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24 *Attorneys for Gregory J. Nickels and City of Seattle*

25 UNITED STATES DISTRICT COURT  
26 WESTERN DISTRICT OF WASHINGTON  
27 AT SEATTLE

28 ROBERT C. WARDEN,

Plaintiff,

v.

GREGORY J. NICKELS and CITY OF SEATTLE

Case No. 2:09-CV-01686-MJP

DECLARATION OF DAVID S. KEENAN IN SUPPORT OF DEFENDANTS' OPPOSITION TO PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION

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I, David S. Keenan, declare as follows:

1. I am an attorney licensed in the State of Washington. I am associated with the law firm of Orrick, Herrington & Sutcliffe LLP (“Orrick”), counsel of record for defendants Gregory J. Nickels and City of Seattle (collectively, “Defendants”) in the above-captioned matter. I submit this declaration in support of Defendants’ Opposition to Plaintiff’s Motion for Preliminary Injunction. I have personal knowledge of the matters set forth herein and, if called upon, I could and would competently testify thereto.

2. On December 22, 2009, I was present for and participated in the deposition of Plaintiff Robert C. Warden. A true and correct copy of the transcript of Mr. Warden’s deposition is attached hereto as Exhibit A.

3. On January 19, 2010, I assembled various media accounts of Plaintiff’s visit to the Southwest Community Center on November 14, 2009. True and correct copies of a sampling of this media coverage are attached hereto as Exhibit B.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed this 19th day of January, 2010, in Seattle, Washington.

\_\_\_\_\_  
s/David S. Keenan  
David S. Keenan

**CERTIFICATE OF SERVICE**

I hereby certify that on January 19, 2010, I electronically filed the following document with the Clerk of the Court using the CM/ECF system which will send notification of the filing to all counsel of record: DECLARATION OF DAVID S. KEENAN IN SUPPORT OF DEFENDANTS' OPPOSITION TO PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION.

DATED this 19th day of January, 2010.

**ORRICK, HERRINGTON & SUTCLIFFE LLP**

By s/ Daniel J. Dunne  
Daniel J. Dunne (WSBA #16999)

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# EXHIBIT A

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

ROBERT C. WARDEN, )  
 )  
 Plaintiff, ) No. C09-1686 MJP  
 )  
 v. )  
 )  
 GREGORY J. NICKELS and CITY OF )  
 SEATTLE, )  
 )  
 Defendants. )

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DEPOSITION UPON ORAL EXAMINATION OF  
ROBERT C. WARDEN

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Tuesday, December 22, 2009

10:03 a.m.

Orrick Herrington & Sutcliffe LLP

701 5th Avenue, Suite 5700

Seattle, Washington

Laurie E. Heckel, CSR, RPR  
Court Reporter

Page 2

1 Tuesday, December 22, 2009  
2 Seattle, Washington

A P P E A R A N C E S

3 For the Plaintiff: ROBERT C. WARDEN  
4 Pro Se  
5 10224 SE 225th Place  
6 Kent, Washington 98031  
7 For the Defendants: DANIEL J. DUNNE  
8 DAVID S. KEENAN  
9 GEORGE E. GREER  
10 Attorneys at Law  
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Page 3

1 Tuesday, December 22, 2009  
2 Seattle, Washington

I N D E X

3  
4 Witness: ROBERT C. WARDEN Page  
5 Examination by Mr. Dunne 4  
6

E X H I B I T S

7  
8 No. Description Marked/ID'd  
9 1 E-mail dewey.potter@seattle.gov from 26  
10 bob@warden.biz, 11/13/09  
11 2 The Critical Thinker 66  
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Page 4

1 ROBERT C. WARDEN  
2 having been called as a witness, was duly sworn and testified  
3 as follows:  
4 E X A M I N A T I O N  
5 BY MR. DUNNE:  
6 Q What's your name?  
7 A My name is Robert Warden.  
8 Q And is it okay if I call you by, Bob?  
9 A Bob is good, yes, exactly.  
10 Q Okay. Bob, where do you live?  
11 A In Kent.  
12 Q And what's your address?  
13 A 10224 Southeast 225th Place.  
14 Q And how long have you lived there?  
15 A Just since March of this year.  
16 Q Before March, where did you live?  
17 A Before March, I lived briefly at my parents' condo while I  
18 was waiting for my home in Vancouver, Washington to sell.  
19 Q Okay. And so did you live in -- how long did you live in  
20 Vancouver before living with your parents?  
21 A Oh, nine -- eight and a half years.  
22 Q Okay. And before Vancouver, Washington, where did you live?  
23 A Falls Church, Virginia for three years.  
24 Q That takes us back to -- what year did you move to Falls  
25 Church?

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1 A 1997.  
2 Q 1997. Okay. So were you in Vancouver from 2000 to --  
3 A Yes, 2000 to 2008, August of '08, I believe.  
4 Q Okay. That gets us back about ten years.  
5 A I was in Seattle the entire time before that, so it makes it  
6 easy.  
7 Q So did you grow up in Seattle?  
8 A Yeah.  
9 Q Whereabouts in Seattle?  
10 A In West Seattle, Highland Park area.  
11 Q Where did you go to high school?  
12 A Rainier Beach, part of the bussing program.  
13 Q Okay. That segues right into where did you go to college?  
14 A University of Washington.  
15 Q What year did you graduate?  
16 A '87.  
17 Q And what was your degree in?  
18 A Double major in English and philosophy.  
19 Q What did you do after you graduated?  
20 A I took a year off and worked a little bit for the postal  
21 service as a temporary letter carrier, and then went to law  
22 school also at the UW.  
23 Q Okay. When did you graduate from the Washington Law School?  
24 A '91.  
25 Q And then what did you do?

1 A Well, let me see, I worked -- I worked part-time for Mary  
 2 Ruth Mann, a plaintiff's employment law attorney, from the  
 3 time I graduated until summer of '92. About that time, I  
 4 had -- I had a wife and two children, and was only working  
 5 part-time in a bad economy, so I went to work for the postal  
 6 service again.  
 7 Q What was your position with the postal service?  
 8 A I started carrying -- I was carrying mail from '92 through  
 9 '95. From '95 to '96, I was a supervisor, and from '96 to  
 10 '97, I was a labor relations specialist.  
 11 Q Is that a position that requires a law degree, or is that  
 12 a --  
 13 A No.  
 14 Q Okay.  
 15 A It comes in handy, but not required.  
 16 Q Okay. And where were you as a labor relations specialist?  
 17 A This was all -- this was all in Seattle.  
 18 Q Okay. And then what happened in 1997?  
 19 A Got a promotion to a position of, what the heck was it,  
 20 government relations representative at postal headquarters in  
 21 Washington, D.C.  
 22 Q And you were there until 2000?  
 23 A Yes, three years there.  
 24 Q Okay. And you came back to Vancouver, Washington?  
 25 A Yeah. I got the job in Portland right across the river as

1 manager labor relations, still for the postal service, and I  
 2 was in that position from 2000 to 2008.  
 3 Q All -- so for a manager in labor relations, is that in a  
 4 particular office or a region?  
 5 A Yeah, it was the Portland District, which encompassed the  
 6 whole State of Oregon and a portion of Southwest Washington.  
 7 And while on paper I was in that position from 2000 to 2008,  
 8 in the middle of that from 2002 to 2005, I served full-time  
 9 in a -- what they call a detail as a litigation attorney in  
 10 employment law, still domiciled there, but working for an  
 11 office somewhere else.  
 12 Q Okay. Have you had your deposition taken before?  
 13 A Yes.  
 14 Q Okay. So are you generally comfortable and familiar with the  
 15 process?  
 16 A Yeah, I'd say so.  
 17 Q And you understand that you're under oath, of course. Is  
 18 that right?  
 19 A Yes.  
 20 Q Okay. If I ask you any questions that aren't clear to you or  
 21 that you don't understand, will you please tell me that?  
 22 A Yes.  
 23 Q Because if you don't tell me that, then I will assume that  
 24 you understand my question, and anyone reading the transcript  
 25 will assume that the question was clear. Is that -- is that

1 okay?  
 2 A Yeah.  
 3 Q Okay. And, Mr. Warden, you're here representing yourself,  
 4 correct?  
 5 A Right.  
 6 Q All right. But except for a short stint, you actually  
 7 haven't practiced litigation, at least for most of your  
 8 career; is that correct?  
 9 A That's right.  
 10 Q In your labor positions, with the exception of your detail in  
 11 litigation, did you go into Federal Court?  
 12 A Ah, yes, kind of as a second chair type of --  
 13 Q Okay.  
 14 A -- situation.  
 15 Q So you -- you have at least some familiarity with --  
 16 A Right. I've been a -- and I've been a witness in Federal  
 17 Court, at least twice that I can remember.  
 18 Q Okay. And when you said, a second chair, were you a second  
 19 chair in -- in federal labor related litigation?  
 20 A Yes.  
 21 Q Okay.  
 22 A Employment discrimination.  
 23 Q In working for the postal service, did you witness or were  
 24 you affected by any incidents where people were shot by other  
 25 postal workers?

1 A I did not witness any. I -- I was peripherally involved, I  
 2 guess, in -- there was one in -- that happened in Baker City,  
 3 Oregon in April of 2006, which was within the Portland  
 4 District, and I was, you know, acting in the position -- I  
 5 was in the position of manager labor relations at the time,  
 6 so, you know, I was involved in kind of the, I don't know  
 7 what you call it, the background of looking at the facts, and  
 8 was there somehow that somebody should have seen something  
 9 coming, you know, all the kind of questions that one asks  
 10 after an event like that.  
 11 Q And can you describe what the circumstances of that shooting  
 12 were?  
 13 A Yeah, Grant Gallaher (ph), I think was the guy's name, he was  
 14 a letter carrier. He was the shooter. He had been contacted  
 15 on the street, I guess by cell phone, by his supervisor  
 16 who -- who had informed him that he needed to carry overtime  
 17 that day. He was dissatisfied with that news, and on his way  
 18 back to the post office in the afternoon he stopped at his  
 19 home, picked up a revolver, and when he got back to the post  
 20 office, he -- actually, his supervisor was in the parking  
 21 lot, so he ran over her. Then he parked and went into the  
 22 post office and looked for the post master, who he could not  
 23 find. Then he came back out and shot the supervisor several  
 24 times.  
 25 Q And this was the supervisor who had called to order him to --



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1 A Yes, she was the only supervisor in the facility.  
 2 Q -- to work overtime.  
 3 A Yeah.  
 4 Q I should also say if you -- if you would, please, before you  
 5 give me your answer, even if you know where I'm going, make  
 6 sure you let me finish my question, because otherwise we'll  
 7 put a little bit of a strain on our court reporter.  
 8 A Understood.  
 9 Q And you investigated the circumstances of the shooting?  
 10 A Yeah. I mean, I wasn't the only one, you know, probably  
 11 every -- every district level manager was -- was involved in,  
 12 you know, what are we saying to the press, what are we saying  
 13 to the unions, what are we saying to, you know, and I was  
 14 primarily as the manager of labor relations was kind of  
 15 coordinating communication with the unions.  
 16 Q And did you also look to see where there were warning signs  
 17 that the person might commit a crime?  
 18 A I didn't personally. We -- there's a position; there is  
 19 someone responsible for that kind of, you know, workplace  
 20 environment situation, and I guess they did. But I drafted  
 21 the letter of resignation that the guy signed in prison, but  
 22 that was my most direct involvement.  
 23 Q Okay. And to your knowledge, was -- what was the -- what was  
 24 the gentleman's last name?  
 25 A Gallaher (ph).

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1 Q Gallaher (ph). Okay.  
 2 A I'm not sure of the spelling, but --  
 3 Q And did he have a criminal record or a criminal background  
 4 before he shot his supervisor?  
 5 A I don't know. Not that I know of, but I don't know.  
 6 Q Okay. And any indication that he was not lawfully in  
 7 possession of a weapon at the time he shot his supervisor?  
 8 A I also don't have any knowledge of that.  
 9 Q Okay. So as far as you know, he was perfectly licensed and  
 10 permitted to -- to own a firearm at his home?  
 11 A I -- I don't either way, but I don't know otherwise.  
 12 Q Okay. I've read -- and we'll get to a couple of things  
 13 you've written where you've mentioned good guys and bad  
 14 guys. Was there any indication he was a bad guy who should  
 15 be prohibited from having a weapon before he shot his  
 16 supervisor?  
 17 A From what I remember, and, again, it's kind of secondhand,  
 18 but from what I remember there were no indications that he  
 19 would do something like he did.  
 20 Q What firearms do you own personally?  
 21 A I personally own a 22-caliber pistol, target pistol, and a  
 22 40-caliber Glock Model 27.  
 23 Q And have you taken training classes in the use and storage of  
 24 firearms?  
 25 A Yes.

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1 Q Can you describe what classes you've taken, please.  
 2 A I took the -- what I think the NRA calls the basic pistol  
 3 course, which is a ten-hour classroom style course. And then  
 4 about a year after that, I think it was, I took a course to  
 5 become certified to teach the first course, and that course  
 6 was about a 20-hour course, as I recall.  
 7 Q Do you have any military background?  
 8 A I do not. Oh, I have one other thing. I also, subsequent to  
 9 that second training, took a -- sort of a correspondence  
 10 deal. Once you take that second training and pass it and  
 11 teach the class a couple of times, you're eligible to then  
 12 take just via home study class and become a range safety  
 13 officer, and I also took that, and am a certified one of  
 14 those.  
 15 Q What are the elements of the basic pistol safety course?  
 16 A Well, it covers -- I mean, it covers the basic parts and  
 17 functioning of the revolver and a semi-automatic pistol, you  
 18 know, the two kinds of pistols. You know, emphasis on safe  
 19 handling of that and safe storage of that. Throughout the  
 20 entire course, that's, of course, the primary -- primary  
 21 focus, and then teaches the proper positioning and -- and  
 22 handling while -- to shoot, you know, aim and shoot at  
 23 targets.  
 24 Q About how much of the course is devoted to safe handling and  
 25 safe storage?

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1 A I'd say a good -- let's see, it's a ten-hour course. I'd say  
 2 there are two hours that are devoted exclusively to that, and  
 3 then all the other elements of the course have it mixed in  
 4 probably close to 50 percent of the rest of it.  
 5 Q How long have you been certified to teach that course?  
 6 A Certified to teach it since January of '07.  
 7 Q And have you been teaching that course actually?  
 8 A I've taught the course at least three times, maybe four  
 9 times, three or four times.  
 10 Q So I take it that you're relatively familiar with the basics  
 11 of safe handling and safe storage?  
 12 A Yes.  
 13 Q Okay. And, again, this is a course offered by the National  
 14 Rifle Association?  
 15 A Yes. They're the ones who put the course materials together  
 16 and you -- yeah.  
 17 Q Do you know whether this is the course that if a person were  
 18 to take a basic pistol course is the most popular or the most  
 19 likely course they would take in Washington?  
 20 A I don't know for sure. I know in order to get a concealed  
 21 pistol permit in Oregon, you have to take a basic course, but  
 22 that course is much shorter. I think it's, like, four hours  
 23 or even less maybe.  
 24 Q Uh-huh.  
 25 A I just know this is considered the basic pistol course.



1 Q And to your knowledge, there is no actual requirement that  
 2 anyone take a basic pistol course or safety course to own a  
 3 handgun in Washington, is there?  
 4 A You are correct. There is not that requirement.  
 5 Q So I could go, assuming I passed the background check, buy  
 6 myself a pistol, and there would be absolutely no legal  
 7 requirement that I would have taken any safety courses or  
 8 studied in any way the safe handling and storage of a gun.  
 9 A I believe that's true.  
 10 Q And -- okay. You mentioned the basic pistol course, that  
 11 you're certified to teach the course, and that you're a range  
 12 safety officer. Does that completely cover the training that  
 13 you have taken?  
 14 A I believe it does.  
 15 Q Okay. Do you have any information about what percentage of  
 16 gun owners in Washington have actually taken the basic pistol  
 17 training course?  
 18 A No, I have no idea.  
 19 Q And there is no way to determine whether any particular gun  
 20 owner, who is either storing a gun in their home or carrying  
 21 a concealed pistol has taken it, is there?  
 22 A I -- not that I know of. You know, maybe some complex search  
 23 at NRA training headquarters, but, yeah, I don't know.  
 24 Q And I believe from your complaint that you also had a  
 25 concealed pistol license, right?

1 Q And is a person who has a concealed pistol license required  
 2 to take any training or courses in under what circumstances  
 3 deadly force might be permitted?  
 4 A No.  
 5 Q Have you ever taken any training other than legal training in  
 6 law school as to under what circumstances deadly force might  
 7 be appropriate?  
 8 A No.  
 9 Q And if you pull out a pistol and shoot at somebody, you may  
 10 be using deadly force, correct?  
 11 A Yeah.  
 12 Q Do you know how many concealed pistol licenses there are in  
 13 Seattle?  
 14 A No.  
 15 Q In Washington?  
 16 A No.  
 17 Q How long have you had a concealed pistol license?  
 18 A My -- the current one I have had since early 2007, about the  
 19 time I became a certified instructor. Prior to that, I had  
 20 one in the early 90's, which I think expired when I lived in  
 21 Virginia or something, yeah.  
 22 Q Okay. Do you know even whether the majority of people who  
 23 have concealed pistol licenses have taken any safety training  
 24 course?  
 25 A I have no idea.

1 A Right.  
 2 Q What is that?  
 3 A That is a license issued -- required by the state in order to  
 4 carry a concealed pistol license. I think it's issued  
 5 actually by -- at the county level or something.  
 6 Q In order to get a concealed pistol license, did you have to  
 7 demonstrate that you had taken any safety or safe storage  
 8 courses?  
 9 A No.  
 10 Q Are you aware of any requirement that people do take safety  
 11 courses in order to get a concealed pistol license?  
 12 A I believe there is not -- I believe that there is not a  
 13 requirement.  
 14 Q Are you aware that assuming that you meet the background test  
 15 and you don't have particular kinds of felony convictions or  
 16 mental illness that a person can get a concealed pistol  
 17 license without proof of any course in the safe operation and  
 18 storage of a handgun?  
 19 A That's right. The statute does not require any such  
 20 training.  
 21 Q But you do have to be 21 years of age, right?  
 22 A Yes.  
 23 Q Okay.  
 24 A You have to be 21 to carry a pistol in the State of  
 25 Washington anywhere.

1 Q Is there any way for anyone to know that information to the  
 2 best of your knowledge?  
 3 A You could probably do some really complex time-consuming  
 4 research at the NRA office that has those records, but -- but  
 5 not that I know of.  
 6 Q Have you in some way or other provided information to the NRA  
 7 so that that organization is aware that you possess a  
 8 concealed pistol license?  
 9 A No.  
 10 Q Are you aware of any information collection process that they  
 11 have to obtain that information?  
 12 A No.  
 13 Q Since you've gotten your concealed pistol license, when you  
 14 travel around King County and the city, do you typically  
 15 carry a concealed weapon?  
 16 A No.  
 17 Q How often do you actually carry it?  
 18 A Maybe a couple of times a month, if that.  
 19 Q And for what purpose?  
 20 A Basically, just -- just to be on the safe side I guess. I  
 21 mean, just self-defense.  
 22 Q Uh-huh, are there particular locals that you might travel to  
 23 where you feel that it's better to have a concealed weapon?  
 24 A I guess on the occasions that I do take it, it's generally if  
 25 I'm going somewhere with my family at night in a -- you know,

1 in the city or a highly populated area.  
 2 Q Uh-huh.  
 3 A Yeah.  
 4 Q Okay. Since you had returned from -- well, let me ask you  
 5 this: Have you ever gone places where you weren't able to  
 6 take your gun and you had to store it?  
 7 A No.  
 8 Q Okay. Have you ever had occasion where you knew you couldn't  
 9 go into a locale or a stadium or a venue with your gun and  
 10 you were required to lock it in your car?  
 11 A No.  
 12 Q You've never had a gun stolen from you, have you?  
 13 A No.  
 14 Q And have you ever had to use your gun for self-defense?  
 15 A No.  
 16 Q Have you ever had to use it to stop a crime in progress?  
 17 A No.  
 18 Q If you saw a crime in progress and you had your weapon on you  
 19 in public, would you use it to stop a crime in progress?  
 20 A Well, that's -- that would be pure speculation. I guess I'd  
 21 like to think I would do what was -- was useful and helpful,  
 22 but I couldn't say what anybody would do under those  
 23 circumstances had I not been there, hoping never to be there.  
 24 Q Right. We all do. How about if you saw a purse snatcher who  
 25 snatched a purse right front of you?

1 A Same answer, speculative, and I -- I don't know.  
 2 (Mr. Greer entered the room.)  
 3 MR. DUNNE: My partner, George Greer, has just entered.  
 4 THE WITNESS: Nice to meet you.  
 5 MR. GREER: Thank you.  
 6 MR. DUNNE: And you did meet Mr. Keenen here.  
 7 THE WITNESS: Yes.  
 8 MR. DUNNE: Okay.  
 9 THE WITNESS: From the City?  
 10 MR. DUNNE: No, he's -- we're all from the firm here.  
 11 THE WITNESS: You're all -- okay, yeah.  
 12 MR. DUNNE: I'm sorry for the interruption.  
 13 So you've been back in Washington since 2000?  
 14 THE WITNESS: Yes.  
 15 Q (By Mr. Dunne) For most of that time, you were in the City of  
 16 Vancouver, right?  
 17 A Yes.  
 18 Q Could you refresh my recollection? When did you get back up  
 19 into King County?  
 20 A August of '08.  
 21 Q Of '08. Here we are, December of '09. So in that 15-month  
 22 period or so, how many times have you had occasion to visit  
 23 City of Seattle parks and park facilities?  
 24 A This is a total estimate, but probably 15 to 20.  
 25 Q And can you tell me which places you've visited?

1 A Yeah, I've been to Alki, Alki Beach quite a few times,  
 2 because there is restaurants down there that we like. That  
 3 would be the majority of probably my visits, Lincoln Park in  
 4 West Seattle, two, three, four times. Yeah, I can't -- I'm  
 5 sure there are others, but not, you know, super frequently.  
 6 Q Any particular venues that you can remember other than Alki  
 7 Beach or Lincoln Park, recognizing that you can't remember  
 8 exactly the number of times?  
 9 A I don't know if the field by Rainier Beach High School is a  
 10 city park or not. I've been there. West Crest Park in South  
 11 Seattle, I think that's a city park. Yeah, again, this is  
 12 just kind of from where -- from where I generally would go  
 13 based on, you know, conducting business or whatever, Schmitz  
 14 Park, I've probably been into Schmitz Park in West Seattle.  
 15 Q Any others?  
 16 A Not that come to mind right now.  
 17 Q Now, when you have visited those parks in the past, have you  
 18 carried a concealed weapon?  
 19 A I believe only at Lincoln Park, once.  
 20 Q So when did you visit Lincoln Park?  
 21 A It was on Wednesday, November 11th of this year, the time  
 22 that I carried the pistol.  
 23 Q And if you've visited parks an estimate of 15 to 20 times in  
 24 the last 15 months, why did you carry a pistol just for that  
 25 occasion in Lincoln Park?

1 A Because I was looking for the sign telling me I couldn't.  
 2 That was two days before, or three days before I went into  
 3 the South Seattle Community Center, and I was trying to find  
 4 a good locale. I couldn't find the sign, by the way.  
 5 Q Okay. So you were in Lincoln Park and the City had passed  
 6 its policy prohibiting carrying guns in certain facilities,  
 7 correct?  
 8 A Yes.  
 9 Q And up until that point in time, to the best of your  
 10 recollection, although you had visited parks and facilities  
 11 owned by the City, you had never carried your concealed  
 12 weapon, correct?  
 13 A That's correct, not that I recall.  
 14 Q Okay. And I take it from your complaint that you felt that  
 15 the City had acted unlawfully in passing its policy, correct?  
 16 A Yeah. I don't know if, "passing" is the right word, but --  
 17 Q Enacting.  
 18 A Yes, promulgating, proclaiming, yeah.  
 19 Q And so when you went to Lincoln Park, you went there for the  
 20 purpose of setting up your lawsuit, right?  
 21 A Ah, yes, uh-huh.  
 22 Q Okay. And you did not find signs prohibiting you from  
 23 carrying a gun in the park at that time?  
 24 A That's correct. Actually, there had been a photo in the West  
 25 Seattle blog of the sign by the children's play area, and

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1 when I went there on the 11th, it was not in that same area,  
 2 so I did not find the sign.  
 3 Q Okay. Did you understand -- where in Lincoln Park did you  
 4 actually go?  
 5 A The children's area, which is on the I guess south -- south  
 6 end of it toward the ferry dock.  
 7 Q Uh-huh.  
 8 A And then drop down the hill to the beach front, looking to  
 9 see maybe the sign was there, pretty much just around that  
 10 south end.  
 11 Q And Lincoln Park is a very large park, correct?  
 12 A It is, yes.  
 13 Q And how much time did you spend looking for signs in Lincoln  
 14 Park?  
 15 A Ten minutes, 15 minutes.  
 16 Q And in that time you found no area that was prohibited to  
 17 you?  
 18 A Right. And I was specifically looking in the one area where  
 19 I thought based on the photo the sign would be, but I did not  
 20 see it.  
 21 Q So, in other words, in the time you were in Lincoln Park, the  
 22 entire park that you traveled through was accessible and open  
 23 to you as a concealed weapons carrier, correct?  
 24 A Well, I think so. There was one older sign right at the very  
 25 south walking entrance that leads down to the beach that had

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1 a list of several things that were prohibited, and among them  
 2 I think it said, "Weapons," but, again, that was an older  
 3 sign. It had nothing to do with this rule.  
 4 Q Okay. So that was on November 11th. What did you do with  
 5 respect to the city policy after going to Lincoln Park and  
 6 not being able to find a sign?  
 7 A Let's see, I drove past the Southwest Community Center and  
 8 noticed they did have a sign.  
 9 Q Had you visited the Southwest Community Center at a time  
 10 prior to November of 2009?  
 11 A Not since 1997, when my children had swim lessons there.  
 12 Q And you were living in Federal Way at that time; is that  
 13 right?  
 14 A No, living in West Seattle.  
 15 Q Oh, West Seattle. And when you would go to the Southwest  
 16 Community Center in the 90's for children lessons, for swim  
 17 lessons, the children swim lessons, did you carry a concealed  
 18 weapon at that time?  
 19 A No. Not -- you mean, to that specific location during the  
 20 swim lessons?  
 21 Q Right.  
 22 A No.  
 23 Q And so the purpose of driving past the Southwest Community  
 24 Center in November of 2009 was you were looking for a place  
 25 where there was a sign prohibiting gun carrying and

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1 possession, correct?  
 2 A Yes.  
 3 Q Again, for the purpose of challenging that -- that policy?  
 4 A Yes.  
 5 Q And you had no other recreational purpose to do so at that  
 6 time, correct?  
 7 A No.  
 8 Q All right. Did you find the sign when you drove past the  
 9 Southwest Community Center?  
 10 A Yes.  
 11 Q And was that the same day, November 11th, that you went to  
 12 Lincoln Park?  
 13 A Yes.  
 14 Q All right. And then what did you do after you found that  
 15 sign?  
 16 A Made our way home. I can't remember if we stopped anywhere  
 17 else, but I think we just went home.  
 18 Q Oh, so your children were with you?  
 19 A Oh, I'm sorry. I was with my -- my -- one of my sons.  
 20 Q Okay. Which one?  
 21 A His nickname is Casey. He's 18 years old.  
 22 Q I should have asked you. Are you currently married?  
 23 A Yes.  
 24 Q And how many children?  
 25 A Two.

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1 Q Casey and --  
 2 A Kenny, Carson and Kenny. Kenny is 19.  
 3 Q Now, up until November 11th, had you had communications with  
 4 other people about the -- for lack of a better word, the  
 5 Seattle policy?  
 6 A I'm not really sure. I'm -- I'm sure I spoke to -- you know,  
 7 after reading about it in the paper, I probably spoke to my  
 8 kids, my wife, you know, my family just about it.  
 9 Q I -- you know, you might have spoken to neighbors, coworkers,  
 10 or something that -- I don't mean to in any way to be  
 11 secretive. I just --  
 12 A Yeah.  
 13 Q Did you speak to anyone at the Second Amendment Foundation --  
 14 A No.  
 15 Q -- as you brought the suit?  
 16 A No.  
 17 Q How about anyone at the NRA?  
 18 A No.  
 19 Q How about any gun rights organizations?  
 20 A No.  
 21 Q There are some lawyers who are representing those  
 22 organizations in a state court case. Did you speak to those  
 23 lawyers from Corr Cronan?  
 24 A I have only within the last two or three weeks spoken to  
 25 them.

1 Q And could you tell me what that conversation entailed?  
 2 A Well, you know, it may be kind of a work product kind of  
 3 thing, but -- but just my communications with them are  
 4 basically just to kind of coordinate with them what each  
 5 group is doing.  
 6 Q Okay. Why don't we set that to the side for now. So after  
 7 you found a city facility that did have a sign that was  
 8 posted prohibiting carrying of weapons, then what did you do?  
 9 A Let me see, two days later on Friday, the 13th, that I -- I  
 10 sent an e-mail to a bunch of different parties, just saying  
 11 what I was planning to do the next day on the 14th.  
 12 Q Okay.  
 13 A And the next day on the 14th -- oh, I'm sorry.  
 14 Q Go ahead.  
 15 A Oh, I was just going to say next, on the 14th, I did what I  
 16 said I was going to do in the e-mail on the 13th.  
 17 MR. DUNNE: So let's go ahead and mark as the first  
 18 exhibit a copy of an e-mail.  
 19 (Exhibit 1 marked for identification.)  
 20 MR. DUNNE: Off the record for just a second.  
 21 (Off the record.)  
 22 Q I'm handing you what has been marked as Exhibit 1. Can you  
 23 identify that, please.  
 24 A Yeah, that's a -- looks like it's mostly the e-mail I sent on  
 25 the 13th.

1 Q Okay. If you want, go ahead and take a minute to review it,  
 2 and then let me know when you finished.  
 3 A Okay. Okay.  
 4 Q This is the e-mail that you referred to and that you sent to  
 5 the members of City of Seattle government on November 13th?  
 6 A Yes.  
 7 Q And what was the purpose of sending the e-mail?  
 8 A To -- to give notice to the city officials so that there  
 9 would be no surprise. I didn't -- I didn't want to -- I  
 10 didn't want to surprise anyone.  
 11 Q Okay. Why were you concerned that you not surprise anyone?  
 12 A Just because of the issue of -- of carrying a pistol, and  
 13 that can be considered provocative by some people, and I just  
 14 didn't want there to be any question about my intentions.  
 15 Q In the last paragraph, you say that you will -- that you are  
 16 not looking for and do not want any kind of uncivil  
 17 confrontation, correct?  
 18 A Yeah.  
 19 Q And that you will fully and peacefully comply with any  
 20 instruction given to you at the Southwest Community Center by  
 21 law enforcement personnel or City of Seattle officials acting  
 22 within the scope of their capacities or duties, correct?  
 23 A Yeah.  
 24 Q And you actually tell them exactly what clothes you will be  
 25 wearing so they can identify you clearly, right?

1 A Baseball cap, yes, uh-huh.  
 2 Q Yeah. And all of that was to be very safe and up front with  
 3 them so they would understand who you are and what your  
 4 purposes are and everyone would be able to have a civil  
 5 exchange as opposed to a confrontation, correct?  
 6 A Yes.  
 7 Q And why did you say that you thought that carrying a pistol  
 8 could be considered by some to be provocative?  
 9 A Well, I mean, it is -- I mean, it is considered by some to be  
 10 provocative, but carrying a concealed pistol, of course, is  
 11 not, because absent me telling someone, nobody would know.  
 12 But, you know, some people -- you know, pistol -- a pistol  
 13 can be -- can be used to -- to, you know, for deadly --  
 14 deadly purposes, and it's not something that -- that you  
 15 should just irresponsibly mess around with. So I just wanted  
 16 there to be no question whatsoever what I was doing.  
 17 Q Now, I'm going to come back to the e-mail in a minute, but  
 18 let's just follow the train of events here.  
 19 A Uh-huh.  
 20 Q After you sent this e-mail, did you have any other  
 21 communications with members of the City of Seattle?  
 22 A No.  
 23 Q Did you have communications with members of any gun rights  
 24 organization such as Second Amendment Foundation or the NRA?  
 25 A I spoke to Mr. -- what's his name, David Workman, I believe,

1 from the Second Amendment Foundation, tried to contact me  
 2 that day, but I -- I think I called him back maybe a week  
 3 later, a few days later.  
 4 Q And did you actually end up talking to Mr. Workman?  
 5 A He actually ended up interviewing me for whatever publication  
 6 they put out. At least, I mean, that's what he said was the  
 7 reason for his contact.  
 8 Q Any other significant communications relating to the policy  
 9 before you actually went to the Southwest Community Center  
 10 that you can recall?  
 11 A Aside from the press, no, and I would lump Mr. Workman into  
 12 the press. That's -- that's the capacity I contacted him in.  
 13 Q So, obviously, your November 13th e-mail, in addition to  
 14 being sent to members of the City of Seattle government, was  
 15 also sent to members of the press, correct?  
 16 A Yes.  
 17 Q And did you have a series of communications with members of  
 18 the press before you actually went?  
 19 A Excuse me, yes, I was contacted by -- by several of them.  
 20 Q Why did you send this e-mail to members of the press?  
 21 A I thought it was a newsworthy subject. The gun ban rule  
 22 itself was prominent in the news, pretty controversial. I  
 23 thought it was something the press would be -- would be  
 24 interested in and the public would be entitled to know about.  
 25 Q And so you also informed members of the press exactly what



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1 date and time that you would go to the Southwest Community  
 2 Center to challenge the gun policy, correct?  
 3 A Yeah. They were copied on the same e-mail that went to the  
 4 city officials.  
 5 Q Okay. And as predicted or forecast, on November 14th at  
 6 around noon, did you go to the Southwest Community Center?  
 7 A Yes.  
 8 Q All right. And -- and when you got there, were members of  
 9 the press there?  
 10 A Or they were arriving at roughly the same time, yes.  
 11 Q Did you go right in, or did you speak to members of the press  
 12 before you went in?  
 13 A Spoke to members of the press before I went in.  
 14 Q Okay. And about how much time did you spend speaking to  
 15 members of the press?  
 16 A Approximately, 30 minutes.  
 17 Q Do you recall what you told them?  
 18 A No. I mean, just basic -- they asked questions. I  
 19 answered. You know, basic background information on why I  
 20 was doing what I was doing, what I thought about the law,  
 21 stuff that they later reported on in the press.  
 22 Q How many people from the press were there?  
 23 A How many people, maybe 10 to 15-ish.  
 24 Q Were there television cameras there as well?  
 25 A Yes.

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1 Q About how many TV cameras?  
 2 A I believe three, three of the stations were there with  
 3 cameras.  
 4 Q Was that each of the major Seattle stations?  
 5 A Yes.  
 6 Q Did you tell the press in those 30 minutes or so that you  
 7 spent with them that you actually had no purpose to come to  
 8 the Southwest Community Center other than to create standing  
 9 for a lawsuit against the city?  
 10 A No.  
 11 Q Okay. But that was true, right, that you had no other  
 12 purpose but to do that?  
 13 A No. I was going to go to the dog show that was there at --  
 14 starting at noon. My main -- my expectation was that I would  
 15 be turned away and not allowed to attend, but had I been  
 16 allowed to attend, I would have attended the costumed dog  
 17 show.  
 18 Q When did you first learn there was a dog show there?  
 19 A I think it was the 11th after I got home from driving past  
 20 the Southwest Community Center, and I looked on the Internet.  
 21 Q So you looked on the Internet and found there was something  
 22 going on there, right?  
 23 A Right.  
 24 Q And -- but before you looked on the Internet, you had  
 25 intended to go to the Southwest Community Center at some

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1 point in the next several days to challenge the gun ban,  
 2 right?  
 3 A Yes.  
 4 Q And the gun -- the dog show just happened to be the event  
 5 that you chose.  
 6 A Yes.  
 7 Q Okay. And but for the fact that you wanted to challenge the  
 8 gun ban, you probably wouldn't have attended the dog show,  
 9 would you?  
 10 A Probably not. I probably wouldn't have even found out that  
 11 there was a dog show.  
 12 Q So it is fair to say that your principal purpose to go to the  
 13 Southwest Community Center was to create the circumstances by  
 14 which you could sue the City, right?  
 15 A Yeah, I would say so. That was my expectation.  
 16 Q And you hadn't been to the Southwest Community Center  
 17 previously in over ten years; is that right?  
 18 A Yes.  
 19 Q Did you tell the press who were assembled there for this  
 20 event that you had visited parks and facilities maybe 10 to  
 21 20 times over the past 15 months and had never had occasion  
 22 to carry a pistol in any of those visits?  
 23 A I -- I don't think I answered a question that specific. I do  
 24 believe I was asked, you know, how many times I carry a  
 25 pistol, whether I've carried a pistol before in parks. I

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1 believe I was asked those sorts of questions, and I answered  
 2 consistent with what I've told you.  
 3 Q Do you recall actually seeing any news reports on whether you  
 4 had ever gone to parks in the last 15 months with a pistol?  
 5 A I do not recall seeing such reports.  
 6 Q Okay. I have reviewed news reports, and I haven't seen any  
 7 reference. Do you have any explanation why in the coverage  
 8 the press may have omitted those facts?  
 9 A No. You'd have to ask them.  
 10 Q Do you have a specific recollection that you actually told  
 11 the press that it was not your -- your practice when visiting  
 12 parks and facilities to actually carry a concealed weapon?  
 13 A I believe I -- I believe I did say something along those  
 14 lines to a question on that subject.  
 15 Q Do you know which member of the press might have asked that  
 16 question?  
 17 A I don't know. They were all assembled together.  
 18 Q So after about 30 minutes with the press, what did you do?  
 19 A That's when I walked into the community center.  
 20 Q Did you use the main entrance?  
 21 A Yes.  
 22 Q And were you wearing your Tacoma Rainier's baseball cap?  
 23 A I was.  
 24 Q So you were wearing the cap that you had told the City you  
 25 would be wearing?

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1 A Yes.  
 2 Q And were you wearing a concealed pistol?  
 3 A I was.  
 4 Q Did you use the main entrance to the community center?  
 5 A Yes.  
 6 Q Did you meet someone from the City when you got to the main  
 7 entrance?  
 8 A After -- after going inside the building, I was promptly met  
 9 by -- I can't remember her name, but, yes, a city official,  
 10 security official, yeah.  
 11 Q And then what happened?  
 12 A She asked -- she confirmed that I was the person who had sent  
 13 the e-mail. I believe she confirmed that I was in fact  
 14 carrying a concealed pistol, you know, by asking me, because  
 15 it was concealed, and then she told me that I could not be in  
 16 the facility with the pistol, and told me that I would need  
 17 to turn around and leave.  
 18 Q Okay.  
 19 A Very polite about it.  
 20 Q And was there any other discussion or communication other  
 21 than what you just relayed?  
 22 A I think I asked her her name and her position, just to  
 23 confirm that, but aside from confirming each other's identity  
 24 and communicating the rule and asking me to go, that was  
 25 pretty much it.

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1 Q Okay. So you -- was she dressed in any kind of clothing that  
 2 indicated that she worked for the City or she was a security  
 3 person?  
 4 A No.  
 5 Q Okay. And she identified herself to you; is that right?  
 6 A Yes.  
 7 Q And advised you of the policy, correct?  
 8 A Yes.  
 9 Q Asked you to leave, right?  
 10 A Yes.  
 11 Q And then you complied with her request, correct?  
 12 A Yes.  
 13 Q All right. And were there any other threats or coercions  
 14 made against you by this woman acting on behalf of the City?  
 15 A No, she didn't say any -- no, she didn't -- she didn't say  
 16 anything threatening or coercive to me.  
 17 Q When you left, what did you do?  
 18 A When I left, the press still wanted to talk. So I believe I  
 19 went back to the same place I was standing outside and  
 20 probably talked to the press for another 20 to 30 minutes.  
 21 Then I went and had pizza with my family.  
 22 Q So for -- the whole thing took approximately an hour?  
 23 A Right, yes.  
 24 Q By the way, where was your family while you were going into  
 25 the community center? Were they watching the dog show or

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1 were they watching you?  
 2 A No, they were -- yeah, they were staying with me.  
 3 Q And was it your plan to immediately go have food and pizza  
 4 with your family after presumably being asked to leave the  
 5 community center?  
 6 A No. It's just, you know, when we were done talking to the  
 7 press, we just, you know, decided it was lunch time, and  
 8 that's when we decided to go have pizza.  
 9 Q Okay.  
 10 A No prior planning on that.  
 11 Q Okay. Let's go back to Exhibit 1.  
 12 A Uh-huh.  
 13 Q I'm going to ask a couple questions about some statements  
 14 made here. In paragraph 2, you say that Seattle Parks and  
 15 Recreation Rule P 060 - 8.14 was promulgated in knowing and  
 16 blatant violation of state and federal law.  
 17 Do you see that?  
 18 A Yes.  
 19 Q What's the basis for your allegation that this rule was  
 20 promulgated in knowing violation of federal law?  
 21 A Yeah, I'm not -- I'm not sure that there is a real -- the  
 22 knowing -- the knowing has more to do with the state  
 23 preemption law.  
 24 Q Okay. And is your basis for saying that the policy or the  
 25 rule was promulgated in knowing violation of state law the

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1 Attorney General opinion on the subject?  
 2 A Mostly, the Attorney General opinion and my own plain reading  
 3 of the preemption law myself.  
 4 Q I see. A similar question, do you have any basis to allege  
 5 that Mayor Nickels was involved in promulgating the rule when  
 6 he was personally in knowing violation of federal law?  
 7 A The knowing of federal law. You know, that, I don't -- you  
 8 know, I don't know. I -- I think that the -- I think that  
 9 the Second Amendment is actually quite clear in what it  
 10 says. The one lack of clarity was clarified by the Supreme  
 11 Court prior to this rule being put into effect. That is,  
 12 there being an individual right to carry -- to keep and bear  
 13 arms. So I think that had somebody done what I would  
 14 consider to be -- you know, required basic research prior to  
 15 promulgating a rule, then they would know that that rule  
 16 violated the Second Amendment because of the Heller case. So  
 17 that would go for both the City and the mayor.  
 18 Q Okay. So -- so you believe that the Heller case is the  
 19 principal constitutional authority that someone should refer to,  
 20 correct?  
 21 A Certainly, with regard to whether or not the right to keep  
 22 and bear arms is an individual or collective right, the  
 23 Heller case answered that question, yes.  
 24 Q Okay. But is it fair to say that you actually have no basis  
 25 one way or another to allege what Mayor Nickels knew or

1 didn't know with respect to federal law?  
 2 A No, I don't -- I don't have personal knowledge of that.  
 3 Q And do you have indirect knowledge or documentary evidence or  
 4 anything?  
 5 A No, I just have the opinion that one would have to either  
 6 have direct knowledge -- or one would have to either know  
 7 that what they were doing violated the law, or one would have  
 8 to have not done what I would consider basic inquiry into the  
 9 matter. And I would hope that Mayor Nickels had at least had  
 10 someone do a basic inquiry into the matter.  
 11 Q All right. But just to be sure that we're clear, you don't  
 12 have a basis to allege that Mayor Nickels personally knew one  
 13 way or the other what the state of the law was, correct?  
 14 A I have not done any discovery yet. So at this time, I do not  
 15 have that knowledge.  
 16 Q Okay. In the next paragraph, you refer to the oath of  
 17 attorney that you took, correct?  
 18 A Yes.  
 19 Q And you say that you agreed in that oath to support the  
 20 constitution of the State of Washington and the constitution  
 21 of the United States, right?  
 22 A Yes.  
 23 Q And that is something you take seriously, correct?  
 24 A Yes.  
 25 Q And you also said that you were fully subject to the laws of

1 the State of Washington and the laws of the United States,  
 2 and you agreed to abide by the same, correct?  
 3 A Right.  
 4 Q And do I take it from those solemn pledges and your  
 5 recitation of those in this e-mail that if the constitution  
 6 of the United States takes a position different than your  
 7 personal position, you would be bound by the constitution?  
 8 A Yes.  
 9 Q And do you also agree that the Supreme Court is the principal  
 10 arbiter of the meaning of the constitution of the United  
 11 States?  
 12 A They would certainly be the final and binding arbiter, yes.  
 13 Q So, for example, you believe that the Heller decision of the  
 14 United States Supreme Court at least defines some aspects of  
 15 the extent of an individual right under the Second Amendment  
 16 of the United States Constitution. Is that fair?  
 17 A Yes.  
 18 MR. DUNNE: Do you want to take a two-minute break  
 19 and --  
 20 THE WITNESS: Sure.  
 21 (Off the record.)  
 22 (Mr. Greer exited the room.)  
 23 Q Mr. Warden, we can mark this if you want, but I have a -- one  
 24 of the news reports, and it's not all that important which  
 25 one. I just wanted to ask you about a quote where you were

1 quoted as saying on November 13th with respect to the City:  
 2 They know full well it's illegal, but they went ahead and did  
 3 it anyway.  
 4 Is that something that you said on November 13th?  
 5 A I believe that's -- yes, I believe that's an accurate quote.  
 6 Q And with respect to the knowledge that the policy was  
 7 allegedly illegal, are you relying on anything other than  
 8 the language of the Second Amendment, the decision of the  
 9 Supreme Court in Heller and the Attorney General's opinion  
 10 and the state statute?  
 11 A No. Those -- yeah, I basically was talking about the  
 12 Attorney General's opinion when I made that statement.  
 13 Q Okay.  
 14 A Yes, nothing other than what you just said.  
 15 Q And your lawsuit doesn't actually include a claim based on  
 16 the state preemption statute, correct?  
 17 A Right.  
 18 Q You originally included one, but you amended your complaint  
 19 to intentionally remove any claim based on Washington State  
 20 statute, right?  
 21 A Right. It contains the Washington contusional, but no  
 22 statutory, yes.  
 23 Q All right. And so at this time, as we sit here today, you  
 24 don't have a claim based on Title 9 of the RCW or any  
 25 Washington statute; is that right?

1 A Right.  
 2 Q On November 13th, you were also quoted as saying that you  
 3 brought your gun to the community center because you're a  
 4 citizen who believes in the rule of law.  
 5 Is that something that you said?  
 6 A In a sounds like it's accurate.  
 7 Q And when you referred to the rule of law, what were you  
 8 referring to?  
 9 A In that case, I was referring to Title 9, RCW Title 9, mainly  
 10 but also, you know, Second Amendment and the state  
 11 constitution.  
 12 Q Okay. Let me hand you a copy of your complaint. I'm sorry,  
 13 the first amended complaint.  
 14 A Okay.  
 15 Q We're not going to mark this as an exhibit, because it's  
 16 already a pleading, but --  
 17 A Do we need the actual exhibit somewhere, the first exhibit?  
 18 Q That's fine.  
 19 A Okay.  
 20 Q Can you turn to page 5, please.  
 21 A Okay.  
 22 Q Would you mind reading the second sentence of paragraph 15?  
 23 A Further, defendants substantially and comprehensively  
 24 infringed Second Amendment Rights after the U.S. Supreme  
 25 Court held that the Second Amendment guaranteed an individual



1 right to bear arms, DC v. Heller citation, and after the  
 2 Ninth Circuit Court of Appeals held that the Second Amendment  
 3 applied to the states, Nordyke v. King, and then noting that  
 4 the Nordyke decision was vacated, and the U.S. Supreme Court  
 5 ruling in McDonald v. Chicago.  
 6 Q And in addition to the language of the Second Amendment, are  
 7 those the two federal decisions that you principally rely on  
 8 to determine the content of the Second Amendment?  
 9 A No. Those are -- I mean, those are the -- those are what  
 10 I -- what I cited in here, mainly -- mainly Heller, because,  
 11 again, Nordyke is just being held to see what the Supreme  
 12 Court does again this year. You know, I'm still doing  
 13 research. There is a lot of cases out there, but for  
 14 purposes of the complaint, that was all I cited.  
 15 Q Okay. Is it your position at least that those two cases do  
 16 provide authority for a person such as yourself to enter city  
 17 owned facilities with a concealed weapon, under the Second  
 18 Amendment?  
 19 A I -- well, I know -- the Heller case for me, you know,  
 20 demonstrates that there is a individual right in the Second  
 21 Amendment. The Nordyke case is the would be the authority in  
 22 the Ninth Circuit, that that individual right applied to the  
 23 states. That's -- those were the points I was making here.  
 24 Q All right.  
 25 A As far as what sort of individual Second Amendment right

1 applied to the states, neither of those cases provide -- you  
 2 know, I'm not looking to them for authority.  
 3 Q What are you looking to for authority?  
 4 A For --  
 5 Q Definition of the individual right.  
 6 A Well, they both -- my point is Heller provides individual  
 7 right; Nordyke -- well, McDonald will decide in June whether  
 8 that individual right applies to the states, and that was  
 9 only my point was in paragraph 15, there is an individual  
 10 right, and it applies to states.  
 11 Q Okay. Let's go ahead and take a look at Heller then. And  
 12 I'm handing you a copy of the United States Supreme Court  
 13 decision in District of Columbia v. Heller.  
 14 A Okay.  
 15 Q 128 Supreme Court 2783, decided in 2008, and is this a case  
 16 that you have read in the past in preparing your complaint?  
 17 A Yes. Maybe not in its entirety as far as dissenting opinions  
 18 and concurring opinions, but, yes, I've reviewed the case.  
 19 Q And if you turn to page 15 of the printout.  
 20 A Right.  
 21 Q At the very bottom of this page, it reads: There seems to us  
 22 no doubt, on the basis of both text and history, that the  
 23 Second Amendment conferred an individual right to keep and  
 24 bear arms. Correct?  
 25 A That's what it says, yeah.

1 Q And is that the holding on which you personally rely?  
 2 A Yeah. I -- I don't know about, you know, one -- one sentence  
 3 in particular, but it is my -- my reading of the case overall  
 4 that it provides that the second amendment is -- provides an  
 5 individual right, not just a collective right.  
 6 Q Go to the next page, please, and, you know, this is page 16  
 7 of the printout but page 2799 of the opinion.  
 8 A Okay.  
 9 Q Can you read the next sentence?  
 10 A The one that starts with, Of course?  
 11 Q Yes.  
 12 A Of course, the right was not unlimited, just as the First  
 13 Amendment's right of free speech was not, see, for example,  
 14 United States v. Williams. Thus, we do not read the Second  
 15 Amendment to protect the right of citizens to carry arms for  
 16 any sort of confrontation, just as we do not read the First  
 17 Amendment to protect the right of citizens to speak for any  
 18 purpose.  
 19 I'm sorry. I may have read more than one sentence.  
 20 Q That's okay. That was perfectly appropriate. And did you  
 21 understand that here Heller does not recognize an unlimited  
 22 right to bear and carry arms?  
 23 A Oh, sure. Yeah, no constitutional right is unlimited.  
 24 Q All right. And by that, that means that governments are  
 25 entitled to -- or have authority to enact some degree of

1 regulation, correct?  
 2 A Absolutely.  
 3 Q All right. And did Heller actually discuss some of the  
 4 parameters of that regulation that were recognized?  
 5 A I don't remember specifically, you know, without looking,  
 6 without being cited directly to it, but might have.  
 7 Q Why don't you turn to page 29 of the printout which is page  
 8 2816 and 2817 of the opinion.  
 9 A Okay.  
 10 Q Do you see under subheading Roman Numeral III --  
 11 A Yes.  
 12 Q -- there is a paragraph that begins, Like most rights.  
 13 A Yes.  
 14 Q And here the Supreme Court says again the right secured by  
 15 the Second Amendment is not unlimited, correct?  
 16 A Yes.  
 17 Q And further on in the paragraph, it says that the majority of  
 18 the 19th-century courts considered the question held that  
 19 prohibitions on carrying concealed weapons were lawful under  
 20 the Second Amendment or state analogues, correct?  
 21 A Yes.  
 22 Q And do you have any information or reason to believe that the  
 23 Supreme Court's statement there is incorrect?  
 24 A I have no reason to believe that.  
 25 Q Okay. So do you agree that under the Second Amendment,

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1 prohibitions on carrying concealed weapons are lawful?  
 2 A They can be, depending on the circumstances.  
 3 Q Okay. And further on, the Supreme Court goes on to say that  
 4 nothing in our opinion should be taken to cast doubt on  
 5 long standing prohibitions on the possession of firearms.  
 6 And then it engages in a list of examples, correct?  
 7 A Yes. Felons, mentally ill, et cetera, right.  
 8 Q And one of the examples is laws forbidding the carrying of  
 9 firearms in sensitive places such as schools and government  
 10 buildings, correct?  
 11 A Yes. That's what it says.  
 12 Q So under the constitution as interpreted by the Supreme  
 13 Court, do you agree that governments have authority to pass  
 14 laws forbidding the carrying of firearms in sensitive places?  
 15 A Yes.  
 16 Q Okay. And sensitive places would include schools and  
 17 government buildings, correct?  
 18 A Well, those are two examples that they give.  
 19 Q Okay. And there may be others?  
 20 A There may be others, sure.  
 21 Q All right.  
 22 A There may -- in some circumstances, a regulation in a school  
 23 or government building may not pass strict scrutiny, but that  
 24 certainly is an example of places where it could.  
 25 Q Okay. And do you have any authority, any federal authority

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1 from the Supreme Court holding in any situation in the last  
 2 200 years that a law forbidding the carrying of firearms in a  
 3 government building was unconstitutional?  
 4 A I'm not familiar with any ruling of that nature, no.  
 5 Q How about any federal court of appeals ruling to that effect?  
 6 A I'm not -- you know, I'm not aware of any.  
 7 Q Okay. So given this statement by the Supreme Court, are you  
 8 aware of any legal authority that governments may not  
 9 restrict the carrying of firearms in government buildings  
 10 under the federal constitution?  
 11 A I'm sorry. Okay. Can you say that again, please.  
 12 Q Yeah.  
 13 A There is a lot of, "nots" in there.  
 14 Q In light of this statement in the majority opinion in  
 15 District of Columbia v. Heller, are you aware of any federal  
 16 authority that prohibits governments from restricting the  
 17 carrying of firearms in government buildings?  
 18 A No.  
 19 Q And based on the oath that we have just reviewed that you  
 20 took as an attorney, would you agree that this is the law of  
 21 the land as reported in Heller?  
 22 A Heller -- yeah, Heller is the law of the land.  
 23 Q Okay. And the law of the land under the Second Amendment is  
 24 that the Second Amendment allows governments to forbid the  
 25 carrying of firearms in government buildings, correct?

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1 A Yes.  
 2 Q Okay.  
 3 A Under -- yeah, under the right circumstances, sure.  
 4 Q And the Southwest Community Center is owned by the City of  
 5 Seattle to the best of your knowledge, right?  
 6 A Yes.  
 7 Q And the Southwest Community Center is a government building  
 8 then, right?  
 9 A I -- yeah, I think you could say that.  
 10 Q And so the City of Seattle's policy with respect to the  
 11 Southwest Community Center is a policy that is within the  
 12 contours we've just discussed in District of Columbia v.  
 13 Heller, correct?  
 14 A No, because I don't think it would pass any level of  
 15 scrutiny. So, I mean, we could get into a legal discussion  
 16 about levels of scrutiny of state regulation of  
 17 constitutional rights, but I don't know that that's what  
 18 we're here to do.  
 19 Q Are you aware of some other federal authority that we haven't  
 20 reviewed other than the Supreme Court's decision in Heller?  
 21 A Regarding government Buildings?  
 22 Q Correct.  
 23 A Not at this time.  
 24 Q Are you aware of any Supreme Court case that holds that an  
 25 individual has a right to bear arms under the Second

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1 Amendment in any place other than their home?  
 2 A Supreme Court case?  
 3 Q Uh-huh.  
 4 A I'm not aware of any, but I haven't done the research yet.  
 5 Q If you turn to --  
 6 A I'll be happy to stipulate that that's an area of law that is  
 7 up in the air right now, and that this case raises a question  
 8 that is not settled.  
 9 Q Well, I don't think so. I think this case raises a question  
 10 that's firmly within the scope of Heller.  
 11 A Okay.  
 12 Q And so I would reject your stipulation.  
 13 A Okay.  
 14 Q Why don't you go ahead and turn to page 33, and I'm going to  
 15 refer you to the very last paragraph.  
 16 A In sum?  
 17 Q Yeah. Why don't you go ahead and read that sentence.  
 18 A In sum, we hold that the District's ban on handgun possession  
 19 in the home violates the Second Amendment, as does its  
 20 prohibition against rendering any lawful firearm in the home  
 21 operable for the purpose of immediate self-defense.  
 22 Q Okay. So there are two phrases in that sentence, correct?  
 23 A Yeah.  
 24 Q The first one refers to the district's ban on handgun  
 25 possession in the home, right?

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1 A Yes.

2 Q And so the Supreme Court's holding is that a ban of handgun

3 possession in a person's home violates the Second Amendment,

4 correct?

5 A Yes.

6 Q And then it goes on to say that prohibiting lawful firearms

7 in the home or prohibiting --

8 A Operable.

9 Q -- operable lawful firearms in the home for the purpose of

10 self-defense is also a violation of the Second Amendment,

11 correct?

12 A Yes.

13 Q So in Heller, the Supreme Court has struck down a law that

14 affects the rights to own handguns in the home, correct?

15 A Yes.

16 Q Can you point to any authority in this -- in this decision or

17 any holding of this decision that extends beyond the home?

18 A No. I think this decision has to do with the home.

19 Q Okay. Let's go ahead and ask you to now look at the Ninth

20 Circuit decision in Nordyke v. King, please.

21 A Okay.

22 Q Oh, I was going to give you these. These aren't exhibits.

23 A Right.

24 Q So we'll just use what you've got. Is Nordyke v. King a case

25 that you read in preparing the complaint that you filed in

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1 this lawsuit?

2 A Yeah, I reviewed it.

3 Q Okay. And it's also the case again that you cite in

4 paragraph 15 of your first amended complaint, right?

5 A I believe so. Yes.

6 Q And are you aware that Nordyke addressed constitutionality of

7 a county ordinance that forbids the carrying of firearms on

8 county property?

9 A Yes, in California, I believe, yes.

10 Q Okay. And in doing so, Nordyke also reviewed Heller and

11 applied Heller to the circumstances, correct?

12 A Yes.

13 Q And are you aware that Nordyke also held that a county has

14 the authority to forbid the carrying of firearms in sensitive

15 places?

16 A I hadn't focused on that part, but that's -- yeah, wouldn't

17 surprise me, I guess.

18 Q Okay.

19 A It's in California, a different law than here.

20 Q Well, it's interpreting the federal constitution, right?

21 A Well, basically, but I don't think the court would say that a

22 county in the State of Washington has authority to do

23 anything like that, because in fact a county doesn't in the

24 State of Washington.

25 Q Well, we're --

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1 A We can't -- we can't pretend that the preemption statute

2 doesn't exist simply because I don't have a claim

3 specifically based on it.

4 Q Let's just focus on your constitutional claim.

5 A Right.

6 Q Okay? Because you don't have a claim under Washington State

7 statutes. We've established that, correct?

8 A Yeah, that's what I just said too.

9 Q Okay. So we'll set that aside for now as irrelevant. We're

10 going to focus on federal law, and you agree, don't you,

11 that -- that in this Ninth Circuit opinion the Ninth Circuit

12 held that counties may forbid carrying of fire arms in

13 sensitive places, including fairgrounds and county property,

14 correct?

15 A With respect to the Second Amendment, yes.

16 Q The qualification is accepted. That's all -- that's all

17 we're talking about.

18 A Right, right.

19 Q And are you aware that the ordinance prohibiting guns in --

20 in sensitive places had the effect of prohibiting guns in

21 recreational areas and historic sites and parking lots and

22 public buildings?

23 A Yeah, I -- I don't remember specifically that part, but --

24 but I don't remember it not either.

25 Q Okay. Well, let's go ahead and look at page 20.

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1 A Sure.

2 Q And refer you to the second full paragraph, which is --

3 quotes from pages 459 and 460 of the opinion. Why don't you

4 go ahead and read that paragraph and the following paragraph

5 to yourself, and let me know when you've finished.

6 A Okay.

7 (Witness reading document.)

8 A Okay.

9 Q So in this decision, the Ninth Circuit refers again to a

10 county ordinance, correct?

11 A Yes.

12 Q And that county ordinance forbade possession of firearms in

13 county property, correct?

14 A Yeah.

15 Q And also open space venues such as county-owned parks and

16 recreational areas, correct?

17 A Yeah.

18 Q And the Ninth Circuit observed that these are gathering

19 places where high numbers of people might congregate, right?

20 A Yes.

21 Q And, specifically, observe that fairgrounds host numerous

22 public and private events throughout the year, and a large

23 number of people attend those events, right?

24 A Yes.

25 Q And then the Ninth Circuit stated, quote, Although Heller

1 does not provide much guidance, the open, public spaces the  
 2 county's ordinance covers fit comfortably within the same  
 3 category as schools and government buildings, end quote,  
 4 correct?  
 5 A Yes.  
 6 Q So do you understand that in this opinion the Ninth Circuit,  
 7 relying on the precedent of the Supreme Court in Heller held  
 8 that a county ordinance forbidding possession of firearms in  
 9 open, public spaces is not unconstitutional under the Second  
 10 Amendment?  
 11 A Yes.  
 12 Q And are you aware of any higher federal authority to the  
 13 contrary?  
 14 A I am not aware of that, no.  
 15 Q And they also summarized Heller to say that the core of the  
 16 right that Heller analyzed was the right of an individual to  
 17 defend themselves in their homes, correct?  
 18 A Yes.  
 19 Q And are you aware of any federal authority that recognizes  
 20 under the Second Amendment a right to bear arms for self-  
 21 defense outside of the home?  
 22 A I'm not aware of any right now, no.  
 23 Q And then the Ninth Circuit goes on to say that prohibiting  
 24 firearm possession on municipal property fits within the  
 25 exception from the Second Amendment for sensitive places that

1 Heller recognized, correct?  
 2 A Yes.  
 3 Q Are you aware of any federal authority that contradicts or  
 4 supersedes that particular holding?  
 5 A No.  
 6 Q Let's go ahead and put that aside. Can I have you pick up  
 7 your complaint again, please.  
 8 A Sure. Where are we at?  
 9 Q Let's go to page 8, your second claim for relief under the  
 10 Equal Protection Act.  
 11 A Okay.  
 12 Q Or, I'm sorry. Under the 14th Amendment.  
 13 A Okay.  
 14 Q In this claim you allege that defendants have violated and  
 15 are continuing to violate the plaintiff's rights to equal  
 16 protection of the laws, correct?  
 17 A Yes.  
 18 Q And my question simply is what classification do you contend  
 19 that defendants have made to deprive you of the equal  
 20 protection of the laws available to other citizens?  
 21 A What classification?  
 22 Q Right.  
 23 A Those carrying firearms.  
 24 Q So just -- and we're just trying to understand exactly what  
 25 this is, so we would be prepared to address it. So in your

1 view, the policy that excludes persons carrying firearms  
 2 discriminates against those people?  
 3 A Yeah.  
 4 Q Okay. By comparison to people who don't carry firearms?  
 5 A Yes.  
 6 Q And you're not alleging that you're a member of any suspect  
 7 class based on race, gender, ethnicity, national origin,  
 8 religion, anything like that, correct?  
 9 A That is correct.  
 10 Q Okay. So your -- your claim is based entirely on the  
 11 exclusion of people with firearms, correct?  
 12 A Yes.  
 13 Q And you do acknowledge, however, that you would be able to  
 14 gain entry if you were not carrying a firearm, right?  
 15 A Yes.  
 16 Q And that carrying a fire arm is not an inherent trait of  
 17 personality or -- or a human condition, but a -- a decision,  
 18 right?  
 19 A Right.  
 20 Q And it's something that's a -- for lack of a better word, its  
 21 conduct, correct?  
 22 A Yeah, it's not a -- it's not a trait like gender or race or  
 23 anything like that.  
 24 Q Let's go to the exhibits to the amended complaint, and let's  
 25 go to Exhibit C, please.

1 A Okay.  
 2 Q Can you tell me what Exhibit C is?  
 3 A It's a copy of the parks department rule, the gun ban rule.  
 4 Q And this is the particular rule that you are challenging,  
 5 right?  
 6 A Yes.  
 7 Q And are you challenging -- well, let me ask a different  
 8 question. Let's go to Section 1.6.  
 9 A All right.  
 10 Q And you understand that there are -- there is an introduction  
 11 in findings for the rule, right?  
 12 A Yes.  
 13 Q And that the findings recite the basis for the rule and  
 14 policy that the City has adopted, correct?  
 15 A Yeah, I believe that's the intent.  
 16 Q Okay. And so one of the findings is in paragraph 1.6, right?  
 17 A Okay.  
 18 Q And that says that safe and secure use of department  
 19 facilities is disturbed by the threat of intentional or  
 20 accidental discharge of firearms in the vicinity of children,  
 21 right?  
 22 A Yes.  
 23 Q And you're aware that there are all across the country every  
 24 month, every week, perhaps every day, intentional and  
 25 accidental discharges of firearms in the vicinity of



1 children, right?

2 A I'm not familiar with the frequency, but, sure, that happens.

3 Q That happens with sufficient regularity that it should be a

4 matter of public concern, right?

5 A Again, I don't know the regularity, but it would be a

6 concern, yeah.

7 Q Okay. And paragraph 1.6 goes on to refer to particular

8 unforeseen circumstances such as the escalation of disputes

9 among individuals carrying firearms. You're aware that that

10 happens from time to time, correct?

11 A Sure.

12 Q Because carrying firearms can itself be a provocative act,

13 right?

14 A Not that I know of.

15 Q Did you testify earlier that -- that carrying firearms can be

16 perceived by some as a provocative act?

17 A No, what I -- what I thought I said was that carrying a fire

18 arm into a facility with the intention of seeing if a rule

19 applied to you could be seen as provocative.

20 Q Okay.

21 A I certainly think carrying an exposed firearm could be

22 perceived as provocative.

23 Q About exposing a concealed firearm, that could be conceived

24 of as provocative as well, correct?

25 A Sure, because it would no longer be concealed at that point.

1 Q Yeah.

2 A Yeah.

3 Q That it would indicate an intention to make use of it in some

4 way, right?

5 A Ah, I think that's going a bit far.

6 Q So another circumstance is the accidental discharge of

7 firearms in the vicinity of children. You're aware that that

8 happens with some regularity, right?

9 A I'm sure it does, and not just children, yeah.

10 Q You teach a course in the safe handling of firearms, correct?

11 A Yeah.

12 Q And that's because occasionally the mishandling of firearms

13 causes injury to people, right?

14 A Sure, yeah.

15 Q Were aware of --

16 A Inherent -- there is an inherent danger of that happening.

17 Q Yeah. Were you aware of the incident at Westlake Center

18 several weeks ago where a person carrying a concealed weapon

19 dropped his pistol on the floor and it discharged and fired

20 and shot himself in the leg?

21 A I heard that report, yeah.

22 Q Yeah. So that would be an example of the mishandling of a

23 fire arm, right?

24 A It certainly sounds like one, yeah.

25 Q Okay. It also refers to the unsafe, temporary storage or

1 placement of firearms that may be found and accidentally

2 discharged by children and youth, correct?

3 A Yes.

4 Q That's a circumstances that happens from time to time,

5 correct?

6 A Yes.

7 Q And the intimidation that occurs when someone openly displays

8 firearms in the presence of youth and children. I think

9 that's something we've touched on, correct?

10 A Yeah. That can be -- that can be perceived as provocative or

11 threatening, yeah.

12 Q So all those are circumstances that are known to occur,

13 correct?

14 A Yes.

15 Q And it is rational for the City to take action to reduce the

16 occurrence of those circumstances, correct?

17 A You know, again, under certain circumstances, it would be

18 rational -- it would be rational for the government to be

19 concerned with those incidents, sure.

20 Q If you go to paragraph 1.8, please.

21 A Yes.

22 Q Here the City makes a finding that many injuries to children

23 by firearms occur when children are playing and gain access

24 to firearms. You're aware that that happens with some

25 frequency, correct?

1 A Yes.

2 Q Even though the firearms are legally possessed and permitted,

3 and no violation of law, correct?

4 A Yes.

5 Q And in fact part of the purpose of the class that you teach,

6 I'm sure, is to instruct people as to the safe handling and

7 storage of firearms to reduce those injuries, correct?

8 A Yes.

9 Q But you can't be sure that in every circumstance the firearms

10 are safely handled and stored, correct?

11 A Correct.

12 Q And in fact the people who enter Seattle facilities don't

13 ever have to take any kind of training regarding the safe

14 storage and handling of firearms, correct?

15 A Correct, yeah.

16 Q And if they go in with a concealed pistol under their jacket

17 and they decide to go swing on a swing, or up and down on a

18 teeter-totter, or go swimming in a pool, there is no

19 particular law as to where and when and how they must store

20 their gun, correct?

21 A I believe that's correct.

22 Q They don't have to store it in a locked place, do they?

23 A You know, not -- I'm frankly not a hundred percent sure. I

24 know if you leave your pistol in your car, it's supposed to

25 be locked or in an opaque container, but --

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1 Q Right.  
 2 A Yeah.  
 3 Q And so if someone were to take their firearm off so that they  
 4 could use play facilities at a children's playground or go  
 5 swimming, that firearm could be stolen, correct, if not  
 6 stored properly?  
 7 A Yes.  
 8 Q Could be found by children, correct?  
 9 A Right.  
 10 Q Could be accidentally discharged, correct?  
 11 A I would think so.  
 12 Q And so it's rational for the City to be concerned about those  
 13 circumstances, isn't it?  
 14 A It's rational for anybody to be concerned about those.  
 15 Q Yeah, okay. And the City is no different. It's rational for  
 16 the City to think about those things, right?  
 17 A Ah, sure.  
 18 Q And in general it's rational for the City to be concerned  
 19 that adults not leave their firearms unattended or properly  
 20 stored in city buildings or parks, correct?  
 21 A The City and every other entity in the world, yes.  
 22 Q Okay. If you look at paragraph 1.9, the City makes the  
 23 finding that the presence of even otherwise lawfully  
 24 possessed firearms increases the likelihood of gun violence  
 25 to resolve disputes.

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1 A I see that.  
 2 Q That would not otherwise involve a threat to life or grievous  
 3 bodily harm. Do you see that?  
 4 A Yes.  
 5 Q Do you agree with that?  
 6 A Ah, not necessarily. I don't know where that -- the basis of  
 7 that is.  
 8 Q Well, you can't experience gun violence without a gun, can  
 9 you?  
 10 A No, you cannot.  
 11 Q So to have gun violence, you must have a firearm, right?  
 12 A Yes.  
 13 Q And a firearm is a deadly weapon, right?  
 14 A Yes.  
 15 Q So isn't it logical and rational to find that the presence of  
 16 lawfully possessed firearms increases the likelihood of gun  
 17 violence?  
 18 A Well, I guess, "lawfully possessed," is the compound word I  
 19 am not sure about. Clearly, the presence of guns increases  
 20 the likelihood of gun violence. In fact, it's a necessary  
 21 condition. My question is with the, "lawfully possessed"  
 22 portion.  
 23 Q Okay. Do you agree that it's rational for the City to be  
 24 concerned about the presence of firearms and the possibility  
 25 that the likelihood of gun violence may increase?

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1 A Rational, yes.  
 2 MR. DUNNE: Let's take a quick break, and then I think I  
 3 got about five minutes left, and we'll get you out of here.  
 4 THE WITNESS: All right. Okay.  
 5 (Off the record.)  
 6 Q Just a couple more questions before we end up, Mr. Warden. I  
 7 looked you up on Google and found that you've become a  
 8 blogger recently; is that right?  
 9 A Yes.  
 10 Q So it appears that you became a blogger in November 2009?  
 11 A Yeah.  
 12 Q Was that --  
 13 A Very end of November, I think.  
 14 Q So that was a week or two after you actually visited the  
 15 community center?  
 16 A Right.  
 17 Q Okay. And in your personal profile you have the following  
 18 quote: "As long as the world shall last there will be  
 19 wrongs; and if no man objected and no man rebelled those  
 20 wrongs would last forever." From Clarence Darrow, right?  
 21 A Yeah.  
 22 Q And you mentioned your favorite movies. The first one you  
 23 mention here is Dirty Harry, right?  
 24 A Yes.  
 25 Q Why did you pick that one?

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1 A I -- I don't know. I think I had probably just put the  
 2 pistol-packing attorney nickname up here or something, but  
 3 it's one of many movies in my top shelf, I guess.  
 4 Q Okay. We have at least one favorite book in common, Light in  
 5 August, so --  
 6 A Ah, good, yeah.  
 7 Q -- that's interesting.  
 8 A Uh-huh.  
 9 Q And you've written at least a couple of blogs, one on the Wah  
 10 Mee massacre and the parole decision there, and another on  
 11 the recent tragedy in Lakewood, right?  
 12 A Yes.  
 13 Q So have you written any others since December 1st, 2009?  
 14 A No.  
 15 Q Christmas season keeping you busy?  
 16 A Yeah, yeah, and was at Atlanta last week, I think I  
 17 communicated, so busier than I would hope, than I would like.  
 18 Q I just had a quick question or two about lessons from  
 19 Lakewood. This again is the tragedy of the four police  
 20 officers --  
 21 A Yeah.  
 22 Q -- who were murdered in Lakewood by a career criminal, right?  
 23 A Yes.  
 24 Q And if you go to the third page of the blog, and --  
 25 A Okay.

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1 Q The last paragraph, can I ask you just to read that paragraph  
 2 into the record?  
 3 A The one fact is certain?  
 4 Q Ah --  
 5 A The last full paragraph on the page you were talking about?  
 6 Q Page 3. In fact, we should -- we should probably -- as long  
 7 as I'm going to have you read something, I might as well go  
 8 ahead and mark it as an exhibit so that's clear. Let's mark  
 9 this as Exhibit 2, and it's entitled, The Critical Thinker.  
 10 (Exhibit 2 marked for identification.)  
 11 Q Can you identify Exhibit 2, please.  
 12 A Exhibit 2 looks like my blog titled, The Critical Thinker.  
 13 Q And your -- what do they call these, your nom de guerre is  
 14 pistol-packing attorney?  
 15 A Yeah. That's what one of the newspaper headlines at least  
 16 said, which is kind of, you know, sounds cool, I guess.  
 17 Q Okay. Can you turn to the third page, please.  
 18 A Yes.  
 19 Q At the very bottom there is a paragraph that begins, What if  
 20 the baristas, could you read that paragraph, please.  
 21 A All right. "What if the baristas at the unfortunate coffee  
 22 shop had been carrying concealed pistols and knew how to  
 23 safely and competently use them? What if at least one of  
 24 them, after Clemmons turned his back and after they moved out  
 25 of immediate harm's way, was able to take him down? What if

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1 today we were celebrating the heroic life-saving actions of a  
 2 concealed pistol carrier rather than mourning the horrific  
 3 and senseless loss of four police officers? It happens.  
 4 Legally armed citizens disrupted the November 2005 Tacoma  
 5 Mall rampage; an armed off-duty out-of-jurisdiction Ogden  
 6 police officer quickly ended the February 2007 shooting spree  
 7 in Salt Lake City."  
 8 Q You believe strongly in the rights under the Second  
 9 Amendment, correct?  
 10 A Yeah. Under all constitutional rights, but, yes.  
 11 Q Yeah. And it sounds from your blog here as though you  
 12 believe that one of the justifications for allowing citizens  
 13 to carry firearms is their ability to use those firearms to  
 14 stop criminal activity.  
 15 A Yes, uh-huh.  
 16 Q Do you know how frequently that happens in any given year?  
 17 A No.  
 18 Q Of the 10,000 or so gun deaths that occur every year, do you  
 19 know about how many of them are deaths of criminals who are  
 20 shot in the act of committing some felony?  
 21 A No.  
 22 Q And do you know whether the coffee shop here actually had a  
 23 policy prohibiting its employees from carrying weapons while  
 24 they were on duty for the protection of themselves and  
 25 customers?

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1 A No, I don't know.  
 2 Q Do you know whether it in fact is common for employers to  
 3 prohibit their employees from carrying firearms while --  
 4 while working?  
 5 A I know in the federal sector where I work weapons are not  
 6 allowed in federal facilities. I've read some cases  
 7 regarding, I think, county bus drivers, but, no, it -- I'm  
 8 sure that there are plenty of employers who prohibit  
 9 employees from carrying pistols while on duty.  
 10 Q And so the point of this blog was in part to say if the  
 11 baristas had been carrying firearms, they may have been able  
 12 to take action to prevent a horrific crime, correct?  
 13 A Sure.  
 14 Q But you -- you recognize the irony here, don't you?  
 15 A Irony?  
 16 Q Yeah. That there were four people in that coffee shop who  
 17 were carrying pistols?  
 18 A Yes, the targets, right.  
 19 Q And each of those people received the best training that  
 20 Washington can provide as to how to prevent crime?  
 21 A Sure.  
 22 Q And, in fact, they were each wearing bullet proof vests at  
 23 the time, right?  
 24 A I'm not aware of that, but it wouldn't surprise me.  
 25 Q And notwithstanding the fact that they were as well-trained

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1 as a citizen can be and fully armed and actually there  
 2 preparing to go out on duty, each of them was unable to stop  
 3 that crime in process, right?  
 4 A Well, they were certainly unable to save their own lives. I  
 5 understand one of them -- one of them shot the guy in the  
 6 stomach but -- right.  
 7 Q So that was my reference. Do you understand the irony?  
 8 A Well, I understand that if you're snuck up on from behind  
 9 it's hard to defend yourself. My understanding -- again, I  
 10 wasn't there was that the baristas saw Maurice pull a gun,  
 11 then turn around and started walking towards the officers,  
 12 which presented an opportunity not available to the officers.  
 13 Q That tends to be what criminals do with their guns, is to  
 14 pull them before you have a chance to pull yours.  
 15 A That certainly, I believe, would be a good strategy.  
 16 MR. DUNNE: Okay. Dave, is there anything you want to  
 17 talk about before we conclude?  
 18 MR. KEENAN: I got nothing.  
 19 MR. DUNNE: Okay. Mr. Warden that's all I have. So I  
 20 wanted to thank you for your time, and --  
 21 THE WITNESS: Sure.  
 22 MR. DUNNE: -- I don't know if you have anything that  
 23 you wanted to put on the record before we conclude.  
 24 THE WITNESS: I'd like to cross-examine myself. No.  
 25 (Laughter.)



1 MR. KEENAN: And then object.  
 2 MR. DUNNE: I can tell you a funny story about that when  
 3 we're off the record.  
 4 THE WITNESS: Okay.  
 5 (Off the record.)  
 6 MR. DUNNE: This will conclude the deposition of  
 7 Mr. Warden.  
 8 (Whereupon, at 11:53 a.m. the deposition was concluded.)  
 9 (Signature was reserved.)

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SIGNATURE

1 I, ROBERT C. WARDEN, hereby certify that I have read the  
 2 foregoing transcript of my deposition taken Tuesday, December 22,  
 3 2009, and that the corrections, if any, were noted on the enclosed  
 4 correction sheet, and with those changes, the same is now a true  
 5 and correct transcript of my deposition testimony.  
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16 STATE OF WASHINGTON )  
 ) ss.  
 17 COUNTY OF \_\_\_\_\_)

19 SUBSCRIBED AND SWORN to before me this \_\_\_\_ day of  
 20 \_\_\_\_\_, 20\_\_.

24 \_\_\_\_\_  
 Notary Public in and for the State of  
 Washington, residing at \_\_\_\_\_  
 My Commission expires \_\_\_\_\_

CERTIFICATE

2 STATE OF WASHINGTON )  
 )  
 3 COUNTY OF KING )  
 4 I, the undersigned Notary Public in and for the State of  
 5 Washington, do hereby certify:  
 6 That the annexed transcript of Tuesday, December 22, 2009  
 7 deposition of ROBERT C. WARDEN was taken stenographically by me  
 8 and reduced to typewriting under my direction;  
 9 I further certify that I am not a relative or employee or  
 10 attorney or counsel of any of the parties to said action, and that  
 11 I am not financially interested in the said action or the outcome  
 12 thereof;  
 13 I further certify that the annexed Tuesday, December 22, 2009  
 14 deposition of ROBERT C. WARDEN is a full, true and correct  
 15 transcript, including all objections, motions and exceptions of  
 16 counsel, made and taken at the time of the foregoing proceedings.  
 17 IN WITNESS WHEREOF, I have hereunto set my hand and affixed  
 18 my signature this 28th day of December 2009.

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23 \_\_\_\_\_  
 Notary Public in and for the State of  
 Washington, residing at Seatac.  
 24 My commission expires 2/14/10  
 CSR License No. 2616

DEPOSITION CORRECTION SHEET

2 WITNESS: ROBERT C. WARDEN: 12/22/09  
 3 WARDEN V. NICKELS; CITY OF SEATTLE, NO. C09-1686 MJP  
 4 PAGE/LINE CORRECTION

5	_____
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23 RETURN CORRECTION SHEET AND SIGNATURE PAGE TO:  
 24 LAURIE HECKEL, CSR, RPR  
 17832 50TH COURT SOUTH  
 25 SEATAc, WASHINGTON 98188

## EXHIBIT B

Westlaw.

NewsRoom

11/14/09 STLTI (No Page)

Page 1

11/14/09 Seattle Times (Pg. Unavail. Online)  
2009 WLNR 22940655

Seattle Times, The  
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November 14, 2009

Kent man challenges Seattle Mayor Greg Nickels' gun ban  
Bob Young  
Seattle Times

Nov. 14--A gun-toting Kent man was asked to leave a West Seattle community center today and he said he accomplished a key step toward legally challenging Mayor Greg Nickels' ban on firearms in city parks, community centers and other facilities.

After a short, civil showdown with a parks department employee, Bob Warden left the Southwest Community Center with a Glock pistol holstered inside his leather jacket. Warden, who holds a concealed-weapons permit, had come to the center to protest Nickels' gun ban. A licensed attorney, Warden had alerted the city and press to his noon protest.

Warden, 44, said the city's gun ban violates state and federal law. Four gun-rights groups and five individuals said last month they are suing the city and Nickels over the ban. But Warden believes those plaintiffs lack standing to challenge the city's ban because they hadn't personally been evicted from city property for carrying a gun.

He said he expects to file a lawsuit and have a judge hear his complaint: "I think this is a pretty good bang for the buck in terms of standing up for our rights."

He said his confrontation with city officials went as anticipated. Followed by a pack of reporters and cameras, Warden entered the community center shortly after noon. He was greeted by Lisa Harrison, a parks security employee, who asked him to leave. Under the watchful eye of several Seattle police officers, Warden promptly complied, as he said he would.

A labor-relations specialist with the federal government, Warden said he is not a member of the NRA, not a gun-rights activist, and not a political conservative. He maintained his protest was "something a good citizen should do."

With so many men and women "fighting for our rights overseas, it seems kind of offensive for people back here to just give them away," Warden said.

The ban went into effect last month in certain park facilities and eventually will include hundreds of playgrounds, community centers, sports fields, swimming pools and water-play areas.

Nickels proposed the ban to protect children, but the move quickly drew fire from gun-rights advocates who questioned its legality.

State Attorney General Rob McKenna has said that state law pre-empts local authority to adopt firearms regulations, unless specifically authorized by law.

Nickels said state law does not prohibit a property owner from imposing conditions on the possession of firearms on his or her property. The mayor argues that a municipal property owner such as Seattle may impose limits on firearms as a condition of entry or use of particular facilities, especially those where children and youth are likely to be.

A Nickels spokesman said the city expects to prevail against those who challenge the gun ban. "We'll meet them in the legal arena. We are very confident in our case and look forward to arguing it," said Alex Fryer.

Warden disagreed.

"Mr. Nickels never presented evidence how a legally carrying citizen is a threat to anyone" in city parks, Warden said. "The mayor has not presented any argument how a gun ban like this would prevent bad guys from sneaking into [a city facility] with a weapon."

His retired parents were on hand to support him. Fred and Barb Warden, also of Kent, said they taught their son to stand up for what he believes in. "He's always had the courage of his convictions and we respect what he's doing," his mother said.

Warden said he has never fired a weapon outside a shooting range. He also couldn't recall any other laws he had publicly protested. "I expect by this time next week everyone will forget me," he said.

Bob Young: 206-464-2174 or byoung@seattletimes.com

Staff reporter Susan Gilmore contributed to this story.

--- INDEX REFERENCES ---

COMPANY: KENT INDUSTRIAL CO LTD

NEWS SUBJECT: (Gun Rights & Regulations (1GU97); Social Issues (1SO05); Government (1GO80); Local Government (1LO75))

11/14/09 STLTI (No Page)

Page 3

REGION: (North America (1NO39); Washington (1WA44); Americas (1AM92); USA (1US73))

Language: EN

OTHER INDEXING: (KENT; NRA; SOUTHWEST COMMUNITY CENTER; STATE ATTORNEY) (Alex Fryer; Bob Warden; Bob Young; Fred and Barb Warden; Greg Nickels; Lisa Harrison; Nickels; Nov; Rob McKenna; Staff; Susan Gilmore; Warden)

Word Count: 738

11/14/09 STLTI (No Page)

END OF DOCUMENT

11/14/09 Seattle Post-Intelligencer (Pg. Unavail. Online)  
2009 WLNR 22946910

Seattle Post-Intelligencer (WA)  
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November 14, 2009

Section: Local

Man carries gun into community center to protest ban

SEATTLEPI.COM STAFF

A Kent man who announced Friday that he intended to carry a pistol into a West Seattle community center to trigger a lawsuit challenging Seattle's ban on guns in public spaces did just that Saturday, and was promptly asked to leave.

Bob Warden, 44, announced his intentions in an e-mail Friday morning to media as well as to the city of Seattle, including the police and city attorney.

On Saturday, Warden walked into the Southwest Community Center at 2801 SW Thistle Street with a Glock-27 .40-caliber sub-compact pistol under a black jacket in a holster strap over his left shoulder. Parks Department employee Lisa Harrison asked him to leave, and he did.

"I'm not here as a Second Amendment activist," Warden said. "I'm here as a citizen who believes in the rule of law."

Warden, who said he's never discharged a weapon outside a firing range, added that the idea occurred to him in the past couple of days.

Media, Seattle Police and a handful of supporters were on hand. Warden sent out an e-mail Friday announcing his intentions.

"As a courtesy, this is advance notice that at noon tomorrow, Saturday, November 14, I plan to exercise my legal right to bear arms in Seattle's Southwest Community Center, 2801 SW Thistle Street," Warden said in his e-mail. "I will be safely and securely carrying my holstered Glock pistol. I have a current valid State of Washington License to Carry Concealed."

Bud Shasteen, 75, an NRA member member of the Second Amendment Foundation, was among Warden's supporters.

"I'm glad he is doing it," Shasteen said. "I'm sorry I didn't think of it. I'd have done it myself."

Alex Kaehler, 16, and his sister, Jeanmarie Kaehler, 20, were also on hand to support the move. Neither owns a weapon, but both said they want to.

"The mayor was definitely way out of line when he passed the law," said Alex Kaehler, who lives in SeaTac. "I'm glad somebody is challenging him."

Mayor Greg Nickels said the ban is intended to protect children. Warden objected to that reasoning.

"Nickels has never presented any evidence to suggest how responsible concealed-weapon carrying is a threat to children in a park," Warden said.

Nickels said on Oct. 14 that guns would be banned on such city facilities as parks and community centers where children gather. Signs banning guns have been posted at city parks.

Late last month, gun-rights advocates sued, saying the ban violates state law.

But Warden, a licensed attorney in the state, said Friday he worries that the earlier lawsuit may be thrown out because those who filed it lack legal standing.

Warden said he does not actively practice law. He said he works in labor relations for the federal government but would not describe his job further.

He said he is taking the action because he believes the ban is illegal. He noted that the state Attorney General's Office has said so.

"They know full well it's illegal, but they went ahead and did it anyway," Warden said Friday.

Warden described himself as a political independent, but a man who has probably voted for only two Republicans in his life.

He said he is not a member of the National Rifle Association, but was certified by that organization as a pistol instructor. He said he uses the certification in his volunteer work with the Boy Scouts.



"I'm not some gun rights nut," he said Friday.

---- INDEX REFERENCES ---

COMPANY: MEDIA AG FUER INNOVATIVE MEDIEN TECHNOLOGIE; KENT INDUSTRIAL CO LTD;  
@MEDIA; MEDIA SA

NEWS SUBJECT: (Gun Rights & Regulations (1GU97); Social Issues (1SO05))

REGION: (North America (1NO39); Washington (1WA44); Americas (1AM92); USA (1US73))

Language: EN

OTHER INDEXING: (AMENDMENT FOUNDATION; BOY SCOUTS; KENT; MEDIA; NATIONAL RIFLE  
ASSOCIATION; NRA; SOUTHWEST COMMUNITY CENTER) (Alex Kaehler; Bob Warden; Bud Shasteen;  
Greg Nickels; Jeanmarie Kaehler; Lisa Harrison; Nickels; Shasteen; Warden)

EDITION: Web Edition

Word Count: 659

11/14/09 STLPI (No Page)

END OF DOCUMENT

Westlaw

NewsRoom

11/14/09 NBC5KING-WA (No Page)

Page 1

11/14/09 Seattle 5 KING-WA (Pg. Unavail. Online)  
2009 WLNR 23028146

5 KING-WA  
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November 14, 2009

KING-5 5:30PM NEWS 2009-11-14 17:30:10

Seattle, WA

NBC

5 KING

KING-5 5:30PM NEWS

2009-11-14

17:30:10

IS SEATTLE'S GUN BAN LEGAL?

TODAY, ONE MAN DECIDED TO PROTEST THE CITY'S NEW POLICY, DECIDING TO CARRY A WEAPON INTO A BUILDING PACKED WITH CHILDREN. CHRIS DANIELS WAS THERE WHEN IT HAPPENED AND JOINS US NOW LIVE FROM WEST SEATTLE. CHRIS?

Reporter: ALAN, SEATTLE'S OUTGOING MAYOR GREG NICHOLS RECENTLY ISSUED THE EXECUTIVE ORDER TO BAN GUNS FROM SPECIFIC PLACES WHERE SMALL CHILDREN AND FAMILIES MAY GATHER, LIKE PARKS AND COMMUNITY CENTERS LIKE THE ONE HERE IN WEST SEATTLE. AND TODAY, IT IS WHERE ONE KENT MAN TRIED TO DEFY THE ORDER, HE SAYS, BY TRYING TO PROVE NICKELS IS NOT ABIDING BY THE LAW.

IT'S A CIVIL RIGHT, JUST LIKE ANY CIVIL RIGHT.

Reporter: BOB WARDEN ALERTED EVERYONE. HE WAS GOING TO TAKE HIS LEGAL CONCEALED AND HOLLISTERED GLOCK INTO THE SOUTHWEST COMMUNITY CENTER AT NOON.

I THINK PUBLIC OFFICIALS WHO CHOOSE TO COMPLETELY GO AGAINST THE LAW SHOULD NOT BE ALLOWED TO GET AWAY WITH IT.

Reporter: WARDEN WAS PROTESTING THE RECENT EXECUTIVE ORDER BY SEATTLE MAYOR GREG NICOLL TO BAN THE POSSESSION OF FIREARMS AT DESIGNATED CITY FACILITIES AND PARKS WITH SIGNS LIKE THESE. IT WAS A REACTION TO THE SHOOTING AT SEATTLE'S OAK LIVE FESTIVAL LAST YEAR. THE STATE ATTORNEY GENERAL'S OFFICE SAYS IT DOESN'T BELIEVE THE CITY HAS THE LEGAL RIGHT TO MAKE SUCH AN ORDER.

SOME PEOPLE ARE GOING TO LOOK AT THIS AND LOOK AT IT AS IF THE CITY OF SEATTLE HAS PUT A BIG SUE ME SIGN ON IT.

Reporter: THE ONE-MAN PROTEST WAS OVER IN A MINUTE.

YOU WILL NOT BE ALLOWED IN THIS FACILITY.

OKAY.

ASK YOU TO PLEASE WALK OUT OF THE FACILITY AND PUT THE GUN AWAY.

Reporter: THE MEDIA CIRCUS MADE LITTLE SENSE TO SOME PARENTS.

HE'S T HIS RIGHT TO MAKE A LEGAL CHALLENGE, BUT I DO SUPPORT THE CITY'S DECISION TO HAVE THE BAN IN PLACE.

Reporter: WARDEN SAYS IT NOW LAYS THE GROUNDWORK TO CONTINUE TO FIGHT THE ISSUE.

I NOW HAVE LEGAL STANDING TO FILE A SUIT CHALLENGING THE RULE.

Reporter: AND THAT'S BECAUSE HE SAYS HE WAS PERSONALLY TURNED AWAY IN THIS CASE, WHICH IS DIFFERENT THAN THE PLAINTIFFS IN ANOTHER CASE THAT'S ALREADY BEEN FILED. A SPOKESPERSON FOR CURRENT MAYOR GREG NICHOLS TOLD ME TODAY, QUOTE, WE'RE ABSOLUTELY PREPARED FOR ANY CHALLENGE, UNQUOTE. AS FAR AS THE AG'S OPINION, THAT SAME SPOKESPERSON FOR THE MAYOR, ALEX FRIAR, SAID AGAIN, QUOTING, IT'S JUST AN OPINION. WE HAVE A RIGHT AND WE'RE WILLING TO GO TO COURT TO PROVE IT, UNQUOTE. LIVE TONIGHT IN WEST SEATTLE, CHRIS DANIELS, KING 5 NEWS.

THE MAYOR'S ORDER STATES IF ANYBODY WITH A GUN REFUSES TO LEAVE A DESIGNATED

ARREST, THEY CAN BE ARRESTED FOR CRIMINAL TRESPASS. TODAY, WARDEN LEFT. HE WAS NOT DETAINED.

---- INDEX REFERENCES ----

COMPANY: AG; MEDIA AG FUER INNOVATIVE MEDIEN TECHNOLOGIE; FACILITY; @MEDIA; MEDIA SA

NEWS SUBJECT: (Gun Rights & Regulations (1GU97); Social Issues (1SO05); Government (1GO80); Local Government (1LO75))

REGION: (North America (1NO39); Washington (1WA44); Americas (1AM92); USA (1US73))

Language: EN

OTHER INDEXING: (AG; FACILITY; FRIAR; GUN; JOINS; MEDIA; NBC; NICKELS; OPINION; PARKS; PLAINTIFFS; PROTEST; QUOTE; QUOTING; SPOKESPERSON; WARDEN) (CHRIS DANIELS; GREG; GREG NICHOLS; HOLLISTERED GLOCK; LEGAL CONCEALED; LIVE TONIGHT)

Word Count: 526

11/14/09 NBC5KING-WA (No Page)

END OF DOCUMENT

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11/14/09 CBS7KIRO-WA (No Page)

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11/14/09 Seattle 7 KIRO-WA (Pg. Unavail. Online)  
2009 WLNR 23029788

7 KIRO-WA  
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November 14, 2009

KIRO-7 EYEWITNESS NEWS AT 11 2009-11-14 23:15:17

Seattle, WA

CBS

7 KIRO

KIRO-7 EYEWITNESS NEWS AT 11

2009-11-14

23:15:17

A MAN CARRIES A GUN INTO A COMMUNITY CENTER FULL OF FALLS AND SMALL CHILDREN. WITH POLICE AROUND, HE IS ASKED TO LEAVE AND HE IS NOW TALKING ABOUT TAKING HIS BEEF TO COURT.

IT'S NOT MY GOAL TO BE ARRESTED. IT'S NOT MY GOAL TO MAKE A SCENE OR ANYTHING.

BOB WARDEN IS ONE PERSON WHO DOESN'T WANT TO COMMIT AN ACT OF CIVIL DISOBEDIENCE ARMED. THIS MORNING HE PACKED UP HIS GUN AND SET OUT FOR THE SOUTHWEST COMMUNITY CENTER IN PROTEST OF SEATTLE'S BAN ON GUNS IN CITY PARKS. HE DOESN'T LIVE HERE ANYMORE. HE IS IN KENT NOW, BUT HE SAYS THIS IS A BIGGER ISSUE.

IF YOU ACCEPT THE IDEA THAT WE HAVE MEN AND WOMEN IN THE ARMED FORCES, OVERSEAS, RIGHT NOW, IN SOME CASES, DYING FOR OUR LIBERTIES. IF YOU ACCEPT THAT, THEN HOW OFFENSIVE IS IT FOR PEOPLE TO WILLY NILLY LET THEM FLOAT AWAY AT 1:00?

SO HE WARNED THEM HE WOULD BE COMING AT NOON, A HIGH-NOON MEETING, IF YOU WILL IS. WITH CAMERAS SURROUNDING HIM, HE WALKED, BUT AS ANTICIPATED, HE DIDN'T GET

FAR.

PLEASE GO OUT THE VICINITY.

Reporter: AND SO HE DID, GOING IN PEACE WITH HIS PIECE, BELIEVING HE SET THE SCENE FOR THE REAL SHOWDOWN IN COURT.

I AM HERE AS A CITIZEN, WHO BELIEVES IN THE RULE OF LAW.

NO WORD ON HE MAY FILE A LAWSUIT. WE GOT THIS RESPONSE FROM THE MAYOR'S OFFICE TODAY. "WE IS EXPECTED THERE WOULD BE LEGAL CHALLENGES AND WE LOOK FORWARD TO STATING OUR CASE IN COURT. WE REMAIN FIRM THAT GUNS HAVE NO PLACE IN COMMUNITY CENTERS,ED WITH AING POOLS AND OTHER PLACES WHERE KIDS ARE PRESENT."

---- INDEX REFERENCES ---

COMPANY: CENTENNIAL BRILLIANCE SCIENCE AND TECHNOLOGY CO LTD; BANK OF BEIJING CO LTD; BANK OF BARODA

REGION: (North America (1NO39); Washington (1WA44); Americas (1AM92); USA (1US73))

Language: EN

OTHER INDEXING: (ACCEPT; ANTICIPATED; BOB; CBS; COMMUNITY; COMMUNITY CENTER; DYING; GUNS; OFFENSIVE; POOLS) (CAMERAS SURROUNDING; LEGAL CHALLENGES)

Word Count: 305

11/14/09 CBS7KIRO-WA (No Page)

END OF DOCUMENT