

Exhibit 20
to
Plaintiffs' Cross-Motion for Summary Judgment
and
Opposition to Defendants' Motion for Summary
Judgment

In The Matter Of:

*Shawn J. Tardy, et al. vs.
Martin J. O'Malley, et al.*

Christopher S. Koper, Ph.D.

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1 additional work on the ban and got that funding from
2 them.

3 Q And why did you revisit the issue again
4 reexamining your 2004 report in 2013?

5 A For the 2013 book chapter, I was asked by
6 Daniel Webster if I would take part in the gun summit
7 at Johns Hopkins that you mentioned earlier, and they
8 asked if I would prepare basically a chapter that just
9 briefly summarized the results of the -- the 2004
10 report.

11 Q All right. In the last sentence of this
12 paragraph, you state, "My conclusions on the impact of
13 the federal ban are most accurately and completely set
14 forth in my 2004 and 2013 reports." Do you see that,
15 sir?

16 A Yes.

17 Q So if I want to look at the most accurate
18 and complete conclusions that you've drawn on your work
19 on the federal ban, I would look to those two reports;
20 correct?

21 A Yes.

1 Q "There is not a clear rationale for
2 expecting the ban to reduce assaults and robberies with
3 guns." Am I reading that correctly?

4 A Yes.

5 Q And that correctly and accurately state
6 your conclusion with respect to the impact on
7 firearm-related crime of the federal ban on assault
8 weapons and large capacity magazines; correct?

9 A That's a partial statement of it.

10 Q All right. But -- but accurate in and of
11 itself?

12 A Yes.

13 Q Okay. And when you say you would not
14 expect the assault weapon or large capacity magazine
15 ban to reduce assaults with guns, that would include
16 assaults leading to homicides; correct?

17 A Not exactly. What I'm saying here is I
18 don't expect the overall level of assaultive violence
19 with guns to change whether or not these guns and
20 magazines are available, but what I am hypothesizing is
21 that changes in the use of these guns and magazines

1 could affect the share of attacks that involve -- that
2 result in injuries or deaths.

3 Q But -- but they -- you would not expect a
4 ban on assault weapons or large capacity magazines to
5 actually reduce the number of firearm-related assaults
6 or robberies; correct?

7 A Correct.

8 Q And you would not expect a ban on assault
9 weapons or large capacity magazines to reduce
10 firearm-related home invasions; correct?

11 A No. Correct, I mean.

12 Q And you wouldn't expect a ban on assault
13 weapons or large capacity magazines to reduce the
14 number of firearms assaults on police officers;
15 correct?

16 A Correct. That's fair enough.

17 Q On note 95 on that page, you address I
18 believe state bans on assault weapons in which you say,
19 "A few studies suggest that state-level assault weapon
20 bans have not reduced crime." Am I reading that
21 correct?

1 A Yes.

2 Q And is that still your view today?

3 A I've not seen any further studies of this
4 yet, but yes, I mean, essentially that's the
5 conclusion.

6 Q All right.

7 A With the qualifiers that are stated in the
8 rest of the footnote.

9 Q Let's mark this as Exhibit 6, please. Let
10 me show you what I've marked as Exhibit 6, which is an
11 article authored by Mark Gius, G-I-U-S, on an
12 examination of the effects of concealed weapon laws and
13 assault weapons bans on state-level murder rates.

14 (Koper Exhibit 6 was marked for
15 identification.)

16 A Okay.

17 Q And I first ask you are you familiar with
18 this article?

19 A No. I've not read this.

20 Q And has anyone mentioned this to you?

21 A Defense counsel did mention the existence

1 crimes resulting in death. I think the percentage of
2 gunshot victimizations resulting in death. I also
3 summarized in chapter nine of this report some of the
4 other findings that we had had in the '97 report when
5 we had looked at some different similar types of
6 outcome measures.

7 Q On page 96 of your 2004 report marked as
8 Exhibit 5, that's your summary of your conclusions;
9 correct?

10 A Yes.

11 Q And in the third sentence you state, "There
12 has been no discernable reduction in the lethality and
13 injuriousness of gun violence," is that correct?

14 A Yes.

15 Q And is that still your view today based
16 upon your study and analysis of the impact of the
17 federal ban on assault weapons and large capacity
18 magazines?

19 A Yes. Based on the data that I analyzed,
20 it's still my view of it. Again, subject to the
21 qualifications that I noted earlier.

1 Q All right. And are you aware of anyone
2 else's data with respect to studying the impact of the
3 federal ban on assault weapons and large capacity
4 magazines that reached a conclusion different from the
5 conclusion that you state here?

6 A No.

7 Q Would you agree with me that the government
8 interest to be served by the federal assault weapon ban
9 and large capacity magazine ban was the reduction of
10 firearm-related violence; correct?

11 A You could view it that way or you could
12 view it more specifically as trying to get a reduction
13 in shootings in incidents with high numbers of shots
14 fired. And so, you know, again, I tended to view --
15 judge this more specifically in terms of effects on gun
16 injuries and gun deaths. As I noted in the report,
17 given the trends in use of assault weapons and large
18 capacity magazines that had been observed to that
19 point, I felt it was actually premature to make any
20 definitive conclusions about the ban's effects on gun
21 deaths and injuries. I felt that the effects of the

1 ban were still unfolding at that time and might still
2 take a while to fully unfold.

3 Q Isn't it true that as you sit here today,
4 you cannot conclude with a reasonable degree of
5 scientific probability that the federal ban on assault
6 weapons and large capacity magazines reduced crimes
7 related to guns?

8 A Correct.

9 Q And it didn't reduce the number of deaths
10 or injuries caused by guns either; correct?

11 A Correct.

12 Q Returning to your report for a moment,
13 Professor. I lost my copy of.

14 On paragraph five at the top of page two
15 you say, "Based on my research, I found, among other
16 things, that assault pistols" --

17 A I'm sorry. Could you clarify for me?

18 Q I'm sorry. Page two.

19 A Page two. Got you.

20 Q Paragraph five.

21 A Uh-huh.

1 Q Under "Summary of Findings."

2 A Okay.

3 Q You state, "Based on my research, I found,
4 among other things, that assault pistols are used
5 disproportionately in crime in general, and that
6 assault weapons more broadly were disproportionately
7 used in murder and other serious crimes in some
8 available data sources," correct?

9 A Yes.

10 Q Let's see if we can pull that apart so I
11 can understand what you're saying here. Now, how do
12 you define assault pistols?

13 A Handguns that have the military style
14 features qualifying as assault weapons.

15 Q And would you agree with me that they
16 became popularly used by criminals in connection with
17 the so-called crack epidemic of the 1980s?

18 A I don't know that I can make a statement
19 that specific. I can say that, I mean, there are
20 statistics in the report on how widely they were used
21 in crime. Generally assault weapons accounted for a

1 small percentage of crime guns. Assault pistols tended
2 to be used more often than assault rifles.

3 Q And is it your understanding that assault
4 pistols have been continuously banned in the State of
5 Maryland since at least 1994?

6 A Yes.

7 Q And that the challenge by my clients to the
8 ban on assault weapons does not include a challenge to
9 the ban on assault pistols, do you understand that?

10 A Okay. Yeah.

11 Q Now, when you say assault weapons more
12 broadly, are you including assault pistols within the
13 definition of assault weapons when you say assault
14 weapons more broadly were disproportionately used in
15 murder and other serious crimes?

16 A Yes. That's a reference to assault weapons
17 in general, so it would be assault pistols and assault
18 rifles together.

19 Q All right. And would you agree with me
20 that evidence does not support that assault rifles as
21 opposed to assault pistols are disproportionately used

1 Guns that one could look at on that issue.

2 Q What I'm trying to do is understand your
3 data and your study and conclusions to be drawn from
4 that.

5 A Uh-huh.

6 Q Am I correct from footnote 13 here that
7 only one case of mass murders of four or more persons
8 in the period 1992 to 1994 involved an assault weapon?

9 A Yes.

10 Q And as you sit here today, do you know
11 whether that assault weapon was an assault pistol or an
12 assault long gun?

13 A I would have to look for that in the '97
14 report. But I would also note to that that I don't
15 know if this was a very representative sample of mass
16 murders. It was just based on a sample that we found
17 through some newspaper reports at the time.

18 Q And one should always be careful in
19 extrapolating conclusions from such small database of
20 points; correct?

21 A Yeah, one has to be cautious. There is

1 in your 2004 report on page 15?

2 A Oh, got you. Okay. Yeah, you're correct.

3 Q All right. So the one report of an assault
4 weapon used in the 1992/1994 period for mass murders of
5 four or more persons was in fact an assault pistol;
6 correct?

7 A It would seem so.

8 Q Okay.

9 A Now, there's some additional relevant data
10 on page 14. So on page 14, I was making reference to a
11 compilation of mass shooting incidents that Gary Kleck,
12 a professor at Florida State, had put together on
13 incidents where I believe his criteria was where six or
14 more people were killed or a total of 12 or more were
15 shot. And as I said here, assault weapons or other
16 semi-automatics, large capacity magazines were involved
17 in six, at least 15 shooting incidents.

18 Q Can you --

19 A Some of them had assault rifles, I think.

20 Q Now, can you separate out how many of those
21 six incidents involved assault weapons as opposed to

1 that it was a higher -- that they showed up in a higher
2 share of mass public shootings than you would expect;
3 correct?

4 MR. FADER: Objection.

5 THE WITNESS: Again, if you calculate the
6 data in that particular way, I think that this
7 statement was also conveying some other nuances. One
8 being that this type of weaponry, assault weapons and
9 large capacity magazines, showed up more often in the
10 mass public shooting incidents, the killings of police
11 than they did in other types of gun crimes, and I think
12 it may have also been in reference to some statistics I
13 report later on the -- based on the Mother Jones data
14 that's been reported.

15 BY MR. SWEENEY:

16 Q But based upon your data in your 2004
17 report, it's not fair to say that other firearms with
18 large capacity magazines are used in a higher share of
19 mass public shootings; correct?

20 MR. FADER: Objection. You can answer.

21 THE WITNESS: They -- yes, that would be

1 fair, fair to say.

2 BY MR. SWEENEY:

3 Q Okay. Let's turn to the killings of law
4 enforcement officers part of that sentence. And what
5 data do you have to support your statement that assault
6 weapons are used in a higher share of killings of law
7 enforcement officers?

8 A On page 15, "Criminal Use of Assault
9 Weapons," one of the second to the last bullet point,
10 gun used in murders of police '92 to '94, overall for
11 that period they were seven to nine percent of the
12 weapons and they accounted for, if you look at footnote
13 12, they accounted for as many as 16 percent in 1994.

14 Q Right. And as we said before, that data
15 included assault pistols in addition to assault long
16 guns; correct?

17 A Correct.

18 Q And at least half of those were assault
19 pistols that you would want to discount for purposes of
20 looking at SB 281 which only affects assault rifles;
21 correct?

1 happened during that period of time or two or three
2 more murders with assault weapons had happened during
3 that period of time, that would significantly impact
4 these percentages; correct?

5 A Yes.

6 Q So these are very small numbers and they're
7 highly susceptible to variability depending upon
8 particular incidents in a particular year; correct?

9 A Yeah. One has to be cautious, yes.

10 Q Right. Yeah. And thankfully both mass
11 public shootings and killings of law enforcement
12 officers are extremely rare events; correct?

13 A Certainly rare in a statistical sense in
14 that, you know, your likelihood of experiencing one of
15 those is very small. I guess from a policy maker's
16 perspective or the citizenry's perspective, there comes
17 a question of, you know, if, you know, how much is too
18 much? If you have a couple of these events occurring,
19 you know, every year even though it's a statistically
20 rare event, it might be of concern.

21 Q I think we can all agree that we would like

1 A We never calculated that number, so I don't
2 know.

3 Q All right. It would be not a whole
4 percentage point; correct?

5 A I think it would be a very small rate, yes.

6 Q Very, very small rate; correct?

7 A Probably.

8 Q Would you agree with me that law
9 enforcement officers are far more likely to be killed
10 by motor vehicles in the line of duty than assault
11 rifles?

12 A Yes.

13 Q Vastly more likely to be killed by handguns
14 than by assault rifles?

15 A Yes.

16 Q Possibly even more likely to be killed by
17 shotguns than by assault rifles? Probably more likely?

18 A Probably.

19 Q Okay. Now, the number of mass public
20 shootings is also thankfully quite low; correct?

21 A Yes.

1 Q Even if we were to assume that all mass
2 public shootings to date had been committed with an
3 assault rifle, if we were to ban all assault rifles,
4 could we safely assume that we would not have any mass
5 public shootings?

6 A I don't think you can assume that there
7 would be no mass public shootings. One might expect
8 that if offenders are using different type of weaponry
9 that perhaps the incidents might result in fewer people
10 shot.

11 Q But we could still expect to see mass
12 public shootings?

13 A Yes. Yes.

14 Q Could we even predict with a reasonable
15 degree of scientific probability that the number of
16 incidents of mass public shootings will decrease if we
17 ban assault weapons?

18 A I guess it depends on exactly how you're
19 defining mass shootings, you know, the number of --
20 number of people who have to be shot for it to qualify
21 as a mass public shooting. I think it will be -- it

1 and considering mass shootings by the number of people
2 shot as opposed to the number of people killed --

3 A Uh-huh.

4 Q -- and if you assume four or more, can you
5 state to a reasonable degree of scientific probability
6 based upon the evidence available to you that banning
7 assault rifles will reduce the number of incidents of
8 mass shootings?

9 A I can't say that based -- I mean, I can't
10 make a firm projection of that based on any particular
11 available data. There might be data to suggest that
12 there could be some reduction in that, but it's hard to
13 really clearly project what that would be or how
14 difficult it might be to detect statistically.

15 Q We have to work with a legal standard for
16 expert opinion in the reasonable probability range.

17 A Uh-huh.

18 Q I'm not sure in the legal context what, you
19 know, firm means as you mean it, but I'm trying to
20 understand whether you can state your opinion to a
21 reasonable degree of scientific probability that

1 Q And is this the work that you're referring
2 to there?

3 A Yes.

4 Q Did we have a clean copy somewhere here
5 that we can mark as an exhibit? Can you mark that as
6 the Exhibit Number 10? Thank you.

7 We've marked as Exhibit 10 that thesis.
8 Has this been published anywhere?

9 (Koper Exhibit 10 was marked for
10 identification.)

11 A No. This is the master's thesis. I -- I
12 believe they are -- I think you can get these through
13 the library, but it's not a publication, per se.

14 Q All right. Did you yourself review any of
15 the Mother Jones data to check the accuracy and
16 validity of this analysis?

17 A I've done very limited work with the Mother
18 Jones data myself. It's the -- in this case, it's Luke
19 Dillon's analysis. He's responsible for conducting
20 that.

21 Q All right. And do you have any information

1 on how Mother Jones itself compiled the data on which
2 Luke Dillon relies here?

3 A My understanding is that they did this
4 through extensive media searches look for mass public
5 shooting incidents over the last roughly 20-some years
6 going back to '82.

7 Q And the Mother Jones data hasn't been
8 published in any peer review journal; correct?

9 A Correct.

10 Q And --

11 A To my knowledge.

12 Q Right. And have you studied the criteria
13 by which they've selected the data?

14 A Yes. They were looking for all incidents
15 where four or more people were killed and that occurred
16 in a public location. They were -- almost all of them
17 were lone shooter cases.

18 Q Would you agree with me that mass public
19 shootings are not on the uprise? They're not
20 increasing?

21 A No. Actually their data make it seem that

1 which one might try to infer that, but the case, yeah,
2 it's not as clear. It's fair to say.

3 BY MR. SWEENEY:

4 Q Now, in paragraph eight of your report, you
5 state in the second sentence that Maryland's
6 recently-enacted ban on assault weapons and large
7 capacity magazines has the quote "potential" close
8 quote to accomplish a couple of things; correct?

9 A Yes. Okay.

10 Q Now, when you say potential, I'm trying to
11 understand what you mean here. Would you agree with me
12 that any law would have the potential to produce a
13 benefit?

14 MR. FADER: Objection.

15 THE WITNESS: Might depend on -- on what it
16 is. In this case, you know, I'm saying potential based
17 largely on my studies of the federal assault weapons
18 ban and what -- what we found there.

19 BY MR. SWEENEY:

20 Q Can you state with a reasonable degree of
21 scientific probability that the ban on assault weapons

1 and large capacity magazines in Maryland will reduce
2 the number of crimes committed with assault weapons and
3 other firearms with large capacity magazines?

4 A I can't put a probability on that. You
5 know, all I can say is based on the experience with the
6 federal assault weapons ban, that there are grounds for
7 believing that the Maryland law could achieve that in
8 extrapolating from the results of the federal study.
9 Otherwise, one has to actually study the implementation
10 of the Maryland law to begin putting, you know,
11 probabilities on it and measuring those effects.

12 Q All right. Can you say to a reasonable
13 degree of scientific probability that the ban on
14 assault weapons and large capacity magazines in
15 Maryland will reduce the number of shots fired in gun
16 crimes?

17 A Not sure what you mean by a reasonable
18 probability 'cause I just I can't put a probability on
19 it and tell you how likely it is to occur.

20 Q Can you say to a reasonable degree of
21 scientific probability that the Maryland ban on assault

1 weapons and large capacity magazines will reduce the
2 number of gunshot victims in such crimes?

3 A Again, same answer. I can't state it with
4 an exact probability at this time.

5 Q And if I ask you the same question with
6 respect to number four, reduce the number of wounds per
7 gunshot victim, and five, reduce the lethality of
8 gunshot injuries when they do occur, and six, reduce
9 the substantial societal costs that flow from
10 shootings, would your answer be the same?

11 A Yes.

12 Q Okay. Now, the Maryland law does not
13 prohibit all semi-automatic firearms; correct?

14 A Correct.

15 Q And criminals can substitute semi-automatic
16 firearms that aren't banned; correct?

17 A Those and other guns.

18 Q Right. And isn't that variable something
19 that you can't control and one of the reasons why you
20 can't say to any probability whether or not the ban
21 will accomplish the six items that you state in