW ME TO ADDRESS THAT.

15 **THE COURT:** ALL RIGHT.

16 TURNING TO THE STATE FOR A MOMENT.

17 FIRST, DO YOU HAVE ANY RESPONSES, TOP OF MIND, TO  
18 MR. BENBROOK, ANY COMMENTS HE MADE?

19 **MS. BOUTIN:** THANK YOU, YOUR HONOR.

20 I THINK THE MAIN ONE IS -- AND I THINK THIS MAY COME  
21 FROM TWO SESSIONS AGO FROM COUNSEL. BUT HE SAID THAT WHEN IT  
22 COMES TO LOOKING AT INDIVIDUAL PROVISIONS OF THE UHA, YOU CAN  
23 LOOK AT THOSE AT THE SECOND STEP. AND HE SAYS BANNING GUNS  
24 FOR ANY REASON IS AGAINST THE SECOND AMENDMENT.

25 IT IS PLAINTIFFS' BURDEN TO SHOW, FOR EACH PROVISION



1 THAT THEY WANT ENJOINED, IT IS THEIR BURDEN TO SHOW, UNDER  
2 THEIR THEORY OF THE -- OF PLAIN TEXT READING, THAT THAT  
3 PROVISION OF THE UHA, LET'S SAY HAVING A -- REQUIRING A SAFETY  
4 ON A GUN, ACTUALLY DOES BAN A GUN. THAT'S THEIR BURDEN IN  
5 STEP ONE OF THE ANALYSIS UNDER BRUEN, THEY HAVE TO PROVE THAT  
6 THE LAW STOPS THEM FROM KEEPING AND BEARING AN ARM.

7 IF IT ONLY BROUGHT THIS SUIT CHALLENGING THE  
8 STATUTORY PROVISION REQUIRING SAFETIES IT WOULD BE OBVIOUS.  
9 THEY HAVE NOT SHOWN EVIDENCE THAT THAT REQUIREMENT STOPS THEM  
10 FROM PURCHASING ANY HANDGUNS THAT THERE IS. IT JUST DOESN'T.

11 SO I THINK SAYING THAT THAT COMES UP IN STEP TWO IS  
12 NOT RIGHT, I THINK IT COMES UP IN STEP ONE. AND THERE IS NO  
13 QUESTION THAT THAT IS PLAINTIFFS' BURDEN ON THIS MOTION, AND  
14 CERTAINLY WHETHER IT IS PRELIMINARY INJUNCTION OR SUMMARY  
15 JUDGMENT.

16 SO I DO THINK IT IS IMPORTANT TO BE CLEAR, THAT IS A  
17 STEP-ONE ISSUE.

18 ANOTHER POINT I THINK WE ARE -- I THINK WE ARE GOING  
19 TO GET IN A MINUTE TO THE OTHER WINTER FACTORS. I THINK,  
20 HOPEFULLY, WE ARE HONING IN ON THE END OF THE MERITS ARGUMENT.

21 I DO WANT TO -- I DO HAVE TWO BROADER POINTS I JUST  
22 WANT TO BRING UP TO MAKE SURE THAT I DON'T FORGET TO SAY THEM.

23 ONE, WE ACTUALLY DID COMPLY WITH RULE 56 WHEN IT  
24 COMES FOR ASKING FOR DISCOVERY. WE SUBMITTED AN APPLICATION  
25 ALONG WITH OUR OPPOSITION TO THAT MOTION SO THAT -- THE ISSUE

1 OF THAT COMPLIANCE IS -- THAT SHOULD NOT BE AN ISSUE.

2 AND THE OTHER IS SIMPLY -- AND I JUST DON'T WANT TO  
3 FORGET TO SAY THIS. IF YOUR HONOR IS INCLINED TO GRANT A  
4 PRELIMINARY INJUNCTION, OR EVEN SUMMARY JUDGMENT, WE WOULD  
5 CERTAINLY ASK THAT THE JUDGE STAY THAT RULING PENDING AN  
6 APPEAL, FOR THE RECORD.

7 **MR. BENBROOK:** YOUR HONOR, IF --

8 **THE COURT:** YES.

9 **MR. BENBROOK:** IF WE ARE IN THE CLEANUP MODE ON THIS  
10 PART.

11 **THE COURT:** YES.

12 **MR. BENBROOK:** JUST TO BE CLEAR, OUR -- AS I HAVE  
13 STATED AT LEAST ONCE, OUR POSITION IS THAT HELLER ESTABLISHED  
14 THAT HANDGUNS IN COMMON USE CAN'T BE BANNED. THAT HELLER HAS  
15 DONE THE HISTORICAL ANALYSIS. SO, YOU KNOW, MY DISCUSSION  
16 ABOUT HISTORY IS IF YOUR HONOR DOESN'T AGREE WITH US ON THAT  
17 BROAD TOP-LINE POINT, SO THAT'S MY -- I JUST WANT TO CLARIFY  
18 THAT AGAIN.

19 ONE LAST POINT ON THE HISTORY POINT THAT I THINK  
20 NEEDS TO BE EMPHASIZED IS THE STATE IS TRYING TO CATEGORIZE  
21 ALL OF THESE HISTORICAL LAWS UNDER THE BROAD RUBRIC OF SAFETY,  
22 SAY THE STATE HAS REGULATED SAFETY SO WE CAN REGULATE  
23 SAFETY -- EXCUSE ME. HISTORICALLY GOVERNMENTS HAVE REGULATED  
24 SAFETY SO THEREFORE WE CAN REGULATE SAFETY.

25 I JUST WANT TO EMPHASIZE, THAT IS FAR TOO BROAD A

1 LEVEL OF GENERALITY TO SATISFY WHAT BRUEN CALLS FOR, AS I --  
2 AS I SPECIFIED EARLIER.

3 **THE COURT:** IS THAT YOUR OBJECTION, IN PART, TO  
4 PROFESSOR CORNELL? HE MAKES THE ARGUMENT THAT HISTORICALLY  
5 THE STATES HAVE FREELY EXERCISED POLICE POWER TO PROMOTE  
6 SAFETY AND THEY HAVE DONE IT IN THE FIELD OF FIREARMS, AND SO  
7 THAT THEY OUGHT TO BE ABLE TO REGULATE HERE, AS THEY ARE,  
8 UNDER THE UHA.

9 **MR. BENBROOK:** ABSOLUTELY. MUCH OF HIS DECLARATION  
10 IS ALONG THOSE LINES, AS WE NOTED IN THE REPLY BRIEF. AND  
11 THAT IS TO THE EXTENT HE DID TRY TO IDENTIFY PARTICULAR  
12 REGULATIONS IN THE PAST, THOSE ARE THE ONES WE HONED IN ON IN  
13 OUR REPLY.

14 **THE COURT:** ALL RIGHT.

15 WHAT IS YOUR RESPONSE, IF THE COURT WERE TO GRANT  
16 PRELIMINARY INJUNCTION OR THE RULE 56 MOTION, THAT IT OUGHT TO  
17 BE STAYED PENDING APPEAL?

18 **MR. BENBROOK:** I THINK THAT KIND OF FOLDS IN WITH  
19 THE OTHER WINTER FACTORS, FRANKLY, GIVEN THE CONSIDERATIONS ON  
20 A STAY. AND THE ARGUMENT -- SO THE STATE'S MAIN ARGUMENT, I  
21 BELIEVE, IF THAT WERE TO HAPPEN, JUST I THINK HAS BEEN  
22 PREVIEWED ALREADY; WHICH IS, WE CAN'T HAVE THIS ENJOINED  
23 BECAUSE IF WE DO ALL OF THESE UNSAFE HANDGUNS, IN QUOTES,  
24 UNSAFE HANDGUNS, WILL FLOOD THE MARKET.

25 SO LET'S UNPACK WHAT THAT ARGUMENT WOULD LOOK LIKE.

1           ALL OF THE SEMIAUTOMATIC HANDGUNS THAT ARE BANNED  
2           CURRENTLY HAVE ALL OF THE SAME BASIC FEATURES AS THE HUNDREDS  
3           OF HANDGUNS THAT ARE GRANDFATHERED IN. HANDGUN, ROUGHLY  
4           COMPARABLE LENGTH, FIRES ONE BULLET AT A TIME; THEY ARE IN THE  
5           SAME CLASS OR CATEGORY OF HANDGUNS.

6           SO WHAT THE STATE IS SAYING IS WE CAN'T LET NEW GUNS  
7           DEVELOPED OVER THE PAST 15 YEARS TO BE SOLD SINCE THEY  
8           PROBABLY DON'T HAVE TWO OF THE FEATURES THAT ARE REQUIRED: A  
9           CHAMBER LOAD INDICATOR OR THE MAGAZINE DISCONNECT.

10          AND THERE IS NO DISPUTE THEY DON'T ALSO HAVE THE  
11          MICROSTAMPING. AND NEVER MIND THAT NO GUN HAS ALL THREE.

12          BUT THIS ARGUMENT BREAKS DOWN WHEN YOU CONSIDER THE  
13          GRANDFATHERING OF GUNS THAT ARE ON THE ROSTER.

14          THE GONZALEZ DECLARATION, AT PARAGRAPH 19, SHOWS  
15          THAT 829 GUNS ARE ON THE ROSTER CURRENTLY, AND ONLY 32 OF THEM  
16          HAVE BOTH FEATURES THAT THE STATE SAY ARE CRITICAL, THE CLI  
17          AND THE MAGAZINE DISCONNECT MECHANISM. IN OTHER WORDS, 797 OF  
18          THE GUNS DON'T HAVE EITHER.

19          SO THIS GRANDFATHERING DOOMS THE ARGUMENT THAT  
20          UNSAFE GUNS WILL POUR IN. AND THE ROSTER REMOVAL, I MEAN --  
21          WELL, SCRATCH THAT.

22          NEXT POINT.

23          WE POINT OUT, THROUGH THE PHILLIPS DECLARATION, THE  
24          PERVERSE REALITY THAT BY NOT ALLOWING ANY NEW GUNS FOR 15  
25          YEARS THE STATE HAS MISSED OUT ON ACTUAL SAFETY IMPROVEMENTS

1 THAT MANUFACTURERS HAVE MADE. SO, RESPECTFULLY, YOUR HONOR,  
2 SCAREMONGERING FROM THE STATE IS NOT A BASIS FOR NOT ENJOINING  
3 OR FOR STAYING PENDING APPEAL.

4 **THE COURT:** ALL RIGHT.

5 ALTHOUGH, OF COURSE, THE STATE, IF A STAY WERE NOT  
6 ISSUED HERE, WOULD SIMPLY SEEK ONE WITH THE NINTH CIRCUIT.

7 **MR. BENBROOK:** LIKELY WOULD, YES. THAT WOULDN'T BE  
8 A SURPRISE.

9 **THE COURT:** A QUESTION. I THINK I KNOW THE ANSWER,  
10 BUT WANTED TO GET YOUR THOUGHTS ON THIS, AS WELL.

11 IN THE MOTION, I THINK YOU NOTED THAT HAVING A  
12 CHOICE IN THE TYPE OF FIREARM IS NEITHER RELEVANT NOR  
13 NECESSARY. WHAT DID YOU MEAN BY THAT?

14 **MR. BENBROOK:** WHERE DID I SAY THAT -- WHERE DID WE  
15 SAY THAT?

16 **THE COURT:** THERE IS A POINT HERE IN THE MOTION FOR  
17 PRELIMINARY INJUNCTION AT PAGE 10. I THINK WHEN THE STATE WAS  
18 POINTING OUT THAT PLAINTIFFS DON'T GET TO PICK AND CHOOSE  
19 WHICH HANDGUNS THEY WANT, THAT THEY STILL HAVE HANDGUNS ON THE  
20 ROSTER THEY CAN PURCHASE.

21 THE ARGUMENT, I THOUGHT, WAS BY THE PLAINTIFF THAT  
22 HAVING A CHOICE IN TYPE OF FIREARM IS NEITHER RELEVANT NOR  
23 NECESSARY, AT PAGE 10. I THINK THAT MIGHT BE IN THE REPLY.

24 **MR. BENBROOK:** YEAH. THAT DOESN'T SOUND LIKE  
25 SOMETHING -- THAT SOUNDS INCONSISTENT WITH WHAT WE ARE

1 ARGUING, YOUR HONOR. THAT IS WHY IT WOULD BE GREAT IF WE  
2 COULD FIND AN ACTUAL CITE.

3 **THE COURT:** IF I MAY GET THAT FOR YOU. I THINK IT  
4 IS IN YOUR MOTION AT PAGE 10. I AM NOT FINDING IT NOW.

5 **MR. BENBROOK:** WELL, IF THAT STATEMENT WERE MADE  
6 SOMEWHERE, THAT DOES NOT SOUND CONSISTENT WITH WHAT WE ARE  
7 ARGUING.

8 **THE COURT:** YES.

9 **MR. BENBROOK:** INDEED, CHOICE IS INHERENT IN THE  
10 RIGHT TO SELF-DEFENSE.

11 **THE COURT:** OKAY. LET ME TAKE ONE OTHER LOOK HERE.  
12 WELL, THAT'S ALL RIGHT.

13 I THINK I HAVE ALL OF MY QUESTIONS ANSWERED. I WAS  
14 GOING THROUGH MY NOTES THERE.

15 ARE THERE ANY ADDITIONAL COMMENTS OR POINTS TO MAKE  
16 BEFORE WE CLOSE THE HEARING?

17 **MS. BOUTIN:** I WOULD LIKE TO RESPOND, YOUR HONOR.

18 **THE COURT:** YES.

19 **MS. BOUTIN:** THANK YOU.

20 ONE LAST POINT ON THE HISTORICAL ANALOGY ISSUE THAT  
21 I THINK IS IMPORTANT IS THAT THE ANALOGOUS CATEGORY OF LAWS IS  
22 NOT JUST SAFETY. CERTAINLY FOR MANY OF THE UHA PROVISIONS IT  
23 IS NOT JUST LAWS ABOUT SAFETY, IT IS LAWS ABOUT CONTROLLING  
24 THE VOLATILITY OF FIREARMS AND THEIR COMPONENTS IN THE -- AND  
25 MAKING IT SAFER IN THE HOME TO HAVE THOSE PARTS. IT IS NOT

1 JUST GENERAL GUN SAFETY.

2 I THINK EVERYONE AGREES THAT, YOU KNOW, GUNS HAVE  
3 THE POTENTIAL TO BE DANGEROUS. AND SO, YES, A BROAD CATEGORY  
4 -- SAFETY IS A FAIRLY BROAD CATEGORY IN THIS CONTEXT. BUT  
5 CERTAINLY WHEN WE ARE ANALOGIZING TO A LOT OF THE PROVISIONS  
6 YOU CAN GO A LOT NARROWER THAN THAT.

7 THE NEXT POINT. WHEN WE WERE TALKING ABOUT THE  
8 INJUNCTION FACTORS PLAINTIFFS' COUNSEL SPOKE ABOUT THE BURDEN  
9 ON THE STATE SAYING THAT, YOU KNOW, UNSAFE HANDGUNS AREN'T  
10 GOING TO, YOU KNOW, POUR IN IF THERE IS, I GUESS -- AN  
11 INJUNCTION AND STAY ARE SIMILAR IN A SENSE BECAUSE IN BOTH  
12 CASES WE ARE TALKING ABOUT PENDING A DECISION ON THE MERITS  
13 WHETHER OR NOT THE LAW WILL BE ENJOINED.

14 BUT, I MEAN, PURCHASING NEW -- EXCITING NEW MODELS  
15 OF HANDGUNS WITHOUT THESE COMPONENTS IS EXACTLY WHAT  
16 PLAINTIFFS ARE SEEKING TO DO. SO I THINK -- I THINK CLAIMING  
17 THAT THERE WON'T BE A LOT OF PURCHASES OF A LOT OF NEW  
18 HANDGUNS THAT DON'T HAVE THESE SAFETY FEATURES DOESN'T REALLY  
19 RING TRUE.

20 AND, YOU KNOW, THERE MIGHT BE SOME ASPECTS OF  
21 CERTAIN HANDGUNS THAT MAKE HANDGUNS SAFER, INCLUDING POSSIBLY  
22 CERTAIN ASPECTS OF OFF-ROSTER HANDGUNS. THAT IS POSSIBLE.  
23 BUT WE KNOW THAT THESE FEATURES CAN SAVE LIVES, ESPECIALLY OF  
24 CHILDREN IN HOMES. WE KNOW THAT. THERE HAS BEEN STUDIES ON  
25 THAT.

1           SO TO SAY THAT THEY ARE SIMILAR AND THEY ARE NOT  
2 TALKING ABOUT BIG DIFFERENCES BETWEEN THESE HANDGUNS, THERE  
3 ARE MAJOR DIFFERENCES BETWEEN THESE HANDGUNS.

4           AND IT IS A BELL YOU CAN'T UNRING BECAUSE IF -- IF  
5 THE INJUNCTION IS ABLE TO TAKE EFFECT, THE HANDGUNS COULD  
6 THEORETICALLY BE PURCHASED. AND THERE IS NOTHING IN THE  
7 UNSAFE HANDGUN ACT THAT OUTLAWS POSSESSION OF THESE HANDGUNS  
8 SO YOU CAN'T TAKE THEM AWAY FROM PEOPLE ONCE THEY ARE  
9 PURCHASED.

10           SO THAT IS WHY AN INJUNCTION IS NOT APPROPRIATE HERE  
11 IN TERMS OF THE PUBLIC INTEREST, WHY A STAY WOULD BE  
12 APPROPRIATE, IF NECESSARY.

13           AND, PARTICULARLY, I THINK, ALSO LOOKING AT THE  
14 STATUS QUO AND THE FACT THAT THIS -- THESE REQUIREMENTS HAVE  
15 BEEN THE STATUS QUO FOR, YOU KNOW, SOMETHING OVER 15 YEARS AS  
16 COMPARED TO THE TIMELINE WE ARE LOOKING AT BETWEEN NOW AND --  
17 AND GETTING MORE INSIGHT INTO WHAT THE FINAL JUDGMENT MAY BE.

18           **THE COURT:** MANY OF THESE BANNED HANDGUNS ARE  
19 ALREADY IN THE MARKET THROUGH THE EXCEPTIONS, THE FAMILIAL  
20 EXCHANGE EXCEPTION AND LAW ENFORCEMENT BUYING THEM AND THEN  
21 SELLING THEM. AM I CORRECT?

22           **MS. BOUTIN:** YOUR HONOR, I'M NOT -- I DON'T KNOW THE  
23 NUMBERS. I CAN'T SAY IF "MANY" IS AN ACCURATE REPRESENTATION  
24 OR NOT.

25           I DO KNOW, WITH RESPECT TO LAW ENFORCEMENT, THE



1 LAW -- THE EXCEPTIONS ARE DIFFERENT FOR DIFFERENT TYPES OF LAW  
2 ENFORCEMENT. SO A POLICE OFFICER, PER SE, THE EXCEPTION  
3 PROBABLY IS A LITTLE BIT MORE BROADLY AS FAR AS WHAT HE CAN DO  
4 WITH THE HANDGUN AS OPPOSED TO OTHER TYPES OF OFFICERS THAT  
5 ARE COVERED BY THE EXCEPTION. SO THEY ARE NOT UNLIMITED AS TO  
6 PUBLIC SAFETY OFFICERS.

7 **THE COURT:** ALL RIGHT.

8 MR. BENBROOK, ANYTHING IN ADDITION?

9 I AM COMFORTABLE WITH THE BALANCE OF THE WINTER  
10 FACTORS, SO I DON'T FEEL THE NEED FOR ANY DISCUSSION THERE. I  
11 WAS REALLY FOCUSED MORE ON THE MERITS DISCUSSION.

12 **MR. BENBROOK:** YOUR HONOR, I HAVE ADDRESSED THESE  
13 POINTS MULTIPLE -- IN SOME CASES MULTIPLE TIMES ALREADY, SO I  
14 AM READY TO STOP TALKING.

15 **THE COURT:** ALL RIGHT.

16 **MR. BENBROOK:** AND I APPRECIATE YOUR CLOSE ATTENTION  
17 TO THE PAPERS.

18 **THE COURT:** YOU ARE WELCOME. THE BRIEFING WAS  
19 EXCELLENT, MUCH APPRECIATED. THESE ARE GREAT ISSUES. VERY  
20 PRINCIPLED DIFFERENCES. AND, OF COURSE, THE COURT'S  
21 OBLIGATION IS A NARROW ONE, NOT MAKING POLICY DETERMINATIONS  
22 OR POLITICAL CONSIDERATIONS BUT SIMPLY DOING AS I AM  
23 INSTRUCTED, UNDER THE LAW, AND MAKING THE BEST JUDGMENT I CAN.

24 SO I WILL TAKE EVERYTHING UNDER SUBMISSION. ISSUE  
25 AN ORDER, I HOPE FAIRLY SOON. AND CONSIDER ALL OF THESE

1 VARIOUS ISSUES INCLUDING, IF AN INJUNCTION IS GRANTED, BOND  
2 AND STAYS, AND ALL OF THOSE ISSUES I WILL TAKE UNDER  
3 SUBMISSION.

4 THANK YOU VERY MUCH.

5 **MS. BOUTIN:** THANK YOU, YOUR HONOR.

6 **THE COURT:** HAVE A GOOD WEEKEND.

7 **MR. BENBROOK:** THANK YOU, YOUR HONOR.

8  
9 \* \* \*

10 I CERTIFY THAT THE FOREGOING IS A CORRECT  
11 TRANSCRIPT FROM THE RECORD OF PROCEEDINGS  
IN THE ABOVE-ENTITLED MATTER.

12 S/LEEANN PENCE 2/21/2023  
13 LEEANN PENCE, OFFICIAL COURT REPORTER DATE  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25