

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

CIVIL ACTION NO. 13-cv-1300-MSK-MJW

JOHN B. COOKE, et al,

Plaintiffs, Volume 1
vs. Page 1 - 148

JOHN W. HICKENLOOPER, Governor
of the State of Colorado,

Defendant.

DEPOSITION OF: GARY KLECK

TAKEN AT INSTANCE OF: The Defendant

DATE: October 25, 2013

TIME: Commenced at 8:07 a.m.
Concluded at 11:46 a.m.

LOCATION: 2894 Remington Green Lane
Tallahassee, Florida

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STIPULATIONS

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The following deposition of GARY KLECK was taken on oral examination, pursuant to notice, for purposes of discovery, and for use as evidence, and for other uses and purposes as may be permitted by the applicable and governing rules. Reading and signing is not waived.

THE COURT REPORTER: Do you swear or affirm to tell the truth, the whole truth, and nothing but the truth?

THE WITNESS: I do.

Thereupon, was called as a witness, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. GROVE:

Q Good morning, Dr. Kleck. My name is Matthew Grove. I'm an assistant attorney general for the state of Colorado. I'm representing the governor in case No. 13-cv-1300, which is captioned *Cook et al. v. Hickenlooper*.

You've submitted an expert report, a supplemented expert report and a rebuttal expert report in that case; correct?

1 A Yes.

2 Q And you've been deposed before; right?

3 A Yes.

4 Q Any questions about how it works?

5 A No.

6 Q And I just need to make sure you're not -- are

7 you taking any medications that would affect your ability

8 to understand and answer my questions today?

9 A No.

10 Q Are you suffering from any medical conditions

11 that would affect your ability to understand and answer

12 questions?

13 A No.

14 Q What's your field of expertise?

15 A Criminology.

16 Q I've always been fascinated by criminology,

17 frankly, so this is going to be interesting.

18 How would you describe the discipline?

19 A The scientific study of the causes and

20 consequences of criminal behavior and the way society

21 reacts to it.

22 Q So it's fair to say that you study criminals

23 and what they do?

24 A Yes.

25 Q How do you define what a criminal is?

1 criminal is, what a criminal isn't?

2 A Yeah. Although, I'm not prepared to right now.

3 I wasn't alerted that that would be a topic of the

4 deposition. But yeah, given time, I certainly could.

5 Q There's nothing, there's no like seminal work?

6 I'm just curious.

7 A No, I don't think so.

8 Q Are most crimes -- would you say the majority

9 of crimes are crimes of opportunity or are they crimes

10 that are well-planned out?

11 MR. COLIN: Foundation. Go ahead.

12 A Well, it would, of course, depend on the type

13 of crime you are talking about. White collar or business

14 crime, for example, is almost invariably planned. It's

15 as planned as noncriminal business behavior and business

16 decisions.

17 Some violent behavior is planned. Mass

18 killings are almost invariably planned and not only

19 planned but often for very long periods of time. A

20 great deal of other violence, more ordinary violence,

21 with just a single victim, is impulsive and, therefore,

22 unplanned. And that's probably more common. It would

23 be the more numerous kind of violent crime.

24 Robbery, on the other hand, it's -- somebody

25 may have a kind of predisposition to rob, but which

1 A It's a legalistic definition. Lots of things

2 are disapproved of or immoral, but if it's a violation of

3 criminal law, that's a crime and a person who does that

4 is a criminal. More informally, though, we usually use

5 the term "criminal" to refer to people who commit more

6 serious crimes or commit crimes repetitively.

7 Q So when does somebody cross the line, to you,

8 between being an ordinary citizen and a criminal?

9 A Again, technically, legally, the only crossing

10 over point is when a person is convicted of a crime. But

11 on the other hand, criminologists don't really focus on

12 that legal distinction.

13 People don't have any one distinct point

14 where they cross over; rather, they gradually become

15 more criminal as they do more crimes, as it becomes

16 more of a frequent activity.

17 Q So I'm just trying to tease out exactly what

18 the line is or if there is a line at all. Someone who

19 commits crimes and then stops for three or four months,

20 is that person still a criminal in a criminologist's

21 view?

22 A There is no clear cut yes or no answer to that.

23 The more crimes you do, the more criminal you are.

24 Q Are there any papers that you can point me to

25 in the criminological literature that discuss what a

1 target they rob is a function of opportunity. You

2 know, they come across a liquor store where they happen

3 to be just a customer but they realize they're the only

4 person in the store, it's late at night; there's only

5 one clerk working there, there's lots of cash in the

6 cash register and then it becomes a robbery.

7 It required both preexisting disposition plus

8 opportunity for the crime to occur.

9 BY MR. GROVE:

10 Q Do people who engage in that sort of activity,

11 an opportunistic crime where they walk into a liquor

12 store or something like that, do they typically walk

13 around with whatever weapon they're likely to use in

14 order to effect that robbery?

15 MR. COLIN: Objection: Foundation, go ahead.

16 THE WITNESS: Could you rephrase the

17 question? I don't understand it as you stated it.

18 BY MR. GROVE:

19 Q Do people who are predisposed to committing

20 armed robberies walk out the door with the weapon that

21 they intend to use for that robbery?

22 A Sometimes they do, yeah. Sometimes they

23 habitually carry a firearm primarily for reasons of self

24 protection, and then when they come across an opportunity

25 to commit a crime they hadn't planned when they went out

1 the door, in a sense, having the gun was planned because
2 they did it every day. It was part of a habitual
3 behavior, and the robbery wasn't planned.

4 In other cases, they have a target in mind.
5 They're going out to commit a robbery in a particular
6 place at a particular time, in which case they do bring
7 the gun with them for that specific purpose.

8 Q You mentioned self protection. Are criminals
9 more likely than ordinary citizens to need to carry a
10 weapon for self protection?

11 A Yes.

12 Q Why is that?

13 A They're victimized more often. And they're
14 victimized more often because they are more likely to
15 associate with dangerous people, more likely to live in
16 dangerous neighborhoods, more likely to find themselves
17 in dangerous situations like buying or selling illegal
18 drugs.

19 Q And are there any legal restrictions on people
20 who are in that situation, whether they should or --
21 should be owning a gun?

22 A Yeah, it's illegal everywhere in the United
23 States for a convicted felon to even possess a gun
24 anywhere. And then on top of that, there's additional
25 restrictions virtually everywhere in the United States,

1 you looked for a record across the entire United
2 States.

3 Q Is the mobility of people with criminal records
4 from state to state, does that vary from the general
5 population?

6 A Yes, criminals are more mobile.

7 Q I'm not going to pull out your résumé because
8 it's really long. But I do have a couple of questions
9 about it.

10 As I was going through it, I noticed that
11 there are some articles -- and forgive my ignorance --
12 that you mentioned are in peer-reviewed journals and
13 then other published articles. There are two different
14 categories.

15 I've never fully understood the peer-review
16 process. How does that work in your discipline?

17 A An author who wants an article published will
18 submit a paper to a professional journal, an academic
19 journal, and the editor of that journal will select
20 between two and four experts in the area to whom he sends
21 the manuscript.

22 They read and evaluate that manuscript and
23 make a recommendation to the editor. And they may
24 recommend that it be rejected out of hand, that it be
25 revised and resubmitted or they may accept it. And the

1 with a few states excepted, to have a special permit for
2 carrying in public places.

3 Q Is -- do most felons have a criminal history?

4 A Well, all of them do, by definition.

5 Q That wasn't a very good question.

6 Do most people who are likely to go in and
7 commit a violent robbery or a mugging, or something
8 like that, do most of them have a criminal history?

9 MR. COLIN: Foundation, speculation.

10 A Most are likely to have an arrest record, if
11 that's what you mean by criminal history, yes.

12 BY MR. GROVE:

13 Q Have you done any studies on this?

14 A No.

15 Q Have any of the studies that you've written
16 cited other studies that discuss that point?

17 A On robbery, no; on homicide, yes.

18 Q What do the studies on homicide say?

19 A They indicate that something like 75 to
20 80 percent of people who are arrested for homicide had a
21 prior arrest record. And that's going to vary depending
22 on how thorough the researchers were in looking for a
23 record.

24 If you only look for a record in the same
25 state, you're not going to find as many priors as if

1 editor takes that as a recommendation. He can, if he
2 likes, overturn it. But usually he'll accept a
3 recommendation, at which point it's accepted for
4 publication and it appears in the journal.

5 Q Do peer reviewers do things like, you know,
6 check math errors, things like that, or are they more
7 looking at the general concepts of the paper?

8 A It would be rare they check for math errors,
9 but they may recognize, based on what's in the
10 manuscript, that there was some flaw in the statistical
11 procedures, that somebody used the wrong procedures and
12 failed to do something that's necessary in order for the
13 procedures to work properly.

14 But they wouldn't have access to the data
15 themselves. And so they wouldn't be in a position to
16 know, for example, that somebody had hand calculated a
17 number and the hand calculation was wrong because they
18 wouldn't have access to the original data and wouldn't
19 be able to do that computation themselves.

20 Q Do peer reviewers make editing suggestions?

21 A Yeah, definitely.

22 Q You've written a number of books and a number
23 of book chapters. Are those typically peer-reviewed or
24 are they -- is it more of an editing process?

25 A That's less likely to be. There can be peer

1 review, and I'd say that's more the exception than the
2 rule.

3 Q In general, would you say that if an article is
4 peer-reviewed, is it something that someone in the field
5 should be able to rely on?

6 A You're relatively more likely to be able to
7 rely on it if it's been refereed than if it hasn't
8 refereed. It's probably not a very strong relationship
9 because a great deal of what is reviewed and refereed
10 very -- supposedly very thoroughly is, nevertheless, poor
11 work; and there's probably a fair amount of work that's
12 excellent on technical grounds, but reviewers have
13 recommended it not be published on non-scholarly bases.

14 Q What sort of non-scholarly bases would you
15 have?

16 A Ideology. In our field -- it's a very
17 ideological field. And so if an author has arrived at a
18 conclusion that a reviewer dislikes on ideological
19 grounds, then they may be inclined to impose a higher set
20 of technical standards as to whether the article ought to
21 be published.

22 Q Have you had any submissions of manuscripts
23 that have been rejected on ideological grounds?

24 A Many.

25 Q Can you give me an example?

1 order of 12 to 14 times, something like that.

2 Q Aside from -- I know some of those have been in
3 liability cases; right?

4 A Correct.

5 Q And some of them have been constitutional
6 challenges?

7 A Yes.

8 Q Are there any other types of cases where you've
9 been engaged?

10 A Yes. I'm currently engaged by the Canadian
11 Department of Justice defending a decision they made or
12 the government made to repeal long gun registration
13 requirements. So I'm not sure what legal category that
14 falls into, but it's certainly not constitutional or
15 liability, whatever that's called.

16 Q What other cases are you currently involved in?

17 A I'm involved in -- I wouldn't be able to give
18 you the names, but there are cases in Connecticut and
19 Cook County concerning assault weapon bans. Washington,
20 D.C. concerning registration requirements; Chicago, I
21 guess there's a case that's still live in Chicago.

22 Q And that's different than the Cook County case?

23 A Yes, that's a distinct case. That's about it
24 that I can think of right now.

25 Q Do any of those other cases involve large

1 A I did an article that was an evaluation of the
2 impact of gun control laws on crime and violence rates,
3 and I probably submitted it to maybe five journals that
4 rejected it before the sixth one -- maybe it was the
5 fifth one -- accepted it.

6 And I think that took a period of like four
7 or five years before it was finally published, from the
8 time it was first completed and could have gone into
9 print to the time it appeared in print.

10 Q What article was that?

11 A That's the Kleck and Patterson article in 1993
12 that was published in the *Journal of Quantitative*
13 *Criminology*.

14 Q How common is it for peer-reviewed articles to
15 reach diametrically opposed positions on a particular
16 topic?

17 A Very common.

18 Q So I know you've testified a number of times as
19 an expert. Can you give me an estimate of how many
20 times?

21 A Testified in court, you mean?

22 Q How about -- we can do both.

23 How about how many times have you been
24 engaged as an expert in connection with a court case?

25 A In my entire life, I would say something on the

1 capacity magazine bans?

2 A The Connecticut case does, and I think the Cook
3 County case does.

4 Q I think there's a Maryland case going on right
5 now too. Are you involved in that?

6 A Yes, I haven't done anything on that one. But
7 that's another one I've been engaged on, I think. I'm
8 not absolutely sure about that one. It runs together in
9 my mind.

10 Q And in any of those cases, are you testifying
11 on behalf of the government?

12 A No.

13 Q So it's the -- just to make that a little bit
14 clearer, it's the plaintiffs in each of those cases;
15 right?

16 A Yes, not the Canadian case, though -- then it's
17 the other way around -- but other than the Canadian case.

18 Q Sure, I'm talking about the Connecticut,
19 Maryland, DC, Cook County cases.

20 A Yes, that's correct.

21 Q And in each of those cases, the plaintiffs are
22 challenging gun laws?

23 A Yes.

24 Q Have you ever testified on behalf of a gun
25 control measure? In favor of, let me clarify that.

1 A No.

2 Q What were you asked to do in this case?

3 A I was asked to address the issue, the portion
4 of the law that concerns large capacity magazines and
5 what impact that has on violence.

6 Q Who asked you to do it?

7 A David Kopel.
8 (Exhibit No. 1 was marked for
9 identification.)

10 BY MR. GROVE:

11 Q The court reporter has handed you Exhibit 1.

12 A (Views document.)

13 Q Do you recognize this document?

14 A Yes.

15 Q What is it?

16 A It's a revised version of my expert report in
17 the Colorado case, and it differs from the previous
18 version in that I added eight more mass shootings that I
19 discovered after the original report had been submitted.

20 Q Did Mr. Kopel pose any specific questions for
21 you to answer in drafting this report?

22 A Beyond what I've told you, no.

23 Q Did you have any assistance in gathering the
24 data for this report?

25 A Yes, David Kopel provided me with the services

1 of a law student, I think, who took my specifications of
2 what to look for and searched for media accounts of mass
3 shootings, which I defined as involving more than six
4 victims, either killed or wounded.

5 Q How did you come up with that definition?

6 A It was one I had used before in a book called
7 *Targeting Guns*, studying an earlier set of mass
8 shootings. And the reason it was more than six was
9 because six was the number of rounds that an old
10 fashioned six-shot revolver could fire, meaning you
11 could, without reloading, shoot six different people with
12 a six-shot revolver.

13 And so the sorts of shootings in which a
14 large capacity magazine was most likely to matter would
15 be those in which large numbers of victims were killed.
16 And so the cutoff was more than what could be killed or
17 injured with a revolver.

18 Q So do you think that a large capacity magazine
19 can matter in a mass shooting?

20 A Well, in one case, it probably did matter
21 and -- during the later period that I studied and in one
22 case in the earlier period I studied.

23 So in the most recent set that's covered in
24 this supplementary expert report, there was one case
25 out of 58 where it probably did matter in the sense

1 that it affected the number of victims killed or
2 injured.

3 Q And you reached that conclusion based on review
4 of media reports?

5 A Correct.

6 Q We'll talk more about that later, I think. But
7 let's talk a little bit more about just the reports, this
8 report.

9 Did you speak to any of the plaintiffs in
10 this case about the factual allegations they've made in
11 the complaint?

12 A No.

13 Q Have you reviewed the complaint?

14 A Yes.

15 Q Have you reviewed the two bills that are being
16 challenged?

17 A One. I don't recall two but one, yes.

18 Q And that's -- was it House Bill 1224?

19 A I wouldn't know the number.

20 Q Yeah, I guess that's not fair.
21 Is it the bill on large capacity magazines
22 that you reviewed?

23 A Yes.

24 Q And I'm sorry, I know you answered this.
25 Did you or did you not review the complaint?

1 A Yes, once.

2 Q Yes, you did?

3 A I read it once, yes.

4 Q So in your tenure as a criminologist, have you
5 had an opportunity to become generally familiar with
6 statistics associated with gun violence?

7 A Yes.

8 Q What sources do you find to be most reliable
9 for that?

10 A It depends on the subject matter.
11 If you want to make relative judgments of how
12 much crime there is from place to place, the best
13 source of information is the uniform crime reports of
14 the FBI, which are police-based statistics.

15 And if you want to know the total amount of
16 crime in the United States, a better approximation is
17 provided by the national crime victimization survey,
18 which is conducted by the census bureau.

19 If you want to know the characteristics of
20 offenders, you only have a little bit of information
21 from the victim surveys because all you really know is
22 what the victim could perceive. So we know a great
23 deal more from the characteristics of people who are
24 arrested, so arrest statistics provide us data on that
25 subject.

1 Q I've seen the UCR and the NCVS, at least; and I²¹
2 haven't dug into the data. But I've noticed that the
3 numbers that come out of those are pretty different.
4 I'm struggling to understand why. Do you
5 know why?
6 A The principal reason is because, by definition,
7 the police can only count crimes that they're aware of,
8 that are known to them, which, for the most part, are
9 those that are reported by the victim.
10 Q And those --
11 A In some crimes, the victim is willing to tell a
12 surveyor from the census bureau about the incident, even
13 though they, for whatever reason, did not report it to
14 the police. So that results in an additional number in
15 the NCVS.
16 Q So the UCR uses police-reported crimes?
17 A Crimes reported to the police or that otherwise
18 become known to them. In some cases, police will
19 discover crime on their own.
20 They might, for example, discover that, you
21 know, in their patrol area, a store had been broken
22 into, that sort of thing. But for the most part, it's
23 crimes reported to the police that they count.
24 Q And then the police give it to the FBI as a
25 central repository?

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1 And people are interviewed -- any one²³
2 individual from the standpoint of the respondent,
3 they're interviewed every six months for a 3 1/2-year
4 period before they're rotated out of the sample -- or I
5 should say, actually, it's not any one person. They
6 come back to the same housing unit every six months;
7 and sometimes, you know, people have moved out and it's
8 a different set of people.
9 So technically speaking, it's the residents
10 of a given housing unit are interviewed every six
11 months. And most of the interviewing is done by
12 telephone except the first interview, which is done
13 face-to-face in the person's home.
14 Q Survey results for the NCVS, are they
15 anonymous?
16 A No. The -- obviously, if the interviewer is
17 going to their home for the first interview or the census
18 bureau knows exactly where the individual lives and when
19 they contact them later by telephone, of course, they
20 know their telephone number. And so yes, they may know
21 who the people are.
22 Q But it sounds like they don't track you down if
23 you move?
24 A Correct.
25 Q Could they -- do they have information that

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1 A Eventually. They first report it to a state²²
2 uniform crime reporting entity, which, in turn, passes it
3 on to the FBI.
4 Q How does the NCVS work in terms of data
5 collection?
6 A It's a survey. The census bureau is basically
7 always interviewing people. They select a representative
8 sample of the U.S. households and in each household
9 that's selected, they interview everybody age 12 and up.
10 And they'll ask them background questions,
11 you know, age, sex, race and so on of the residents of
12 the home and then they'll ask them general screener
13 questions to determine whether or not they've been a
14 victim of a crime in the previous six months. And if
15 they say yes, they ask a whole series of detailed
16 questions about what those crimes were.
17 Q Is that a snapshot in time or is it done over a
18 period?
19 A It's being done continuously.
20 Every month they're doing an additional large
21 number of interviews so that, at any one time, there
22 are 60 to 80,000 individual persons who are interviewed
23 about crime experiences. But it's a rotating panel
24 design, meaning about 1/6 of the sample drops out and
25 another 1/6 is -- comes into the sample to be replaced.

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1 would allow them to do that?²⁴
2 A I don't know.
3 Q I guess I'm just curious as to if you're just
4 going to -- if you're worried about housing units and not
5 the people who are living there. I'm just wondering why
6 the census bureau doesn't track them down. But if you
7 don't know, you don't know.
8 A It would be difficult. I mean, that's
9 certainly the reason. It would be very difficult.
10 Q Do they take your name and address and all of
11 that stuff? Obviously, they have your address. Do they
12 have your name?
13 A I think they do, and they do it partly so that
14 they can tell if they are talking to the same people as
15 last time. So then they can tell which are, you know,
16 the individuals for whom they could compare the last
17 interviews and see what changed as opposed to the people
18 who are new to the sample -- new to that housing unit and
19 they -- you know, the census bureau hasn't previously
20 interviewed them.
21 Q If the surveyor finds out -- you know, if a
22 surveyor comes and comes into the house and sees that
23 you're dealing crack out of the house, for example, is
24 the surveyor allowed to, then, report that to the police?
25 A I have no idea.

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1 Q Are there any assurances from surveyors that
2 information provided to them will be generally
3 anonymized?

4 A There's an assurance of confidentiality. I'm
5 not sure about anonym -- whatever that word was you just
6 used. They assure confidentiality, which is a different
7 thing. It means that even if the surveyors know the
8 person's identity, they're not going to release the
9 information in individual form, at least, that's what the
10 respondents are assured of. Whether they believe it or
11 not is a debatable matter, but that's the assurance
12 that's given.

13 So any particular response of an individual
14 couldn't be linked with that specific individual.
15 That's the reality of it. And so the census bureau is
16 honestly assuring people of that. But whether people
17 accept that or not, given the fact that they're not
18 anonymous, is a quite distinct matter.

19 Q Have you reviewed the script for NCVS
20 surveyors?

21 A Yes.

22 Q And it contains that assurance that information
23 that they provide won't be shared outside of the survey?

24 A Yes.

25 Q Have there been any trends in violent crime

1 should make sure we're both talking about the same thing.

2 Are there -- what constitutes a violent
3 crime? Are there categories?

4 A Yes. Mostly when we deal -- when we talk about
5 violent crime, we're talking about the ones that we have
6 data on, the ones that we have counts for. And so that
7 is in effect what the uniform crime reports or the
8 national crime victimization will count.

9 And the ones they count is -- well, the
10 uniform crime reports will count as a violent crime:
11 Murder and non-negligent manslaughter, aggravated
12 assault, robbery and rape. And the NCVS will count all
13 of those as violent crime except they don't count
14 homicide or murder in non-negligent manslaughter.

15 Q Homicide is not counted as a violent crime for
16 the NCVS?

17 A No, because it's based on survey data taken
18 from victims; and obviously, they can't interview
19 homicide victims.

20 Q That's a fair point. Although, I thought they
21 did it on a household basis.

22 A They do do it on a household basis; but once
23 the households are selected, then they speak to
24 individual persons and ask those individual persons about
25 their prior victimization experiences. For crimes that

1 over, say, I don't know, the past 30 years?

2 A So you're talking about since 1983?

3 Q I just pulled that number out of a hat.

4 If there are any significant breaking points
5 before or after that.

6 A Crime went up a lot from '85 to '91, then it
7 went down a lot from '91 to 2000. And from 2000 to the
8 present, it's generally been declining a little bit,
9 very, very mildly.

10 Q So '91 was the peak?

11 A Yes, correct.

12 It depends on which crime you're talking
13 about. There was actually a peak in '91 for homicide
14 and another peak in '93. But '91 is probably best
15 described as the peak of crime overall.

16 Q What about for gun violence?

17 A I think it was the same.

18 Q So it generally tracks violent crime?

19 A Yes, the only difference is trends in gun
20 violence tend to be more volatile, meaning when crime in
21 general is going up, gun violence will go up more
22 steeply; when crime in general and violence in general is
23 going down, gun violence will go down more. So it's more
24 variable; gun violence is more variable.

25 Q When we talk about violent crime, I guess we

1 are kind of inherently household crimes, like having a
2 burglary of a home, then there's a principal respondent,
3 who is called the household respondent, and they respond
4 on behalf of the household.

5 So it's usually, you know, head of household
6 or some other adult who would be that respondent. And
7 they would report on things like either break-ins in
8 the home or household larcenies, thefts that aren't
9 attached to a particular individual; but they were, in
10 effect, crimes pertaining to the household. And I
11 think the same is true of motor vehicle thefts, the
12 household report -- respondent would report on that.

13 Q So I'm not going to ask you for exact figures
14 because I'm sure there are a ton of numbers on this, but
15 what's the most recent year that we have reliable data
16 for on gunshot wounds and fatalities?

17 A Let's see. We're probably about to get, this
18 month or next month, the uniform crime reports out for
19 2012. 2011 is definitely out. 2012 might just be out.
20 I'm not sure about that.

21 Q And do you think the UCR is a reliable
22 indicator of the number of gunshot fatalities?

23 A Yes, well, homicides, but other gunshot
24 fatalities would include suicides and, of course, the FBI
25 doesn't have anything to do with that.

1 Q Is there a reliable source that encompasses all
2 gunshot wounds?

3 A Yes, the National Center for Health Statistics
4 gathers mortality data based on death certificates. And
5 so they would count up homicides, suicides and fatal gun
6 accidents. So they would be comprehensive in covering
7 fatal violence involving guns.

8 Q What about nonfatal violence?

9 A The NCVS does not gather that in any systematic
10 way. There are alternative sources of information based
11 on emergency room data, so probability samples of
12 emergency rooms might be contacted for their accounts of
13 nonfatal gunshot wounds that they treated; but that
14 really isn't a comprehensive count of nonfatal gunshot
15 woundings because they can only count the ones that are
16 treated. And that's almost certainly far too low with
17 respect to criminal nonfatal assault injuries.

18 Q Why is that?

19 A Well, we know from studies of victims of
20 violence that most victims are criminals. They have
21 criminal records and medical personnel are required by
22 law to report gunshot wound treatment to the police,
23 which means if you are a criminal and you've been
24 wounded -- let's say, you were trying to stick up a
25 liquor store and the liquor store owner shot you -- if

1 you go to the local emergency room, then it will be --
2 the police will be told that this individual is being
3 treated for a gunshot wound. And if the liquor store
4 owner, meanwhile, had reported that incident to the
5 police, they'd know this is the guy who did it. There
6 aren't that many people shot in any one day who fit a
7 general description that would be provided of the
8 suspect.

9 And so, in effect, that sort of victim of a
10 nonfatal gunshot wound has a choice of either seeking
11 professional medical care and then being handed over to
12 the police for a possibly very severe legal penalty or
13 self treating, which means for less serious gunshot
14 injuries, the choice would be pretty clear.

15 It would be advisable to self treat or have,
16 you know, a relative, friend, girlfriend or whatever do
17 the treatment rather than go to a professional medical
18 source.

19 Q Would you say a firearm injury, being shot, is
20 a generally serious injury?

21 A Yes. But some are less serious than others.
22 And less than 10 percent of gunshot assault injuries are
23 fatal.

24 So most of them could be treated in a
25 nonprofessional way because mostly what physicians do,

1 even with the injuries that are reported to them, is
2 they do the same kinds of things that an amateur could
3 do; that is, they clean out the wound. They'll rinse
4 it with something like Betadine. They'll put a sterile
5 bandage on it. And they may or may not give the person
6 some antibiotic pills.

7 And that's the way most gunshot injuries are
8 treated. In other words, there's no surgery. There's
9 no stitching up, even. In other words, it's the kind
10 of treatment that an amateur or nonprofessional person
11 could administer, which is why it's a realistic option
12 to self treat on the less serious gunshot injury.

13 Q Have there been any studies on the number of
14 people who self treat when they've been shot?

15 A No.

16 Q Have there been any studies, that you're aware
17 of, on whether when a criminal is shot he goes to the
18 hospital?

19 A Yes, there was one rather dubious jail survey
20 where inmates were asked if they had been shot and if
21 they had been shot, did they seek medical treatment. I
22 don't recall it asking about whether they self treated or
23 not or what they did.

24 Q Let's talk about that dubious jail survey.
25 (Exhibit No. 2 was marked for

1 identification.)

2 BY MR. GROVE:

3 Q This has been marked as Exhibit 2. Is this
4 said survey?

5 A Yes.

6 Q What's dubious about it?

7 A The context in which the respondents are
8 interviewed. They're incarcerated; they're in jail.

9 In fact, it's even worse than if they were in
10 prison because when you're in jail, the bulk of
11 criminals there are awaiting trial, meaning it hasn't
12 been established yet whether they'll be convicted and
13 punished and yet that's something that's upcoming. And
14 for most of them, they will be convicted and punished.

15 So it's still up in the air what kind of a
16 sentence they'll receive, and so the last thing on
17 earth a person in that position wants to do is to
18 present themselves as even more criminal than the
19 authorities already know them to be.

20 And if you're asked a question, you know:
21 Did you receive a gunshot wound and if so, did you seek
22 professional treatment, the obvious follow-up question
23 for anybody who said: No, I didn't -- was foolish
24 enough to say no -- would be why?

25 I mean, it's what any ordinary person would

1 want to know because from a purely medical standpoint,
2 of course, the sensible thing is to seek medical
3 treatment. Of course, the correct answer, the true
4 answer is: I didn't want to go to the professional
5 medical treatment personnel because it would result in
6 me going to prison for whatever crime I was committing
7 when I got shot.

8 Q Are you aware of any studies that contradict
9 the findings in Exhibit 2?

10 A No.

11 Q Have you ever interviewed a jail or prison
12 inmate about whether he -- whether when he was shot, he
13 went to the hospital?

14 A No.

15 Q If you were going to do a study like that, what
16 would be important -- what do you think that --
17 withdrawn.

18 What did the authors of the report in
19 Exhibit 2 not do that they should have done?

20 A What they should have done is interview people
21 in a different context, not in a jail context. It would
22 have been somewhat better even if they had just asked
23 people in a prison setting.

24 Because in a prison setting, at least the
25 penalty, the sentencing has already been done. It's

1 Well, it was Tallahassee Memorial Regional Hospital.
2 And then they could check to see if an individual of
3 that name had been treated for a gunshot wound based on
4 the medical files.

5 Q Is verification of that type of survey result
6 important?

7 A Yes.

8 Q Why?

9 A Because there are strong a priori reasons to
10 doubt the validity of what respondents are saying.

11 Q Does that apply to these particular respondents
12 in particular or just is that a general rule and survey
13 technique?

14 A These respondents in particular.

15 Q And why is that?

16 A Because of the context -- well, because of the
17 character of the respondents as well as the context.
18 They are criminals, No. 1, and No. 2, you are
19 interviewing them in a jail.

20 Q So what's your best guess as to how many
21 firearm injuries there were in 2011?

22 A We really don't know. We only have the
23 medically treated injuries; and as I've said, I'm very
24 dubious about the validity of those numbers.

25 So in many years, it's been on the order of

1 not up in the air how severely they'll be punished.
2 Better still would be interviewing people who are not
3 under any kind of incarceration conditions. And that
4 would be a sample of unincarcerated criminals who would
5 be interviewed, rather than people in jail or prison.
6 That would be still better.

7 Q Anything else they should have done?

8 A Well, of course, better still would be to kind
9 of verify to the extent that people's responses can be
10 verified.

11 If somebody says yes, I was treated, of
12 course, you can ask: Well, where was that and check
13 medical facilities to see if they were treated. If
14 somebody says no, you can follow up -- I'm sorry, yeah,
15 if somebody says no, you can follow up by asking: Why
16 not?

17 I don't think they verified that when they
18 said yes, I sought professional medical treatment, I
19 don't think they verified with any medical personnel
20 that were involved whether yes, that was true and
21 certainly validating that kind of response, dubious as
22 it is, subject to serious doubts, you'd certainly want
23 to validate it.

24 So they could have asked them: Well, where
25 was that treatment facility? And they could say:

1 100,000 people who underwent medical treatment for
2 nonfatal gunshot injuries. The true number is almost
3 certainly larger than that, but nobody really knows.

4 We do, however, know that a great deal of
5 nonfatal gunshot injuries do go uncounted in, for
6 example, the NCVS. That's probably the strongest
7 evidence we have that victims of nonfatal gunshot
8 injuries don't report those injuries.

9 Although, in that case, it's not reporting to
10 the census bureau in the NCVS. And we know that just
11 from comparing the number that were treated medically
12 and the number that you would come up with if you used
13 strictly the NCVS data, and that shows the NCVS data
14 are way too low. So people are not telling the census
15 bureau about their non-fatal gunshot injuries.

16 So you have at the low end, the NCVS
17 estimates, then you have kind of, in some middle range,
18 the data based on that probability sample of emergency
19 rooms on medically treated injuries, and then there's
20 some higher number but we don't know how much higher,
21 the true total number of nonfatal gunshot injuries, the
22 bulk of which are probably criminals nonfatally shot,
23 but who did not go to seek medical treatment for the
24 obvious reason that it would result in a prison
25 sentence.

1 Q Does the NCVS -- would you expect it to
2 incorporate noncrime-related gunshot injuries?

3 A No. I'm just talking about nonfatal injuries
4 in connection with violent crime.

5 (Exhibit No. 3 was marked for
6 identification.)

7 BY MR. GROVE:

8 Q This is Exhibit 3. Have you seen this document
9 before?

10 A Yes.

11 Q What is it?

12 A It's a report from the U.S. Bureau of Justice
13 Statistics on trends in firearm violence from 1993 to
14 2011.

15 Q And does this -- how reliable would you say
16 this source is?

17 A Highly reliable in connection with firearm
18 homicides, less reliable when you're talking about
19 nonfatal violence.

20 Q I'm interested -- earlier you said that
21 criminals are frequently victims of crime themselves; am
22 I restating that correctly?

23 A Yes.

24 Q Are criminals excluded from the NCVS?

25 A No. The only ones who couldn't be covered

1 A Yes.

2 Q Why is that?

3 A Well, I really already mentioned the basis for
4 that. When you come up -- well, let me back up. Do we
5 know specifically about whether that particular kind of
6 individual underreports nonfatal victimization by
7 gunshot, no.

8 But do we know that people in general
9 responding to the NCVS underreport it, yes. And it's
10 based on that data I discussed previously; that is, the
11 NCVS-based estimates don't even come up with a number
12 as large as the number we know were medically treated
13 based on the emergency room data.

14 Q How far off the mark are they on that?

15 A I don't recall. It was substantial, but this
16 is based on research done by Phillip Cook in the mid
17 '80s, so I don't even know if any similar work has been
18 repeated since.

19 But we do have reason to believe that
20 criminals would underreport to the victimization
21 surveyors more than other people, even. And the reason
22 for that is, again, they don't really know what the
23 follow-up questions might be.

24 And it's quite reasonable to suppose they'd
25 have the same fears that jail inmates would, that the

1 would be those that are institutionalized.

2 Q Why doesn't the NCVS cover them?

3 A Well, in a way, they're covered in other census
4 bureau surveys. They periodically do surveys of prison
5 inmates, federal and state prison inmates.

6 But also, it's just a matter of it doesn't
7 really fit into the sampling design because the sample
8 they choose is housing units and which would be, for
9 the most part, either apartments or stand-alone homes.
10 And so they -- they're not very good at covering
11 institutionalized individuals.

12 And it's partly also a matter of access. If
13 you selected a probability sample of individual persons
14 who are scattered across many different prisons and
15 jails, it would entail getting permission from every
16 single prison and jail administration in which those
17 selected individuals were housed in order to do the
18 survey.

19 So, instead, the census bureau does a
20 separate survey entirely devoted to first sampling a
21 representative sample of institutions, and then
22 sampling individuals within those institutions.

23 Q If a criminal who is not in prison or jail is
24 randomly selected for the NCVS survey, do you have any
25 reason to believe that they wouldn't report being shot?

1 follow-up questions might be: Well, what were the
2 circumstances of this? And a criminal would hardly
3 want to admit that they had gotten shot at attempting a
4 robbery or, for that matter, he wouldn't even want to
5 report the fact that one of his crack-smoking friends
6 had shot him in the course of consuming crack cocaine.

7 Q So in terms of gunshot wounds, I think you said
8 that the trend had generally, I think we started at 1983.
9 You said it peaked around the early 90's and then tailed
10 off to about where it is today; is that right?

11 A Almost, except there's been a slight decline
12 continuing since 2000 but only a very mild decline.

13 (Exhibit No. 4 was marked for
14 identification.)

15 THE WITNESS: And I'm sorry. Did that
16 question concern firearms homicide or homicide in
17 general about the trends?

18 BY MR. GROVE:

19 Q Actually, people being shot, whether it's fatal
20 or nonfatal.

21 A In that case, I'm not so sure because what I
22 was telling you is the trends in homicide.

23 Q This is Exhibit 4.

24 Have you seen this paper before?

25 A (Views document.)

1 I believe so.

2 Q The title is "Trends in Nonfatal and Fatal
3 Firearm-related Injuries in the United States, 1985 to
4 1995." So let's look at page 3 of that at the table.

5 A You mean page 53?

6 Q The third page, yes. And the table is: Annual
7 Estimates of Numbers and Percentages of Persons. I won't
8 read the rest of it.

9 A (Views document.)

10 Q And this is nonfatal firearm-related injuries
11 treated in the U.S. hospital emergency departments.

12 So from June 1992 to May 1993, which is a
13 year-long period, there were an estimated 99,000 people
14 treated for gunshot wounds in emergency departments; am
15 I reading that right?

16 A Yes.

17 Q How big -- you mention that this estimate is
18 likely higher than the NCVS estimate?

19 A Yes.

20 Q How much bigger?

21 A I don't know.

22 Q And you mention that it's probably too low
23 because it excludes some subset of people who treat
24 themselves?

25 A Yes.

1 Q Do you have an estimate of how many people that
2 is?

3 A No.

4 Q Just a ballpark figure?

5 A No.

6 Q Do you know if anybody has done any work on
7 that?

8 A Not that I know of.

9 Q So you don't know what percentage of people who
10 are shot while committing crimes treat themselves?

11 A No, only that I assume that it's a very large
12 share.

13 Q Would you agree that -- I mean, we see a
14 dropoff in the third column of that table from June '94
15 to May '95 of looks like about 13 percent, from 101,000
16 to 80,000 -- 88,000. And that trend, as I understand it,
17 has generally continued.

18 Do you know why gunshot violence has -- gun
19 violence in general has declined over the last 15
20 years?

21 MR. COLIN: Foundation, objection.

22 A It's probably a mistake to think of it as a
23 firearm-related thing because crime in general was going
24 down over that same period. It peaked in the early '90s
25 and then it was already declining by the mid '90s, which

1 is what that third column refers to.

2 So this is mostly a reflection of things
3 improving in whatever factors affect crime in general
4 and not necessarily firearm specific. But as I say,
5 it's a general pattern that firearms violence will go
6 up more proportionally than violence in general when
7 crime is going up, and it will go down proportionally
8 more when violence is generally going down. And so
9 these figures kind of illustrate that.

10 BY MR. GROVE:

11 Q Do you think that the number of untreated
12 gunshot wounds generally would track the data that we
13 have from emergency departments?

14 A Probably, yeah, because the motive to not
15 report it would remain constant, basically criminals
16 would still not want to go to prison and would still
17 continue to perceive the going to prison as a consequence
18 of seeking professional medical care.

19 Q So it's not every person that gets shot while
20 committing a crime that treats themselves; right? I
21 mean, some of them have to go to the hospital, I would
22 think.

23 A Certainly the ones that would see their
24 injuries as life threatening if they were not
25 professionally treated, would -- if they were physically

1 capable of making that choice, would very likely seek
2 medical treatment.

3 And in other cases, they wouldn't have the
4 choice because they would be, let's say, unconscious or
5 otherwise incapacitated and others would make that
6 decision on their behalf, dial 911, summon an ambulance
7 and so forth.

8 Q Do you know if there are surveys on whether and
9 under what circumstances someone perceives a wound to be
10 life threatening?

11 A Well, there's certainly studies by medical
12 personnel of that. They have classification schemes
13 like, you know, a six class categorization where they
14 rate the seriousness of the injuries on up to, you know,
15 critical or life threatening.

16 And so that's partly the basis for my
17 assertion that most nonfatal gunshot injuries are not
18 life threatening because even those that are treated by
19 medical personnel, which presumably are more serious
20 than the ones that were self treated, even most of
21 those are not rated by professional medical personnel
22 as life threatening.

23 Q Is that based on -- are those surveys based on
24 the perception of the person who has been shot or the --

25 A No, that's the professional medical judgment.

1 So a physician would presumably classify the
2 injury on that categorization scheme.

3 Q So you're not aware of any work, then, in which
4 somebody has talked to gunshot victims and said: You
5 were shot in the leg. How serious did you perceive that
6 to be?

7 A No, I'm not aware of any such study.

8 THE WITNESS: Can I get another water.

9 MR. COLIN: Sure, I'll get you one.

10 (Brief recess was taken.)

11 BY MR. GROVE:

12 Q Have medical techniques for treating gunshot
13 wounds improved over the last 30 years?

14 A No, no, or, at least, there's no affirmative
15 evidence of it. There's been improvements in medical
16 treatment of other kinds of injuries like blood trauma
17 injuries and prior to the last 30 years, in fact, prior
18 to, let's say, the early 1960s, there was affirmative
19 evidence that there was medical improvement in the
20 ability to treat gunshot wounds.

21 But what happened by that point, let's say,
22 early '60s or so, medical treatment of gunshot wounds
23 had gotten so effective that survival rates were
24 approaching 100 percent, which basically meant there
25 was a ceiling effect. You couldn't get any better.

1 weapons.

2 Q Let me stop you right there.

3 What do mean by tiny?

4 A Well, probably on the order of 1 or 2 percent
5 of violent crimes are committed with assault weapons.

6 Q Why so few?

7 A I think criminals find them to be unsuitable
8 for their purposes because they tend to be larger and
9 less concealable. That's one likely reason.

10 Another reason is they tend to be more
11 expensive. And so since criminals are -- or violent
12 criminals are predominantly low income, that's an issue
13 too.

14 Q Any other reasons that an assault weapon ban
15 would not, in your view, be effective?

16 A The underlying premise or the rationale for
17 banning them are generally wrong.

18 For example, it's described -- some
19 advocates, anyway, will describe assault weapons as
20 especially lethal; although, they are somewhat vague as
21 what exactly they mean by that.

22 But I think experts in the area usually think
23 of lethality as the likelihood that a given round fired
24 from such a weapon would result in a death. And the
25 bulk of assault weapons tend to be either no larger in

1 I mean, medical personnel were basically
2 saving everybody who reached medical treatment. And so
3 there wasn't any room for further improvement after
4 that point.

5 Q Generally speaking, are there any types of gun
6 control laws, in your view, that would be effective in
7 reducing gun violence?

8 A Yes.

9 Q Let's go through a few of those.

10 So we know that, you know, *Heller v. District*
11 of Columbia, I'm sure you're familiar with that case;
12 right?

13 A Yes.

14 Q That took a ban on handguns completely off the
15 table. So I won't even go there. That's not a
16 possibility. But there is a history of banning certain
17 types of guns at both the state and federal level. So
18 let's talk about a couple of those.

19 In your view, would a ban on assault weapons,
20 however that's defined, be effective in reducing gun
21 violence?

22 A No.

23 Q Why not?

24 A Two reasons: First of all, only a very, very
25 tiny share of violence is committed with those kinds of

1 caliber or smaller in caliber than their non-assault
2 weapon counterparts.

3 So, for example, assault rifles, so-called,
4 will have smaller calibers, like .223, while hunting
5 weapons that are left unbanned will have larger
6 calibers and bigger bullets produce bigger holes in the
7 victims and they're more lethal.

8 Or it's argued that assault weapons fire more
9 rapidly; although, usually there isn't any distinction
10 between a banned semiautomatic weapon and an unbanned
11 semiautomatic weapon. But even the distinction between
12 semiautomatic and, let's say, revolvers turns out to be
13 inconsequential in crime simply because shooters never
14 make use of the full capabilities of that rapid fire.

15 So semiautomatic weapons might be slightly
16 faster firing than their non-assault weapon
17 counterparts, but no criminal actually makes use of
18 that higher rate of fire.

19 Even in mass shootings where large numbers of
20 rounds are fired, the information we have on how many
21 shots were fired in how long a time period indicate
22 that shooters never fire guns at a rate higher than
23 could be maintained by an ordinary six-shot revolver,
24 including reloading time.

25 Q What studies are you referring to when you say

1 that?

2 A Well, everything I've written on assault
3 weapons, for starters. As to rate of fire, I've
4 determined that myself.

5 I've fired revolvers as fast as I could, and
6 I've fired semiautomatic pistols as fast as I could and
7 an audio timer was used to nail down exactly how fast
8 they fired.

9 And there are firearms reference works which
10 will mention people firing six rounds from a revolver
11 by people who have really practiced at it in under one
12 second. I've never been able to do that, but you can
13 do it -- I'm not an especially skilled shooter -- you
14 can do it in two seconds.

15 So, you know, you can fire a revolver at a
16 faster rate than has been known to ever been used in
17 any mass shooting -- any gun that has been used in a
18 mass shooting.

19 Q So in your view, a mass shooter with a revolver
20 would be just as effective as a mass shooter with an
21 assault weapon?

22 A In almost all cases, except in the cases where
23 he doesn't have another gun which is also loaded and
24 there's somebody present who is willing to intervene to
25 tackle the shooter and, therefore, stop his shooting,

1 foundation for that because usually we don't have any
2 information about people escaping from the scene. We
3 have information on how many people ended up getting
4 shot, but we don't have any information on how many
5 were present and could have been shot but weren't. So
6 there's really no way to tell.

7 Q So it's your testimony that if a mass shooter
8 walks into a room with 100 people with a revolver and
9 another mass shooter walks into the same room of 100
10 people with a gun that has a 50-round magazine that you
11 wouldn't be able to tell -- you wouldn't have a
12 prediction as to which incident would result in more
13 people being shot?

14 A I'd only make a prediction with regard to the
15 situation where there was somebody present willing to
16 tackle them while they tried to reload. And then, of
17 course, there would be fewer dead in the scenario where
18 the shooter had only a six-shot revolver.

19 In any other scenario, which would cover
20 virtually all the cases of which I'm aware, it wouldn't
21 make any difference because the individual would be
22 free to reload. And in mass shootings, we know they
23 either do actually reload or there was nothing to stop
24 them from doing that.

25 Q And you don't think people would run away?

1 then it would make a difference. And that kind of
2 scenario is extraordinarily rare.

3 As I say, I discovered one such case in the
4 earlier study that was published in *Targeting Guns* of
5 that ten-year period; and there was one case in my
6 updated study that covered the period since then so.

7 Q What about victims escaping, is that likely to
8 save lives?

9 A Well, I'm not sure how much of a difference it
10 would make as to whether the person had an assault weapon
11 with regard to that, but yes, victims escaping,
12 obviously, would result in fewer deaths.

13 Q I mean, say a shooter walks in with -- doesn't
14 matter what sort of gun, a gun that has 50 rounds in it,
15 in one magazine without reloading, versus a shooter that
16 walks in with a revolver.

17 All things being equal, which scenario is
18 going to have more people shot?

19 MR. COLIN: Foundation.

20 A Which pair of scenarios are you comparing? You
21 only mentioned one.

22 BY MR. GROVE:

23 Q Fifty-round magazine versus revolver.

24 A Versus a revolver. Okay.

25 I don't know. I don't have any empirical

1 A Yes, in both cases people could and would, if
2 it was possible to do so, if they weren't panicked and
3 paralyzed by fear, yes, indeed. Indeed, there's, at
4 least, anecdotal evidence that some people do precisely
5 that. The question, though, is whether it would be any
6 different between the two scenarios you've laid out.

7 Q How long does it take to empty, say, a 50-round
8 magazine?

9 A If somebody would actually fire at the full
10 capability of a semiautomatic weapon, they could probably
11 do it in -- I don't know, with some practice, they could
12 probably do it in 25 seconds.

13 Q How long would it take to shoot 50 bullets from
14 a six-shot revolver? Let's assume you have a speed
15 loader.

16 A Yeah, unfortunately, I didn't come prepared to
17 answer that kind of question. Once upon a time, I would
18 have been able to give you a very precise answer because
19 there are firearms competitions in which people do that.

20 I mean, they are timed as to how fast they
21 can go through a particular course of fire, which may
22 involve something like two dozen rounds or whatever.
23 So I couldn't really tell you. I could tell you that
24 you could fire the initial six easily in two seconds
25 and then the reloading would take a couple of seconds

1 with a speed loader.

2 But as to exactly how many, I wouldn't be
3 able to tell.

4 Q Would it take longer than the 25 seconds you
5 cited earlier?

6 A I don't know.

7 Q Do mass shooters typically -- do they take part
8 in shooting competitions?

9 MR. COLIN: Foundation.

10 A I don't know.

11 BY MR. GROVE:

12 Q Do they train in quickly changing magazines?

13 MR. COLIN: Speculation and foundation.

14 A I don't know.

15 BY MR. GROVE:

16 Q Have you done any research on that?

17 A No.

18 Q Okay. We were talking about gun control
19 measures that might or might not be effective. So we're
20 talking about types of guns and in particular guns that,
21 at least, some people perceive to be more popularly used
22 in crime.

23 Have you heard the term "Saturday night
24 special"?

25 A Yes.

1 specials? I really don't know. I mean, I'm guessing six
2 would probably be around the smallest.

3 Q So the average of a semiautomatic, whether it's
4 a Saturday night special or something else, is going to
5 be larger than six rounds?

6 A Yes, yes, definitely.

7 Q Do any states -- I want to say Maryland does --
8 but that would be answering the question for you, have
9 any states tried to ban Saturday night specials?

10 A Yes, Maryland has, but other states have as
11 well. Something like a half dozen; although, I couldn't
12 name them right now.

13 Q Have those bans been effective?

14 A No.

15 Q Why not, in your view?

16 A Well, the principal reason is that they leave a
17 very large number of other alternative weapons including
18 most brands of handgun still available and so that
19 there's no difficulty in offender simply using a
20 different type of handgun.

21 And whatever benefits there might have been
22 from keeping at least a few criminals from having those
23 handguns are canceled out by the fact that if you've
24 eliminated the least lethal types of handguns, which is
25 what Saturday night specials are, almost by definition,

1 Q What's a Saturday night special?

2 A It's a cheap, small-sized handgun.

3 Q Is it a revolver, a pistol? Does it matter?

4 A Could be either.

5 Q What capacity does a -- I'm just going to call
6 this NS -- SNS; is that okay?

7 A Sure.

8 Q What capacity does a revolver that's an SNS
9 typically have?

10 A Six.

11 Q What about a pistol?

12 A Could -- it's a function not of the pistol per
13 se but the size of the magazine. And usually there are
14 magazines that range anywhere from six rounds on up to 32
15 rounds and with particularly unusual weapons, even larger
16 than that.

17 Q Does a -- are you aware of any Saturday night
18 specials that have a capacity of less than six rounds?
19 I'm sorry. Let me withdraw that.

20 Obviously, revolvers might have a five or six
21 round capacity; right?

22 A Yes.

23 Q So what about semiautomatics, what's the
24 smallest magazine size that come --

25 A Semiautomatics that are Saturday night

1 any substitute weapon would have to be more lethal.

2 So it's either a larger caliber handgun or,
3 worse still, a long gun, like a sawed-off shotgun. So,
4 in effect, any benefits there might be are canceled out
5 by substitution of more lethal firearms.

6 Q Why are Saturday night specials less lethal?

7 A First of all, they're small caliber. Small
8 size tends to go along with small caliber so that the
9 bullets they fire punch smaller holes in the targets, in
10 human beings that are injured.

11 Secondly, they tend to have shorter barrels,
12 and shorter barrels make the firearms less accurate so
13 that the shooter is less likely to hit the target in
14 the first place.

15 And third, Saturday night specials, by being
16 cheap, they also tend to be less reliable. They're not
17 all unreliable. Some are actually surprisingly
18 reliable; but on average, cheap means less reliable,
19 which means if it's -- if the shooter pulls the
20 trigger, it's less likely to actually discharge as
21 designed. And so no injury can occur if the gun didn't
22 discharge in the first place.

23 Q That reminds me, I meant to go back to this.

24 You mentioned earlier that assault weapons
25 typically use .223; is that right?

1 A That's one very common caliber certainly.

2 Q And that's a -- and Saturday night specials, is

3 a .22 often used in those?

4 A They're not usually defined by caliber; but on

5 average, any gun that's smaller tends to be also smaller

6 in caliber. So the most common small calibers would be

7 .22, .25 and .32. All of those would be regarded as

8 relatively low caliber.

9 Q So .223 ammunition that assault weapons use,

10 that's on the small end of ammunition; right?

11 A Yes.

12 Q So does bullet velocity have anything to do

13 with lethality of rounds?

14 A Up to a point, only up to a point. It's a

15 curvilinear relationship; that is, as muzzle velocity

16 goes up, up to roughly the sound of -- the speed of

17 sound, which is around 1,100 feet per second, greater

18 muzzle velocity means greater penetration of the round so

19 that the wound cavity is longer so that a round is more

20 likely to go all the way through the victim's body,

21 creating a longer wound cavity.

22 But after that point, additional muzzle

23 velocity actually doesn't produce a larger wound cavity

24 because the bullet travels so fast, it doesn't have

25 time to deform or expand out, which means the wound

1 cavity is narrower.

2 And so it turns out that the most lethal

3 velocities are kind of middle velocities because the

4 bullet has time to expand so it creates a wider cavity,

5 wound cavity. And also, it goes completely through the

6 victim as if there's no obstruction, like bone or

7 extremely heavy clothing.

8 Q Have you heard of the concept of cavitation?

9 A Yes.

10 Q What is that? What is cavitation?

11 A Well, actually, back up. No, I should say no,

12 I don't know. I'm not confident enough to answer that.

13 Q Okay. How about -- let me go back to gun

14 control measures that might or might not have an effect.

15 How about limiting the number of guns that

16 any one individual can purchase?

17 A I don't think we have any empirical evidence on

18 that, so all I could give you is a guess, really. I

19 can't give you an empirically based assessment.

20 Q Well, let me give you a more concrete example.

21 I know that -- I don't know if there are any

22 laws in effect that do this. But I know that one

23 proposal I've seen is limiting people to buying one gun

24 per month or one gun per year.

25 Do you know if -- are there any laws like

1 that that are in effect?

2 A Yes.

3 Q Are they effective or do you think they would

4 be likely to be effective?

5 A I don't recall the research on the subject.

6 I mean, my inclination is to say no because

7 they seem to be based on the rationale that it's

8 traffickers or traffickers' representatives who are

9 buying these multiple guns.

10 But the indirectly relevant research -- not a

11 direct test of the laws per se -- but the indirectly

12 relevant evidence concerns whether or not guns

13 purchased in a multiple handgun incident are more

14 likely to later on be recovered by police in connection

15 with a crime.

16 So that seems to be the underlying premise,

17 that multiple purchases are likely to be purchases by

18 traffickers or their confederates, like straw purchases

19 and, therefore, more likely to be later on transferred

20 to criminals who would use them in crime. And that's

21 not supported by the evidence.

22 They're, in fact, no more likely to be end up

23 being recovered by the police than handguns that are

24 purchased one at a time.

25 Q Do you think that putting in place tougher

1 criminal penalties for violating gun laws would be

2 effective?

3 A No.

4 Q Why not?

5 A Because my research indicates it has no impact,

6 and a broader array of research concerning other kinds of

7 laws indicates that adding additional penalties, making

8 penalties more severe, has no impact on crime.

9 Q And what research have you done on that?

10 A The Kleck and Patterson article I cited before.

11 Q That's 1993?

12 A Yes. But I'd also base it on many studies done

13 by others that were reviewed in *Targeting Guns*.

14 Q And *Targeting Guns* is your 1997 book?

15 A Yes.

16 Q What about shifting the focus from specific

17 types of guns and the penalties and things like that to

18 who can possess them.

19 If a law could make it more difficult for

20 high-risk individuals to acquire firearms, is that

21 likely to reduce gun violence?

22 A Yes.

23 Q Where do criminals typically get their guns?

24 A There are three common sources: They either

25 purchase them from people, individuals they know, family,

1 friends and acquaintances or they steal them or if they
2 don't have a criminal record, they buy them from gun
3 stores because it's a completely legal purchase if they
4 don't have a criminal conviction or other disqualifying
5 attributes.

6 Q Let's go back to Exhibit 3.

7 *And that's Firearm Violence, 1993 to 2011.*

8 On page 13, let's look at Table 14.

9 A (Views document.)

10 Q Take a look at that, and tell me when you've
11 digested it.

12 A Yes.

13 Q So as I read this table, it says that about
14 80 percent of state prison inmates in both 1997 to 2004,
15 which are the two snapshots of this survey, did not buy
16 the gun from a source that would have required a
17 background check; is that right?

18 A Yes.

19 Q And is -- are those dated, to your knowledge,
20 accurate?

21 A On that point, I believe they are.

22 Not to the exact percentage point,
23 necessarily, but certainly they're accurate with
24 respect to the main point that most guns acquired by
25 criminals would not be purchased from the kind of place

1 requirements?

2 A Yes.

3 Q And those federal requirements are set forth by
4 the Brady Act; is that right?

5 A Yes.

6 Q When was Brady passed?

7 A 1993, and I think the effective date was early
8 '94.

9 Q Would it be fair to say that the Brady Act is
10 an example of an effort to prohibit -- prevent prohibited
11 persons from acquiring firearms?

12 A Yes.

13 Q How did Brady change the law surrounding
14 firearm acquisition?

15 A Well, it made it a national requirement that a
16 person had to go through a background check, whereas
17 previously there was no such federal requirement.
18 Individual states had those kinds of requirements, but
19 many of them did not.

20 Q Was there a central -- for the states that had
21 those requirements, was there a centralized database that
22 they checked?

23 A Yes. They could check with an FBI database or
24 they could check with some state version of that.

25 Q So that was -- the FBI database, was that a

1 that would require a background check.

2 (Exhibit No. 5 was marked for
3 identification.)

4 BY MR. GROVE:

5 Q This is Exhibit 5.

6 A (Views document.)

7 Q I've printed this out from the Internet so the
8 format may be a bit different than what you've seen
9 before, but do you recognize this article?

10 A I do.

11 Q And are you the Gary Kleck that wrote it?

12 A I am. It's an outstanding article, wonderful.

13 Q Let's look at page 15 --

14 A (Views document.)

15 Q -- under the subheading "How Do Criminals
16 Acquire Guns?" And in the last paragraph of that, you
17 rely on a study by James Wright and Peter Rossi,
18 R-O-S-S-I, that concluded that, quote: Criminals acquire
19 their guns predominantly through private secondhand
20 transfers.

21 I know this article was written in 1986.

22 Have things changed since then?

23 A Not to my knowledge.

24 Q Would it be fair to say that most criminal gun
25 acquisitions fall outside of federal background check

1 precursor to NICS?

2 A Yes -- well, yes, I guess.

3 Q Did that become more formalized with Brady?

4 A I don't know what that means.

5 Q Did it get better after Brady? Did NICS become
6 more comprehensive?

7 A I wouldn't be qualified to say.

8 Q Does Brady apply to private transfers of guns?

9 A No.

10 Q In your opinion, would it be complicated or
11 unfeasible to -- infeasible to extend a background check
12 requirement like Brady to cover private transfers of
13 guns?

14 A There would be difficulties, yes.

15 Q What would those difficulties be?

16 A Well, one difficulty would be that you'd have
17 to arrange it so that it was a practical matter for
18 people to get the background check done.

19 So you would have to have something that made
20 firearms dealers willing to do this background check,
21 for example, offering them the opportunity to have
22 fairly generous brokerage fees for performing that
23 service.

24 So, you know, if people wanted to acquire a
25 gun and they had to go through the background check for

1 a private transfer, they would have to be able to find
2 a willing gun dealer who would do the background check
3 or some other source.

4 Q Let's flip to page 17 of this article, which
5 is -- we're still on Exhibit 5.

6 And then the last paragraph of this that
7 starts with: And states which have permits to
8 purchase.

9 You wrote that: Undoubtedly many private
10 persons under a private transfer scheme would still
11 illegally transfer guns directly to ineligible persons
12 either because they owned so few assets that they would
13 stand to lose very little if sued or because they did
14 not think that the gun could be traced back to them if
15 it were subsequently involved in an injury or damage.

16 Do you still agree with that statement?

17 A Yes.

18 Q And then the next sentence says: Nevertheless,
19 even partial compliance could reduce the availability of
20 guns to criminals enough to justify the costs of the
21 added caseload in civil courts and the additional
22 inconvenience to dealers and private sellers of guns; do
23 you think that's still accurate?

24 A Yes.

25 Q And you laid out a sort of a proposal, I guess,

1 perceptions of licensed gun dealers as to what's worth
2 their time and trouble and any other difficulties they
3 might face.

4 For example, at the time, I had not really
5 considered issues of liability for the dealer, you
6 know. If something went wrong and there was a failure
7 of the background check, would he in any way be liable?
8 It was an issue I hadn't even addressed at that time.
9 I don't really know if it was then or is now an issue
10 but certainly it's been discussed.

11 Q If something goes wrong under Brady with a
12 background check, does the dealer have liability?

13 A I don't know. I'm not qualified to say.

14 Q Are you aware of any dealer, as you sit here
15 today, who has ever been held liable, in some fashion,
16 for a problem with a background check that he performed
17 under Brady?

18 A No, I'm not aware of any such case.

19 Q In your view, would it be realistic to expect
20 universal compliance with a private background check
21 requirement?

22 A It would be very unreasonable to expect.

23 Q Would it be realistic to expect that no one
24 would comply with a background check?

25 A That would be also unrealistic. There would be

1 might be the best way to say this, for how this would
2 work. And I think it's the Kennedy-Rodino, R-O-D-I-N-O,
3 approach.

4 How would that work, in general?

5 A For private -- for background checks on private
6 transfers?

7 Well, broadly speaking, the prospective buyer
8 and seller would go to a willing licensed firearm
9 dealer, federal firearms licensee, who, of course, is
10 capable of performing background checks. But in this
11 case, they would perform the background check on behalf
12 of these two individuals, the prospective buyer and
13 seller.

14 And if the background check was clear, if
15 there was no indication that the prospective recipient
16 was unqualified, then the transfer would go through.
17 And the dealer would be entitled to charge some modest
18 brokerage fee in order to -- you know, for his trouble.
19 And if, of course, it was denied, then the sale -- the
20 transfer would be illegal if he, the prospective
21 recipient, didn't pass the background check.

22 Q What sort of modest brokerage fee would be
23 reasonable?

24 A Well, I didn't really get into it at the time,
25 you know. It would really have to be determined by the

1 some compliance.

2 Q Would implementation of a universal background
3 check, in your view, make it more difficult for some
4 prohibited individuals to acquire firearms?

5 A Yes.

6 Q In 2012, you published an article in the
7 Fordham Urban Law Journal; correct?

8 A Yes.

9 Q And I don't have that one printed out, but I
10 was reading it last night. It's a good article.

11 A Thank you.

12 Q In that article, you said that -- and this is a
13 quote -- since background checks on dealer transfers
14 appear to be beneficial, extending them to cover private
15 transfers of guns is a reasonable next step; do you still
16 believe that to be true?

17 A Yes.

18 Q I understand it's not the focus of your expert
19 report in this case, but I think you mentioned that you
20 hadn't reviewed Colorado's background check provision;
21 you have or haven't?

22 A If I did, I've forgotten it. So I'm not
23 qualified today to speak on it.

24 Q Okay. Then I won't ask any questions about it.
25 I will ask you this: If it generally

1 followed the outlines of the proposal that you put
2 forth in 1986 and that was outlined in your 2012
3 Fordham paper, do you believe that Colorado's law would
4 have similar impacts to what you predicted in the 1986
5 paper?

6 A If it followed those same outlines and if you
7 could gain the cooperation of licensed dealers so that
8 they would do those background checks, then yes.

9 Q What if you couldn't gain their cooperation?

10 A That would be a problem. It would call for
11 additional measures that I hadn't anticipated in 1986.

12 Q Is there a problem under the federal law in
13 getting FFLs to participate in the background check
14 system?

15 MR. COLIN: Form.

16 A I'm not aware of any.

17 MR. COLIN: Private transfers or in general?

18 MR. GROVE: No, under Brady. Under the
19 federal law.

20 BY MR. GROVE:

21 Q You're not aware of any?

22 A (Witness shakes head.)

23 Q Is it sort of a condition of participation as
24 an FFL that you do that?

25 A I don't know. I would have guessed yes, but I

1 A No.

2 Q And did any of your -- the opinions and
3 conclusions expressed in Exhibit 1 change from the early
4 versions to what we see as the final product now?

5 A No.

6 Q So you're welcome to look at the report as you
7 answer this question, but what are your conclusions?

8 A (Views document.)

9 The overall conclusion was that Colorado's
10 ban on large capacity magazines would be more likely to
11 harm the safety of Colorado citizens than to improve
12 it.

13 Q I'm going to make you go through each one of
14 these. So maybe we should just do that one by one. That
15 would be the easiest way.

16 So on page 3, what is your first conclusion?

17 A (Views document.)

18 Q And actually let me back up just a second.

19 Do you have any expert opinions in this case
20 that are not encompassed in this report?

21 A I'm not sure I understand the question.

22 I mean, I thought by definition, my only
23 expert opinions were the ones in this report. Is there
24 some other legal meaning to this that I'm not picking
25 up on?

1 don't know for sure.

2 Q Let's go back to Exhibit 1, which is your
3 report.

4 A (Views document.)

5 Q Is this the only report you've written in this
6 particular case?

7 A Well, I wrote an earlier version of this same
8 report, which didn't have that additional eight mass
9 shootings. But other than that, the previous report was
10 the same.

11 Q And you wrote a rebuttal report after this;
12 right?

13 A Yes. I think it was a rebuttal to a guy name
14 Zacks.

15 Q Let's talk about -- we'll talk about that
16 later. So let's focus on Exhibit 1 for now.

17 Were there any prior drafts of this report,
18 aside from the one that I know about?

19 A Nothing that was submitted to the attorneys.

20 I mean, I obviously worked on it
21 incrementally so, in that sense, there were earlier
22 drafts. But there's just the two versions that I
23 submitted to the attorneys.

24 Q Aside from the attorneys, did you submit the
25 draft form of this report to anyone else?

1 Q No.

2 A Okay. This is it.

3 Q Okay.

4 A That's -- they're all in the report.

5 Q I just wanted to make sure of that.

6 What we try to do in depositions is make sure
7 there's not a freight train coming from the side that
8 we don't see.

9 A Okay.

10 Q So the first opinion is at page 3, and it is
11 No. 1. And it says: Criminals rarely fire very large
12 numbers of rounds in any given crime incident.

13 Why does that matter?

14 A Because the larger the number of rounds that
15 are fired, the more likely it is that a large capacity
16 magazine would influence the number of people killed or
17 injured.

18 Whereas if somebody is only going to fire one
19 or two rounds, they could have fired that with or
20 without a large capacity magazine. And usually
21 offenders don't even fire as many rounds as you could
22 have in an old-fashioned six-shot revolver, nevermind
23 fire dozens of rounds.

24 Q Would you say that the chances of injury are
25 related in any way to the number of rounds that are

1 fired?

2 A It's a complex relationship.

3 It's -- if somebody is fire -- if the reason
4 why somebody is firing a large number of rounds is
5 because they're firing very rapidly, the rapidity of
6 firing reduces the likelihood they'll hit the target
7 that they're aiming at.

8 On the other hand, if they're carefully
9 aiming at individual targets, taking their time and
10 shooting large numbers of rounds, then the large number
11 of rounds will lead to more people being hurt.

12 Q Generally speaking, if someone was shooting at
13 you, would you rather that they shoot two bullets or ten?

14 A Two.

15 Q And is that because you're less likely to be
16 hit by two than ten?

17 A If the shooter continues trying to make an
18 attempt to shoot me, he's more likely to eventually
19 succeed with larger numbers of attempts.

20 Q This cites a Reedy and Koper study from 2003.
21 (Exhibit No. 6 was marked for
22 identification.)

23 A (Views document.)

24 BY MR. GROVE:

25 Q Is this the study that you cited?

1 that's the point. There's no important difference
2 between, let's say, three rounds being fired and two
3 rounds being fired if you're talking about banning
4 magazines that hold more than 15 rounds because,
5 obviously, with either a revolver or a semiautomatic
6 pistol with or without a large capacity magazine, under
7 that definition, the criminals could have fired all the
8 rounds they fired.

9 So the fact that those using semiautomatic
10 pistols fired more rounds, it's not a reflection of
11 magazine capacity because neither the revolver shooters
12 nor the semiautomatic pistol shooters came anywhere
13 near using the full capacity of their respective
14 weapons.

15 Instead presumably, it was a matter of their
16 intentions or circumstances. They wanted to shoot more
17 rounds or circumstances called for shooting more
18 rounds, and that happened to be the case more
19 frequently with semiautomatic pistols than with those
20 using revolvers.

21 Q Would you agree that there's a correlation here
22 between magazine size and the number of shots fired in a
23 particular incident?

24 A Yes.

25 Q And what is that correlation?

1 A Yes, it is.

2 Q Let's discuss some of the findings in that
3 study.

4 First, I think you testified earlier that, on
5 average, semiautomatics hold more cartridges than a
6 revolver; is that right?

7 A Yes.

8 Q And tell me if I'm wrong, but I think the point
9 that you're making in opinion 1 of your expert report is
10 that limiting magazine capacity won't advance public
11 safety when it comes to criminal shootings because
12 criminals don't fire that many shots to begin with; is
13 that right?

14 A Well, I'm making a much narrower point that
15 merely says that it's unusual that criminals fire large
16 numbers of rounds. It still, at that point, remains
17 possible that there could be some improvement in public
18 safety nevertheless; but point No. 1 just establishes
19 that criminals rarely fire more than a handful of rounds.

20 Q So one of the findings that Koper made in this
21 article that he reported are that more shots are fired
22 during assaults with semiautomatics than during assaults
23 that use revolvers; do you agree that that's one of the
24 findings?

25 A Yeah, it's marginally higher but still low and

1 A It's a positive correlation -- well, depending
2 on how you coded semiautomatic. If semiautomatic is the
3 larger -- gets the larger value, then it would be a
4 positive correlation.

5 Q And let's look at Table 1, which is on
6 page 154.

7 Let's look at the minimum estimates, for
8 example, which the first left-hand column is in that
9 table. There are very few incidents, would you agree,
10 in which someone who was firing with a revolver fired
11 more than the capacity of a revolver?

12 A (Views document.)

13 Yes.

14 Q And would you agree that there are more
15 incidents -- nevermind. So I withdraw that question.

16 Koper also found that -- in this study that
17 more victims are wounded during assaults with
18 semiautomatics than during assaults that use revolvers;
19 do you agree with that?

20 Well, first of all, do you agree that he
21 found that?

22 A Could you repeat the question, please?

23 Q Koper found that more victims, more victims are
24 wounded during assaults with semiautomatics than during
25 assaults with revolvers?

1 A Yes. There was a slight difference of 1.15
2 versus 1.0 for revolvers.

3 Q And that's in Table 2; correct?

4 A Correct.

5 Q And do you have any basis to question that
6 finding?

7 A No, as a bare statistical finding, I don't have
8 any reason to doubt it.

9 Q What about as a non -- what do you mean by as a
10 bare statistical finding?

11 A Well, the interpretation that some people would
12 be likely to make would be that it was because a
13 semiautomatic pistol was involved that there were more
14 victims wounded than in revolver cases; whereas, it
15 could, in fact, be that the intentions of the shooter
16 were what determined the number of victims shot and that
17 those who are planning on shooting more victims or
18 anticipate the possibility of that happening would choose
19 a semiautomatic pistol over a revolver.

20 So it wasn't the weapon that mattered; it was
21 the shooter's intentions or circumstances that
22 mattered.

23 Q If I intended to shoot more people, why would I
24 choose a semiautomatic than a revolver -- over a
25 revolver, excuse me.

1 So my question is, as I read this: Koper
2 found that a pistol victim was more likely to receive
3 multiple wounds than a revolver victim.

4 A (Views document.)

5 That's true. Even though the average was
6 lower for pistol cases, the percent who got two or more
7 wounds was higher for pistols.

8 Q Right. I'm guessing there must have been a
9 couple big outliers for revolvers or something. But --

10 A You can see all the data in Table 2. Let's
11 see. Number of wounds is -- there's only one that's
12 seven in the revolver case; one that's six in the pistol
13 case. So really it's not a matter of outliers.

14 So they don't list anywhere, you know,
15 somebody got 14 wounds or ten or whatever. There
16 really aren't any outliers. There's always got to be a
17 maximum, of course, but there are no outliers.

18 Q Would you agree that, in general, the more
19 times a victim is shot the less likely his chances of
20 survival?

21 A Other things being equal, that's probably true.

22 But often if the reason why somebody got shot
23 multiple times was because the shooter was firing more
24 rapidly and, therefore, less accurately, it's possible
25 that the multiple wounds would be in less vulnerable

1 A Because you would be able to shoot more rounds
2 without reloading.

3 Q Koper also found that, in this study, more
4 pistol victims received multiple wounds than revolver
5 victims; do you have any basis to disagree with that
6 finding?

7 A Could you repeat that one as well?

8 Q Yeah, this one is a little bit more nuanced.
9 It's at page 153 in the right-hand column, third full
10 paragraph just above "discussion."

11 A (Views document.)

12 Q Did you have a chance to read that paragraph?

13 A You were going to rephrase the question.

14 Q I'm sorry. I was giving you a chance to read
15 the paragraph.

16 Did you read it and do you understand what it
17 says?

18 A Yes.

19 Q Okay. So about halfway through that paragraph,
20 Koper says: Although a higher percentage of pistol
21 victims sustain multiple wounds -- and then in
22 parentheses, it says: 24.3 percent to 20 percent for
23 pistol and revolver victims respectively -- the average
24 number of wounds for pistol victim was actually lower
25 than that for revolver victims.

1 areas, less vital areas of the body as a result of the
2 inaccurate shooting produced by rapid firing.

3 But other things being equal, let's say, you
4 had two wounds in vital areas versus one wound in a
5 vital area, yes, the victim would be more likely to die
6 in that scenario, with two wounds rather than one.

7 Q I think we're on 6.

8 MR. COLIN: Seven.

9 MR. GROVE: Seven?

10 (Exhibit No. 7 was marked for
11 identification.)

12 BY MR. GROVE:

13 Q This is a study from the Journal of Trauma
14 titled "The Case for Enhanced Data Collection of Gun
15 Type."

16 MR. COLIN: Extra copy.

17 MR. GROVE: Didn't I give you one?

18 MR. COLIN: Not yet. I can share his. It's
19 all right.

20 MR. GROVE: Did I give you two?

21 THE COURT REPORTER: I don't think so.

22 MR. GROVE: Okay. Sorry.

23 BY MR. GROVE:

24 Q Have you seen this study before?

25 A No.

1 Q I'll represent to you that they did something
2 fairly similar to the Reedy and Koper study in 2003.
3 This study analyzed -- actually, do you want to take a
4 couple minutes to skim through this?

5 A Yes.

6 (Views document.)

7 MR. GROVE: Can we go off.

8 (Brief recess was taken.)

9 BY MR. GROVE:

10 Q Did you have a chance to review Exhibit 7?

11 A Yes, very briefly.

12 Q Would you agree that this study attempted to do
13 something fairly similar to what Reedy and Koper did?

14 A Yes.

15 Q And it analyzed about 400-odd homicide victims
16 and the guns that killed them; right?

17 A Yes.

18 Q And it found that the use of a pistol by the
19 shooter resulted in more entry wounds than when a
20 revolver was used?

21 A Yes.

22 Q Let's look at page 1358, which is the third
23 page of the exhibit.

24 Figure 1 shows that they're about 4 1/2 mean
25 wounds inflicted by pistols and about two wounds on

1 up with the worst possible outcome, which is homicide;
2 whereas, the Koper study was better because it kind of
3 studied the whole violent process from being in a crime
4 incident, an assault incident, getting shot and then
5 whether the gunshot wound results in death.

6 And so some of the differences in the
7 studies, I think, are attributable to that. And it's
8 the nature of the sample. And some of it is
9 attributable to just local differences; although, they
10 don't specify where this study was done, where the
11 Richmond et al. study was done.

12 Q And then the next sentence after the one that I
13 just read said: Pistols also had the strongest
14 association between wounds per gun and the number of body
15 regions injured; do you have any reason to dispute that
16 statement?

17 A Well, I don't understand the statement, so I
18 can't really dispute it. I don't really know what that
19 means.

20 Q Fair enough. It's not the best sentence I've
21 ever seen.

22 A It sounds like it's virtually a tautology as
23 far as I can tell. That sentence doesn't compare pistols
24 with revolvers or any pair of gun type, but it's
25 saying -- I guess it's saying that when somebody is

1 average inflicted by revolvers on these homicide
2 victims; correct?

3 A Yes.

4 Q In fact, on page 4, which I think is page 1359,
5 actually, if you look at the first full paragraph, it
6 says: Pistols were associated with more than twice as
7 many wounds per gun than revolvers and largely accounted
8 for the differences found between handguns and long guns.

9 And the next sentence -- well, first of all,
10 do you have any reason to dispute that statement?

11 A With respect to this particular sample, yeah,
12 that's -- as far as I can tell, that's accurate.

13 Q Are you aware of any other studies or any other
14 research that you've done that would refute that
15 statement?

16 A Well, yeah, the Koper study, the Reedy and
17 Koper study.

18 Q This was a larger sample size than Reedy and
19 Koper; correct?

20 A Yeah, but the sample size really isn't the
21 issue. The issue is the nature of the sample. This
22 other study done by whoever, Richmond et al., it's a
23 study only of homicide.

24 So it's kind of a censored sample of violent
25 incidents, which means you only get the ones that ended

1 wounded multiple times, they're likely to be wounded in
2 multiple places, which is probably true, kind of trivial
3 but probably true, I assume.

4 Q And the point of this study, to me, seems to be
5 in the last two sentences of this, it says: These
6 findings suggest the extent of wounding from pistols is
7 significantly different from that of other gun types and
8 that pistol wounds may thus present distinct clinical
9 challenges which require treating physicians to do
10 different things.

11 I suppose that wasn't really a question. It
12 was just a statement.

13 Going on from there, though, it does say
14 that -- at the beginning of the next paragraph, it
15 says: One reason pistols produce more wounds per gun
16 than revolvers may be because the magazine capacity of
17 pistols typically exceeds the number of chambers in
18 most revolvers, often allowing more shots to be fired;
19 do you disagree with that statement?

20 A Well, given that it's stated as a speculation,
21 it's certainly one reasonable speculation among others.

22 Q So it would be reasonable to conclude that
23 that's true?

24 A That the speculation is true?

25 Let me state what I think and you can tell me

1 if I've answered your question. You can't infer from
2 these data that it was the fact that it was a pistol
3 that caused more wounds to be inflicted.

4 It may, as I previously said, simply be a
5 reflection of the fact that people who are either
6 intending to or willing to inflict more wounds are also
7 the people who select pistols. And they would have
8 fired just as many rounds and inflicted just as many
9 wounds, even if they had a revolver, because it was
10 their intentions that were different.

11 Q Would you agree in this study that there was a
12 correlation, correlation between gun capacity and the
13 number of wounds inflicted?

14 A Well, between pistols versus revolvers, yes.

15 Q And so, in general, guns that had higher
16 capacity inflicted more wounds?

17 A Well, strictly speaking, I don't think they
18 broke it down that way. I don't think they ever showed
19 number of rounds by capacity. They only made the
20 distinction between revolvers and pistols unless I missed
21 something.

22 Q That's accurate.

23 But I thought that we'd established earlier
24 that, on average, pistols have higher capacities than
25 revolvers.

1 A Yeah, on average, but the problem is, in some
2 cases, these pistols had small magazine capacities that
3 were no larger than revolvers and, of course, some
4 revolvers have capacities up to eight or nine rounds.
5 And so you can't just tell by these data alone whether
6 that statement you just made is correct.

7 All you can say is: Pistols, on average,
8 produce more wounds than revolvers. And, on average,
9 pistols have larger magazine capacities than revolvers.
10 But you can't conclude what you stated, which is that
11 --

12 Q How common are revolvers that hold eight or
13 nine rounds?

14 A I don't know.

15 Q Have you ever seen one?

16 A Yes.

17 Q Have you ever seen one used in a crime?

18 A No. That doesn't mean they don't occur. I
19 just have never seen one.

20 Q Are they more collector's items?

21 A I have no idea. I don't know.

22 Q Have you ever analyzed gun trace data in which
23 one was traced?

24 A A revolver with eight or nine rounds? Trace
25 data wouldn't tell you that one way or the another.

1 Q It wouldn't tell what type of gun is being
2 traced?

3 A It would tell you whether it's a revolver. It
4 wouldn't tell you whether it's an eight-round revolver or
5 a nine-round revolver or any other number of rounds.

6 Q I just asked because I had no idea that such
7 weapons existed. I thought the capacity was typically
8 six.

9 A It is most commonly six.

10 Q So you don't have a guess as to the percentage
11 of revolvers that hold more than six rounds that are in
12 current circulation?

13 A No.

14 Q But we're still sticking with -- you still
15 agree that the mean capacity of a pistol exceeds the mean
16 capacity of a revolver?

17 A Yes.

18 Q But you think this sample size of 400 deaths
19 would not be large enough to demonstrate that; you don't
20 think it necessarily would be consistent with that?

21 A No, the problem isn't sample size. Sample size
22 is a trivial issue. It's the character of the sample,
23 the fact that it was limited just to the incidents that
24 had a particular outcome, in this case, that resulted in
25 the death of the victim, whereas you had a broader array

1 of incidents covered in the Koper study, covering both
2 fatal and nonfatal assaults.

3 Q I guess I'm not clear how outcome would make a
4 difference when you're talking about -- when you're
5 talking about the results, at least with respect to the
6 size of the capacity of the gun that was used to inflict
7 the wounds.

8 Can you clarify that?

9 A Well, I can only note the contrast in findings
10 between these two studies, and that's the biggest thing
11 that distinguishes the two studies. They come to
12 different conclusions, and one study involved homicides
13 only. And the other involved the full array of violent
14 assaults, gunshot assault.

15 Q Let's move on to the second conclusion.

16 MR. COLIN: I'm sorry, this second conclusion
17 or in this document?

18 MR. GROVE: We're back to Exhibit 1.

19 MR. COLIN: Okay, thank you.

20 BY MR. GROVE:

21 Q So as I read this, you say that -- let's unpack
22 this because there's several things.

23 First of all, you say -- you reference:

24 Extremely rare mass shootings in which large numbers of
25 victims are shot.

1 What do you mean by extremely rare, first of
2 all?

3 A Well, I was able to identify a grand total of
4 58 cases over a 20-year period. So that's roughly three
5 shootings per year. And the number of both fatal and
6 nonfatal assaults in each year is certainly in the tens
7 of thousands, so it's certainly well under 1 percent.
8 It's probably under 1,000. So extremely rare in this
9 case would mean less than 1,000.

10 Q What do you mean by large numbers of victims?

11 A I defined it as more than six killed or wounded
12 for the purposes of this particular study because I was
13 interested in the issue of large capacity magazines and
14 the consequences their use had for how many people got
15 killed or injured.

16 And my reasoning was that this would be a set
17 of shootings in which it was especially likely that
18 large capacity magazines would make a difference if
19 they ever made a difference.

20 Q And then after the comment, it says: The
21 shooters virtually never needed large capacity magazines
22 to injure or kill as many victims as they did.

23 How do you infer what particular mass
24 shooters needed?

25 A Well, because if you had multiple guns that

1 neither multiple guns nor multiple magazines. And
2 there's no indication that they had opportunity to
3 reload.

4 Q So what these mass shooters needed, you based
5 that on your view of the newspaper articles?

6 A That's the information I based my judgments on.

7 Q Did you interview any of the mass shooters?

8 A No.

9 Q Did you interview any of the investigators?

10 A No.

11 Q Did you interview victims?

12 A No.

13 Q Witnesses?

14 A No.

15 Q Did you review any police reports?

16 A In a couple of cases, yes.

17 Q Which ones?

18 A Let's see.

19 For the earlier study -- well, actually, I
20 wouldn't be prepared to tell you now because it's been
21 a long time. But I think I reviewed a couple of police
22 reports just because they happened to be available.

23 But it really didn't have any significant
24 impact on the conclusions because I was almost
25 invariably relying entirely on media accounts.

1 allowed you to continue firing without reloading, then it
2 means that there's no opportunity for anyone to intervene
3 and stop them from firing.

4 The same is true of having multiple magazines
5 except then there's perhaps a two-second interval where
6 the shooter would have to drop an expended magazine and
7 insert a new one in a semiautomatic weapon, again,
8 providing virtually no opportunity for someone to
9 intervene.

10 Because, of course, if no one intervenes,
11 then there's nothing to stop the shooter from
12 continuing to shoot as long as they want to. Or in
13 other cases, we know they didn't need a large capacity
14 magazine simply because they could, instead, reload.
15 And we know they could reload because they, in fact,
16 did reload.

17 So, in some of these incidents, we know they
18 didn't need the large capacity magazine because they
19 had multiple guns and others because they had multiple
20 magazines and other cases because regardless of whether
21 they had multiple guns or multiple magazines, they did,
22 in fact, reload.

23 So that boils it down to basically cases
24 where they might have needed large capacity magazines
25 to hurt as many people as they did because they had

1 Q Did the materials you review say anything about
2 the physical layout of the location where the shooting
3 happened?

4 A In some cases, yes. So --

5 Q You take that --

6 A -- for example, you would often know whether it
7 occurred in an indoor location or an outdoor location.

8 Q Did you take that into consideration when
9 determining what a mass shooter needed?

10 A No.

11 Q Did the materials you reviewed in any of the
12 shootings reveal anything about the rate of fire?

13 A In some cases, they did; because in some cases,
14 the media accounts included both number of rounds fired
15 and the span of time from beginning to end of the
16 shooting.

17 Q Does that really tell us what the rate of fire
18 was?

19 A Well, it tells us an overall rate of fire, an
20 average rate of fire over the span during the shooting;
21 but it doesn't tell us rates of fire maintained during
22 any short interval.

23 Q Are you aware of any reports that do address
24 that question?

25 A Occasionally they would, very, very rarely, but

1 it's probably not reliable information because nobody is
2 standing there with a stopwatch or anything.

3 So you're depending on eyewitness testimony
4 among people who are almost certainly extremely
5 fearful, and they're making guesses about time. And
6 so, you know, you may have very accurate information
7 about numbers of rounds fired, especially when a
8 semiautomatic weapon is involved because the police can
9 recover expended shells.

10 But the time intervals depend entirely,
11 almost entirely, on eyewitness testimony, which is
12 probably not reliable about an exact time interval.

13 Q So just a hypothetical situation. Say we have
14 one mass shooting in which it's reported in the media
15 that it was all over in ten minutes, and the shooter
16 fired 60 rounds.

17 As I understand what you are saying here, you
18 would say that it's pretty easy to fire 60 rounds in
19 ten minutes and so for that reason, the shooter would
20 not have needed a mass -- sorry, the shooter would not
21 have needed a large capacity magazine in that situation
22 to discharge that many rounds; is that right?

23 A You are going to have to repeat the question.
24 That's a pretty complicated question.

25 Q What I'm trying to get to is this: If a

1 incidents?

2 A No, we do know an average rate of fire over the
3 span of time when shooting was going on; and we know that
4 for a minority of mass shooting incidents.

5 Q Okay. Which ones?

6 A Well, I mean, you can go through my appendix;
7 and every time it lists the span of time of the shooting
8 plus the number of rounds fired, then that would be an
9 example of where we did know the average rate of fire.

10 So it is a minority of the incidents, but
11 it's not none of the incidents. There are some cases
12 where the media account provided both pieces of
13 information needed to calculate an average rate of
14 fire.

15 Q Sure. And I guess my point is that: Do those
16 media reports actually discuss the length of time of the
17 event as a whole or the length of time that the shooter
18 took to expend the rounds that he expended?

19 A No, this pertains to the latter.

20 It's the span of time when firing was going
21 on, so it's basically the estimated time from first
22 shot to last shot.

23 Q Okay. So let's look at page 20 of your report.
24 And it starts on page 19, actually. It's *Time Magazine*:
25 *Terror in the Sanctuary*.

1 shooting event takes ten minutes, a large portion of the
2 expenditure of the rounds could be compressed into a very
3 small part of that ten minutes; correct?

4 A Yes.

5 Q So, for example, the shooter could walk into a
6 room, shoot everybody in the room in a matter of 20
7 seconds and then go hide in the bathroom for ten minutes
8 and shoot himself when the police arrive?

9 A Yeah, certainly that's possible. We can
10 speculate that could be the case.

11 Q And so some of these media reports say this was
12 all over in ten minutes; right?

13 A (Witness nods head.)

14 Q But they don't say -- at least, I haven't seen
15 anything that says something like the scenario that I
16 just outlined, that actually says the active shooting
17 part of this incident took X number of minutes, and the
18 rest of it was spent hiding from the police or running or
19 anything like that?

20 A That's correct. The media accounts wouldn't
21 really have any reliable information on that because
22 they, in turn, are relying on the eyewitness testimony,
23 which, as I say, is probably not reliable.

24 Q So it's fair to say we actually don't know
25 anything about the rate of fire in most of these

1 A (Views document.)

2 Page 20?

3 MR. COLIN: Nineteen, it starts.

4 THE WITNESS: Oh, 19, okay.

5 BY MR. GROVE:

6 Q Bottom of page 19, top of 20.

7 A All right. Got you.

8 Q So on 20, there are notes and it says: The
9 *Houston Press* article states that the 9-millimeter gun
10 was a Ruger and that the event lasted ten minutes. And
11 according to the official Wedgewood Baptist Church
12 website, the gunman fired over 100 rounds.

13 So based on the press report, is it your
14 understanding that this gunman walked in, fired his
15 first shot at second 1 and then fired his last shot at
16 minute 10?

17 A We don't know.

18 I mean, that's why earlier in that synopsis,
19 it says: Time from start to end is unknown. The fact
20 that it didn't say it lasted ten minutes is an
21 indication that that later comment, based on the
22 *Houston Press* article, is ambiguous. It may be the
23 incident in some sense, the event in some sense lasted
24 ten minutes; but it's not necessarily the span of time
25 from first shot to last.

1 Q And that's my question. Is do we know in any
2 of these incidents what the time was from first shot to
3 last?

4 A Yes. I believe there are a few. Not a very
5 large set of cases, but there are a few.

6 Q If you could --

7 A Mass shootings in 2001. This is page 23.

8 It starts out ABC News, ex-employee kills
9 four. It has both information on time of shooting from
10 start to end and number of rounds fired. The next
11 incident after that --

12 Q Well, let's stop right there.

13 What does -- how do we know from where it
14 says time from start to end, how do we know what the, I
15 guess, density of shots during any given minute of that
16 was? How do we know --

17 A We don't.

18 Q Okay. And --

19 A As I say, it's just an average rate of fire
20 over the entire span in which firing was going on.

21 Q And so it looks like he had an SKS
22 semiautomatic rifle; and according to the news report, we
23 don't know what type of magazines were used.

24 A (Views document.)

25 Q And so my question is this: Do we know --

1 in with a musket, a front loading musket, and reload it
2 and shoot it four times in 15 minutes; right?

3 A Yes.

4 Q And so if you were in this office and I walked
5 in with a front-loading musket and I shot the first
6 person, would you wait around or would you run?

7 A I would run.

8 Q And so if I walked in with a Tec-9 with
9 52-round magazine, do you think that your chances would
10 be better or worse than if I ran in -- walked in with a
11 musket?

12 A Worse.

13 MR. COLIN: Foundation.

14 BY MR. GROVE:

15 Q Do we have any other incidents in which we know
16 what the actual rate of fire during the active shooting
17 portion was?

18 A Yes. In these incidents where they have both
19 the span of time in which shooting occurred, which I
20 guess I would refer to as the active shooting period and
21 where they showed the number of rounds fired.

22 Q Let's talk about Columbine. That might be a
23 good way to start this. And that's going to be at
24 page 18.

25 A (Views document.)

1 break this thing down into 30-second chunks.

2 Do we know during any particular 30-second or
3 one-minute chunk how many shots were fired during that
4 period?

5 A Not unless the entire span of time was 30
6 seconds or one minute or whatever.

7 Q And here it was eight to 15 minutes?

8 A Right. So, in this case, we wouldn't know for
9 any one minute or 30-second span what the rate of fire
10 was.

11 Q So it's possible, based on this report that you
12 reviewed, that the ex-employee walked in, shot four
13 people in 15 seconds, went into the bathroom until the
14 police came and then shot himself 15 minutes later?

15 A Yes, we might speculate that; but it is only
16 speculation. It's not really evidence or solid
17 information. And in my view, what really matters is the
18 average.

19 The average is much more important because it
20 basically conveys how rapidly the shooter had to shoot
21 in order to kill as many or injure as many people as he
22 did. How often he fired in any 10- or 30-second
23 interval is relatively minor.

24 Q I guess I'm not sure I understand that because
25 if -- I mean, if I walk in and I've got -- I could walk

1 Q So let's mark this.
2 (Exhibit No. 8 was marked for
3 identification.)

4 BY MR. GROVE:

5 Q Have you seen this document before?

6 A Yes.

7 Q Do you recognize the picture on the first page?

8 A Yes.

9 Q What is that picture?

10 A It's a picture of the two shooters in the
11 Columbine High School shootings.

12 Q Do you recognize the weapon that the shooter on
13 the right of the picture is holding?

14 A It looks in general like a Tec-9.

15 Q And is that an extended magazine?

16 A Yes, I believe it is; although, it's hard to
17 say exactly how extended. It might be in the vicinity of
18 15 to 20 rounds, maybe, hard to tell.

19 Q If I told you it was 32, would you have any
20 reason to disagree with that?

21 A Well, that one doesn't look like it's 32. It
22 doesn't look long enough for that, but he may have had
23 multiple magazines and, in fact, probably did. But that
24 one doesn't look like it's 32. Could be. I mean, you
25 know, it's hard to tell.

1 Q Would you agree that magazine is likely to hold
 2 more than 15 rounds?
 3 A Probably, yeah.
 4 Q And so on page 18 of Exhibit 1, where you say
 5 capacity of magazines, do you agree or disagree that the
 6 Columbine shooters possessed high capacity magazines
 7 under Colorado's definition?
 8 A Probably, although, it's -- you know, if you're
 9 going to rely on just this videotape evidence, it's not
 10 really very clear. You certainly can't tell what the
 11 capacity is. You could probably say, in all likelihood,
 12 it's over 15 rounds and that's about it. So that's why
 13 that was coded as capacity of magazines unknown. Really
 14 didn't know.
 15 Q We'll get back to that later but, the page is
 16 replete with that sort of evidence.
 17 How did you treat in this study -- because
 18 the vast majority of these I know are the capacity of
 19 magazines is unknown. How did you treat them when you
 20 were doing your analysis?
 21 A Well, the analysis didn't entail -- didn't use
 22 that information at all because it wasn't necessary to
 23 reach the conclusions I reached because it was basically
 24 on the basis of whether they had multiple magazines,
 25 multiple guns or had an opportunity to reload so...

1 difficulty of inferring whether or not it was really
 2 the magazines or gun types that produced the number of
 3 victims rather than just the fact that some people want
 4 to kill and injure a lot more people than other
 5 shooters.
 6 Q It sounds to me, then, like a shooter who wants
 7 to kill and injure a lot of victims would bring a large
 8 capacity magazine with him for that purpose?
 9 A Yes. It would be more likely to do that simply
 10 because it's their belief they can more easily achieve
 11 their goal of hurting a lot of people.
 12 Q And do you believe that that -- withdraw that.
 13 Do you have any reason to disagree with that
 14 conclusion that a mass shooter would reach?
 15 A I'm sorry, I don't understand the question.
 16 Q That's because it was a terrible question.
 17 Do you agree if someone wanted to go and kill
 18 a lot of people that a large capacity magazine would be
 19 a more efficient tool for doing so?
 20 A In that case, I honestly don't know what
 21 efficient would mean. I would believe that, for whatever
 22 reason, a person intending to kill a lot -- or injure a
 23 lot of people would be more likely to bring such a
 24 magazine.
 25 I'm not sure what exactly efficiency would

1 Q So you didn't deem --
 2 A Yeah, it might have turned out to be additional
 3 information I needed, but you can essentially rule out
 4 the significance of large capacity magazines solely on
 5 the basis of those other factors without addressing the
 6 issue of the capacity of the magazines.
 7 Q Do you disagree with Dr. Zacks's conclusion
 8 that there is a correlation between the use of large
 9 capacity magazines in mass shootings and the number of
 10 injuries inflicted?
 11 A I don't have an opinion on that one way or
 12 another, I don't think, although I might have commented
 13 on, you know, his methods about arriving at that
 14 conclusion. But I don't recall expressing an opinion on
 15 that particular issue.
 16 Q Do you generally agree that mass shootings that
 17 involve the use of a high capacity magazine by a mass
 18 shooter result in more injuries, more gunshot wounds
 19 among the victims than mass shooting events that do not
 20 involve the use of high capacity magazines?
 21 A Yes, I think that's true; but it's a function
 22 of people having an intention to kill a lot more people
 23 and, therefore, they bring weapons and magazines that
 24 they believe are consistent with that intention.
 25 And so, again, you're faced with the

1 have to do with it, but just that he would be able to
 2 accomplish it if he could fire more rounds without
 3 reloading. So I suspect that's what he would see as an
 4 advantage.
 5 Q "Efficiency" was probably a bad word.
 6 Do you think you would be more likely to
 7 succeed in your goal of killing a lot of people if you
 8 had a large capacity magazine versus a smaller capacity
 9 magazine?
 10 MR. COLIN: Foundation.
 11 A Well, it turns out -- all I can say on that
 12 that I'm confident about is it turns out it's not
 13 necessary except in the most extraordinarily rare
 14 incidents to have a large capacity magazine in order to
 15 kill or injure large numbers of people.
 16 BY MR. GROVE:
 17 Q And you base that on your conclusion about,
 18 one, having multiple handguns and, two, the length of the
 19 incident?
 20 A Multiple guns of some type.
 21 Q I'm sorry, yeah; and two, the length of the
 22 incident?
 23 A Well, not just those factors but also having
 24 large numbers of magazines independent of whether they
 25 are large or small capacity and also whether or not

1 there's anyone present willing to intervene and stop the
2 shooter because if there's not such a person who was
3 willing and able to intervene and do so, for example,
4 when the shooter is attempting to reload, then, it
5 doesn't matter what the magazine capacity was, so the
6 person can take their time.

7 Q I didn't have time to go through all of these
8 because there were a lot.

9 (Exhibit No. 9 was marked for
10 identification.)

11 BY MR. GROVE:

12 Q This is Exhibit 9.

13 A (Views document.)

14 Q And I'll direct you to page 13, the *New York*
15 *Times* article, that's -- this is the police report from
16 that incident.

17 Have you reviewed this report as part of your
18 analysis in this case?

19 A So you're referring to the gunman kills two and
20 hurts 19 on Air Force base --

21 Q Correct.

22 A -- case?

23 And did I review the sheriff's department
24 report? No, I did not.

25 Q And so we say -- the report says that an

1 it modify my conclusions, I can't say because, obviously,
2 I haven't seen this kind of information. And so I don't
3 know whether it would.

4 By the way, I should point out, on my
5 particular synopsis on that incident, if you read the
6 notes, it does mention the shooter purchasing a
7 70-round magazine. It just doesn't establish that that
8 was the one he was using in the shooting. So it's kind
9 of partial information that...

10 Q Would you agree that the police report
11 established that it was a 75-round drum magazine that was
12 used?

13 A I have no reason to doubt that. Other than the
14 fact that, you know, another news report said it was 70
15 rounds rather than 75. But between the two sources, I
16 would be more inclined to believe the sheriff's
17 department report.

18 Q That was my question. Thank you. I feel your
19 pain on sourcing some of this stuff, by the way.

20 (Exhibit No. 10 was marked for
21 identification.)

22 BY MR. GROVE:

23 Q So this is the North Hollywood bank robbery
24 shootout. It's referenced at page 14 to the top of
25 page 15 of your report.

1 AK-style rifle was used and that the capacity of the
2 magazine was unknown in that case; correct?

3 A In my summary?

4 Q Yes.

5 A Yeah.

6 Q And I'm on page -- this is page 2 of the
7 report. It's the first page with text on it. Fourth and
8 fifth line down, it says: Mellberg was armed with a
9 Norinco Mac 90 7.62 X 39 caliber semiautomatic rifle, and
10 the rifle had attached to it a 75-round drum magazine.
11 That's not something that you analyzed or even had
12 available to you; correct?

13 A Yeah. If it wasn't in the news media account,
14 then we wouldn't know it.

15 Q And you weren't able to find this report on the
16 Internet?

17 A No. Well, I shouldn't say we weren't able to.
18 We made no effort to.

19 Q Why didn't you make an effort to?

20 A We didn't believe that it was necessary. And
21 believe me, we were under a pressure of time, so that
22 would have also entailed additional time.

23 Q Did you think the information in this report
24 would have been useful to your conclusions in this case?

25 A Well, it would be useful, but if you mean would

1 A (Views document.)

2 Q And here again, it says: The capacity of the
3 magazines were unknown. If we look at page -- these
4 don't have page numbers on it. The fourth page that
5 says: Aftermath and controversy in bold.

6 A (Views document.)

7 MR. COLIN: Maybe I'm missing something.
8 Is this the reference that you're talking
9 about?

10 MR. GROVE: Yeah, it's under the bottom of
11 page 14 and the top of page 15.

12 MR. COLIN: Well, then, I'll object to the
13 form of the question. That inaccurately states.

14 BY MR. GROVE:

15 Q So the title is five gunfights that change law
16 enforcement. And I'm on -- I'm now looking at Exhibit 10
17 and I'm trying to compare these two.

18 So on Exhibit 1 at the bottom of page 14, it
19 says: Capacity of magazines unknown; correct?

20 MR. COLIN: Well, I'll object to the form.

21 Part of what it says.

22 A It says that the shooters were in possession of
23 at least 3,300 rounds of ammunition in both box and drum
24 magazines. And so unless they had an enormous number of
25 magazines, it sort of does imply the magazines they had

1 were large capacity. But it doesn't actually nail it
2 down and certainly doesn't nail down exactly how large
3 the capacities were.

4 BY MR. GROVE:

5 Q So let's look at Exhibit 10, again. And we're
6 on page 4. This says: Aftermath and controversy. And
7 it says that: The shooters had an AR-15 converted to
8 fire automatically with two 100-round beta magazines, a
9 semiautomatic HKA-91 rifle with several 30-round
10 magazines and then a Beretta that we don't know the
11 capacity for and then three different AK-47s that were
12 fully automatic with several 75- to 100-round drum
13 magazines as well as some more 30-round box magazines.

14 So would you agree that the capacity of the
15 magazines in this situation was unknown?

16 A It was unknown on the basis of the news report.
17 Known on the basis of the Wikipedia article.

18 Q Do you have any reason to doubt this Wikipedia
19 article?

20 A Yeah, plenty. Not this one in particular, just
21 the fact that it's Wikipedia, which is frequently wrong.
22 I wouldn't rely on Wikipedia unless I absolutely had
23 nothing else to rely on.

24 Q Do you have any reason to believe that the two
25 shooters in the North Hollywood shootout did not have

1 target, basically.

2 Q Let's go back to Exhibit 8.

3 And I just want to go through these and
4 compare what we have in Exhibit 8 with data that you
5 relied on. It's a little bit hard to match some of
6 these up, but I think we can do it for most of them.

7 So your start in 1994, and actually I do want
8 to ask about this Long Island Railroad shooting while
9 we're on the topic. What do you know about that
10 shooting?

11 A A guy named Colin Ferguson had a 9-millimeter
12 semiautomatic pistol and multiple magazines. It was --
13 it occurred on a Long Island commuter train.

14 He started shooting, emptied his first
15 magazine, quickly changed another magazine without any
16 bystanders interfering with him, then according to some
17 eyewitnesses, he changed into a third magazine.

18 Others say no, he only switched into a second
19 one. And then at one point or another, according to
20 some eyewitnesses, he was trying to hand load a
21 magazine and that's when bystanders jumped him and
22 stopped the shooting.

23 Q So he was tackled or somehow interfered with as
24 he was changing magazines?

25 A Well, not exactly. Apparently, at least

1 magazines that held more than 15 rounds?

2 A Not exactly except, as I say, I wouldn't rely
3 on Wikipedia because anybody can contribute to Wikipedia,
4 whether they know what they are talking about or not and
5 so it's not a good source to rely on, whereas
6 professional journalists have more of a commitment to
7 having a sound foundation for what they put into their
8 accounts, the news account.

9 And so I have that general reason to doubt
10 it, but not this particular fact any more than any
11 other alleged fact.

12 Q Do you think it's realistic to assume that
13 these shooters would have equipped a fully automatic
14 AK-47 with a magazine that held 15 or fewer rounds?

15 A Please say again.

16 Q If you had a fully automatic AK-47, one that
17 had been altered to do that, would you have equipped with
18 a magazine that held 15 or fewer rounds?

19 A No.

20 Q Why not?

21 A Because a fully automatic weapon will fire
22 anywhere from 800 to 1,200 rounds a minute, which means
23 you would have expended 15 rounds in like a second.

24 So, you know, it's -- a second's worth of
25 firing would be -- would allow you to shoot once at one

1 according to some eyewitnesses, he had used up his
2 magazines and now he was trying to hand reload one of
3 them.

4 So you wouldn't call it changing magazines
5 exactly; but, you know, it's apparently he had run out
6 of loaded magazines and so the only way he could
7 continue shooting people was to attempt to hand load
8 the rounds into a magazine.

9 Q And at the point that he had run out of
10 bullets, someone was able to interfere?

11 A Well, at the time he had run out of loaded
12 magazines. He still had cartridges, the ones he was
13 trying to reload into an expended magazine but...

14 Q Did he -- was he finished or did he intend to
15 continue shooting people?

16 A It looked like he was intending to shoot some
17 more people.

18 Q Okay. So we covered the Fairchild Air Force
19 base. That's a *New York Times* article on page 13 that's
20 referenced.

21 And then these don't all match up,
22 unfortunately.

23 It's interesting how -- just shows you some
24 of the unreliability of the media sources that not
25 everybody can agree what is a mass shooting and what is

1 not. It's just an editorial comment.

2 Let's go to page 16 of your report and then
3 we're going to compare it to the middle of page 4 on
4 Exhibit 8, which is the Caltrans maintenance yard.

5 So the page 16 on Exhibit 1 is the *New York*
6 *Times* article. It says: Dismissed worker kills four
7 and then is slain.

8 This is the Caltrans maintenance yard
9 shooting; correct?

10 A Yes.

11 Q And your report indicates that the capacity of
12 the magazines was unknown. And the Violence Policy
13 Center report indicates that the shooter had five
14 30-round magazines.

15 Do you have any reason to dispute that?

16 A No. They presumably were using additional
17 sources beyond the ones that my assistant was using.

18 Q And then you don't have in this, the next one
19 up the page, on Exhibit 8 on page 4, which is the
20 Connecticut State Lottery headquarters, as best I can
21 tell.

22 A What page was that?

23 Q I'm still on the same page, which is page 4 of
24 Exhibit 8, just above the Caltrans maintenance yard
25 shooting?

1 A Well, they don't report their sources, so I
2 never quite know why they said what they said. I don't
3 know for a fact that it was the *New York Times* that was
4 wrong and Violence Policy Center was right.

5 Evidently Violence Policy Center used some
6 other source of information, but they don't state what
7 it is.

8 Q Which do you think he had, a 30 or a 15?

9 A Well, I'd rather rely on a source that I know.

10 In this case, it's the *New York Times*. That
11 doesn't make them infallible. They may be the
12 newspaper of record; they can make mistakes too.

13 But in the case of the Violence Policy
14 Center, you don't have any source cited at all.
15 There's no way to tell where that 15-round magazine
16 claim came from.

17 Q Let's look at Thurston High School, which is
18 the next one up the page. This is the Springfield,
19 Oregon shooting. And I think that this is the one that
20 you mentioned that there actually was interference by a
21 bystander --

22 A Yes.

23 Q -- at reloading. Tell me what you know about
24 that incident.

25 A Actually, there's eyewitness conflict on this

1 A Right.

2 Q It's the Connecticut State Lottery
3 Headquarters.

4 A Okay.

5 Q Is that one you took into account?

6 A Let's see. No, because it's not a mass
7 shooting, according to my definition.

8 Q Oh, because there were only five dead?

9 A Well, in fact, four because we weren't counting
10 the shooter. So it's really not even borderline. It's
11 four rather than seven plus.

12 Q Okay. Move on.

13 So Westside Middle School, Jonesboro,
14 Arkansas. Again, we're on page 4 of the Violence
15 Policy Center exhibit.

16 Is that one that made it into here, into your
17 expert report?

18 A Yes. It would be on page 17 of my report,
19 starting out *New York Times* from Wild Talk to Friendship.

20 Q Okay.

21 A And it's dated March 24th. The incident
22 occurred March 24th.

23 Q Here you do have a 30-round capacity magazine;
24 although, interestingly the Violence Policy Center report
25 says 15.

1 one as well, but, you know, what some accounts say is
2 he's firing the 50-round magazine out of a rifle, a
3 .22 caliber storm Ruger rifle, semiautomatic rifle,
4 expends that magazine, and according to some people, he
5 was either attempting to reload or he was just switching
6 guns and firing another shot. And then he got tackled by
7 two brothers. And then some other individuals also
8 joined in once the first two had done so, and they
9 stopped him from firing.

10 Q Would you agree that changing guns, you have to
11 pause in order to change guns?

12 MR. COLIN: Foundation.

13 A Very, very briefly. So briefly that I couldn't
14 imagine that would be a reason why somebody would in that
15 instant decide that yes, I'm willing to tackle them.

16 These guys were willing to tackle him, at
17 least according to some eyewitness accounts, even
18 though he was still firing. So some versions of it, he
19 was beginning to shoot with another gun.

20 So these were very, very unusual bystanders
21 in that they may not -- based on some eyewitness
22 accounts, they may not have even had to wait for the
23 shooter attempting to reload. And, in fact, I think
24 one of the people who tackled him, the first one,
25 actually had already been shot.

1 So it was even more extraordinary. He was a
2 wounded individual who was willing to attack a shooter
3 who either was attempting to reload or was just
4 continuing to fire with a second gun.

5 Q Okay. So we're on page 18 of Exhibit 1 now.

6 Three are killed and five hurt in shootout in
7 Utah City. I haven't been able to find anything about
8 this one.

9 Do you remember any details of this shooting?

10 A The Utah City one we're talking about, on page
11 18?

12 Q Yes.

13 A Not really. This was -- as mass shootings go,
14 this was not a particularly celebrated one or well
15 covered in the media. So no, I don't recall much of
16 that.

17 In fact, it's somewhat surprising that that
18 one even made it into the *New York Times* because
19 normally they wouldn't cover incidents with three
20 killed unless it was a local story.

21 Q Let's move on to page 24 of your report.

22 A (Views document.)

23 Q So you've got -- I'm at Mass Shootings in 2004,
24 which is the Wisconsin hunting camp shooting.

25 And your sources say ten rounds and mine,

1 A I don't know.

2 Q Does Wisconsin have limits on the number of
3 rounds the hunter can carry?

4 A I don't know.

5 Q So would it be fair to say that -- I'm not
6 going to go through the rest of these.

7 Would it be fair to say that, in your view,
8 the magazine capacity was not relevant to the analysis
9 that you were doing here?

10 A Are you referring to this particular case
11 or...?

12 Q In Exhibit 1, the analysis that you did that
13 underlies your conclusion 2, you did not -- you didn't
14 take into consideration magazine capacity in reaching the
15 conclusion about what mass shooters need?

16 A Well, I took it into account in the sense that
17 I concluded that it was irrelevant --

18 Q Well, let's talk about --

19 A -- to how many people got killed or injured.

20 Q Let's talk about the Aurora Theater shooting.
21 That's summarized at page 38 of your report;
22 what do you know about that event?

23 A Well, there was a single shooter who entered a
24 theater with three guns. He had a semiautomatic rifle, a
25 semiautomatic handgun and a tactical shotgun. And he

1 which is the Violence Policy Center report, says a
2 20-round magazine on the SKS assault rifle.

3 Do you have any reason to doubt this was a 20
4 round instead of, in fact --

5 A Well, again, my response would be the same as
6 in the previous case where there was a conflict. I don't
7 know what the sources were for the Violence Policy
8 Center, where at least I know the sources for the media
9 accounts. And so I would have a generic doubt about
10 unsourced claims, know more for this than the other; but
11 the point is the Violence Policy Center just didn't cite
12 sources so.

13 Q So on page 25, your note says: Some accounts
14 claim that the shooter had a 20-round magazine, however,
15 the AP reports states: The prosecutors displayed a
16 10-round magazine in court and claimed that he'd shot at
17 least 20 rounds.

18 A Right. And so what may account for this
19 discrepancy is that the Violence Policy Center relied on
20 one of those accounts that mentioned a 20-round magazine,
21 but I have no reason to doubt AP would be inaccurate
22 about what prosecutors showed as the shooter's magazine
23 in court.

24 Q Are SKS rifles often equipped with 10-round
25 magazines?

1 fired very large numbers of rounds; although, in this
2 case, not known exactly how many. It's just that,
3 universally, people said large numbers of rounds.

4 The shooting lasted roughly six minutes, and
5 he ended up killing 12 people and wounding 58.

6 Q So let's go back to the -- let's go back to
7 this idea of time and the activity of a mass shooter
8 during the time span of an incident.

9 This estimates that the time from start to
10 end was six minutes; is that right?

11 A Yes. And start to end of the shooting.

12 Q Right. And so in your analysis, let's say the
13 shooter fired 100 rounds. That makes it easy to divide.

14 Does that mean that under your analysis, you
15 would assume that the shooter fired 15 and a half
16 rounds per minute during that six minute --

17 A That would be the average rate of fire, yes.

18 Q And is that the reason -- and it's pretty easy
19 to shoot 15 1/2 rounds a minute; right?

20 A Yes.

21 Q And so, in your view, did the fact that the
22 shooter in that case had a 100-round drum magazine make
23 any difference in the number of people that he was able
24 to shoot?

25 A No, because in this case, no one was willing to

1 stop him regardless of when he ran out of ammunition and
2 had to change magazines.

3 Q Do you know if anybody was able to escape the
4 theater?

5 A Almost certainly, yes, because while 70 (sic)
6 were killed, there were a lot more people in the theater.
7 So there must have been many who escaped the theater.

8 Q And do you think it's possible that anybody
9 could have escaped while he was changing magazines?

10 MR. COLIN: Foundation, speculation.

11 A I don't know. I just don't know one way or
12 another. There wasn't that kind of detail provided in
13 media accounts.

14 BY MR. GROVE:

15 Q If the shooter had walked in with -- he had an
16 AR-15 -- actually, he had a Smith and Wesson M&P -- but
17 if he had started shooting that and he had a 15-round
18 magazine versus the 100-round magazine that he did have,
19 do you think more or fewer people would have been shot?

20 A It wouldn't have made any difference. Best
21 judgment is it wouldn't have made any difference because
22 this particular individual had both additional guns and
23 additional magazines.

24 Q And you base that on your review of the media
25 report?

1 The shooter in that particular case had four
2 magazines with him, and the media accounts did say what
3 the capacity of the magazines were. Two would be
4 defined under Colorado law as large capacity because
5 they had 33 rounds, and two would not because they had
6 15 rounds.

7 Q Which ones did he use?

8 A Well, witness accounts differed on that. So
9 according to some witness accounts, he had used as many
10 as three of the magazines and then on the fourth one, it
11 jammed. A spring failed, apparently, so the magazine
12 wouldn't feed rounds anymore.

13 And there's differing eyewitness accounts as
14 to what he did in reaction to that. Some say he was
15 still attempting to make the gun work -- make the
16 magazine work and others say he responded to that by
17 trying to leave the scene. And at that point, he was
18 tackled.

19 So he was either tackled while he was
20 attempting to make the magazine function or he was
21 tackled while he was already finished shooting and
22 leaving the scene.

23 Q This says: Time from start to end, five
24 minutes. So we know that 19 people were shot; correct?

25 A Yes.

1 A That's correct.

2 Q Any other sources?

3 A No.

4 Q And you don't know anything about the actual
5 rate of fire aside from an estimate, aside from dividing
6 the number of bullets by the total time; is that correct?

7 A Right. And in this case, we don't really even
8 know the number of rounds fired. So in this case, we
9 don't really know rate of fire.

10 You can say what it was at minimum because
11 you can -- just to make the simplifying assumption that
12 each of the 70 individuals was shot with one round in
13 which case there were at least 70 rounds fired, but
14 whether there were additional rounds above and beyond
15 that, we don't know. And the media accounts, in any
16 case, didn't provide that additional information.

17 Q What do you know about Tucson in 2000 -- was it
18 late 2011?

19 A (Views document.)

20 Q Page 35.

21 A That's best known as the incident in which
22 Congresswoman Gabrielle Giffords was shot. She was shot
23 nonfatally, but the event involved six people being
24 killed and 13 wounded nonfatally including Congresswoman
25 Giffords.

1 Q Do we know that -- where does the five-minute
2 figure come from? How long -- do we know from news
3 reports?

4 A Almost always the news reports base it on
5 eyewitness accounts and sometimes the eyewitness
6 accounts, even they conflict with one another.

7 Sometimes they're getting -- the news media
8 accounts are getting it indirectly from the police who,
9 in turn, got it from eyewitness accounts except for the
10 incidents where there were law enforcement officers who
11 happened to be present from the beginning to the end.

12 And I have no reason to believe that was the
13 case here. So, as usual, you've got an eyewitness
14 estimate, basically.

15 Q My understanding of this shooting was that
16 basically the shooter walked up to the front of the
17 line -- and there was a line waiting to see the
18 congresswoman -- and that he walked down the line firing
19 at people; do you find -- is that consistent with what
20 your understanding is?

21 A Except for the last part. I'm not sure about
22 the last part, whether he was firing as he went down the
23 line or he had gotten to the end of the line and then
24 started firing. That, I don't recall.

25 Q But you would agree that the victims were lined

1 up?

2 A Certainly, some of them were. I don't know
3 that all of them were waiting to, you know, meet the
4 congresswoman.

5 Q And this was in an outdoor setting?

6 A Yes.

7 Q Do you find it plausible that it took five
8 minutes in order to expend enough bullets to kill -- or
9 to kill or wound 19 people?

10 A It's perfectly plausible since many other mass
11 shootings with similar number of victims took similar
12 amounts of time. In effect, you know, the individual who
13 is the shooter is in control of how fast he wants to
14 fire. And in this case, yes, he might have fired for
15 five minutes.

16 Q Do you think --

17 A But as I say, all of these time estimates have
18 to be taken with a big grain salt because they depend on
19 eyewitnesses who were in a terrified frame of mind in
20 many cases. And there's conflict even between
21 eyewitnesses.

22 So each of them may be unreliable and those
23 unreliable accounts even can conflict with one another.
24 And so basically we're just going with what we have of
25 however much reliability it may have.

1 many rounds in 85 seconds with a magazine that held 15 or
2 fewer rounds?

3 A Easily.

4 Q Do you know of any mass shootings in which
5 that's been done?

6 A I couldn't tell you offhand. I can just tell
7 you from shooting experience that it's easy to accurately
8 fire that many rounds in 85 seconds because that's over
9 one second a round, which in shooting, is an enormous
10 amount of time.

11 Q It's easy to aim if you are shooting that
12 rapidly?

13 A It's less easy but sufficiently easy,
14 especially at the close ranges that most mass shootings
15 occur at. It's not at all difficult to accurately shoot
16 60 rounds in 85 seconds.

17 Q So it's your position -- I just want to be
18 clear -- that the size of the magazine did not make a
19 difference in the Tucson shooting?

20 A Yes, accord -- it -- depending on which
21 eyewitness accounts you believe, because there's conflict
22 on the issue of whether or not the shooting was disrupted
23 by bystanders.

24 So if you believe the *New York Times* account,
25 which said that the shooter was already attempting to

1 Q In an outdoor setting, do you think it's
2 plausible that 13 -- or 19 people would have stood around
3 long enough in order for him to shoot all of them?

4 A Some people are paralyzed by fear, and so yeah,
5 it's possible. And again, in other outdoor shootings,
6 apparently the shootings did last that long and so there
7 must have been victims still remaining for the shooter to
8 shoot at.

9 Q Which ones are you talking about?

10 A I couldn't tell you offhand, but there are
11 others that occurred in outdoor locations. It's possible
12 the one just above it might be an outdoor location, the
13 one, the Hialeah one.

14 Q Let's look at page 36.

15 Actually, do know the time for this one. And
16 I'm sorry, I'm on the second one, which is CNN gunman
17 kills three, wounds others at Nevada IHOP.

18 So we know from this report that the shooter
19 used large capacity magazines under the Colorado
20 definition; correct?

21 A Yes.

22 Q And that he fired 60-plus shots in 85 seconds;
23 is that right?

24 A Yes.

25 Q Would it be realistic for someone to fire that

1 leave the scene at the point where he was tackled by
2 bystanders, then no, the large capacity magazine didn't
3 make a difference.

4 On the other hand, if he was trying to reload
5 and that's when -- and he intended to shoot, continued
6 shooting and that's when bystanders tackled him, then
7 it's possible a large capacity magazine would have made
8 a difference.

9 So that's an ambiguous case along with the
10 Kinkel Oregon case, where it's a lot clearer it did
11 make a difference.

12 Q And do you know whether the size of the
13 magazine affected the rate of fire in Tucson?

14 A I have no idea one way or the another on that.

15 Q And it's your position that the size of the
16 magazine, the 100-round drum that the shooter used in
17 Aurora, didn't make a difference in the number of people
18 that were shot?

19 A That's correct, yes.

20 Q And that the 100-round drum, use of the
21 100-round drum, did not affect rate of fire?

22 A Well, it could have affected the rate of fire
23 while he was firing that 100 rounds because he didn't
24 have to reload as he would have with a smaller capacity
25 magazine. But it didn't make a difference to how many

1 people were killed.

2 That was just a function of when he decided
3 to stop shooting because nobody caused him to stop. He
4 didn't run out of ammunition. He simply, for whatever
5 reason, was satisfied with the number of rounds he had
6 fired and the number of people he had hurt.

7 Q You're not aware of whether the theater was
8 empty by the time he stopped shooting?

9 A I'm not aware one way or the other on that.

10 Q Your report indicates that the time from start
11 to end was six minutes. Do you think -- and I'm talking
12 about Aurora again.

13 Is it realistic that a theater could empty in
14 six minutes in that kind of situation?

15 A It's possible. What happens when people try to
16 exit, though, is the exits get jammed. There's a limited
17 number of exits, and people are crowding through and some
18 people get trampled and some people fall down.

19 And so it's not a matter of like how many
20 people could exit during a, you know, fire exercise or
21 fire alarm exercise because people are panicked and
22 other things can happen that prevent a rapid exit, but
23 is it possible. Certainly, it's possible.

24 Q Do you know if there was a pile-up at the door?

25 A I don't know one way or the other.

1 A Not based on these news accounts, no.

2 Q So we don't know anything about bursts that he
3 may have engaged in?

4 A No. In my view, that would be less relevant to
5 the event of whether -- to the issue of whether a large
6 capacity magazine would make any difference.

7 The point is how much time did he have an
8 opportunity to fire as many rounds as he fired and the
9 case -- the fact in virtually every single case is that
10 the shooters had ample time, even without large
11 capacity magazines, to fire as many rounds as they did.

12 Q Are you aware of any -- of whether any victims
13 or any children in the classroom or classrooms that were
14 attacked were able to escape while he was changing
15 magazines?

16 A Can I back up just a little bit to complete my
17 answer?

18 Q Sure.

19 A About these time spans, these are the spans
20 where the news media accounts said they were actually
21 shooting, but it's not the time span when they could have
22 shot.

23 The time span when they could have shot, when
24 they had an opportunity to continue firing, if they
25 chose to do so, could be much longer than that so --

1 Q Do you know anything about the layout of the
2 Aurora theater?

3 A No, except that I assume it's like other
4 theaters, but I don't know for sure.

5 Q Are there fire codes that allow for quick exits
6 from theaters generally?

7 A Certainly fire codes would mandate a certain
8 number of exits, given the capacity of the room.

9 Q Do you have any reason to believe that the
10 Aurora Theater was not in compliance with those codes?

11 A I have no reason to believe one thing or
12 another on that issue.

13 Q What about Newtown? What do you know about
14 that shooting?

15 A (View document.)

16 Q Page 39 of your report.

17 A A single shooter used three guns and was
18 carrying at least 12 magazines and at least one of -- at
19 least ten of them were 30-round magazines, and there were
20 others of unknown capacity. He fired at least 154 shots
21 in approximately a five-minute span, and he ended up
22 killing 26 people besides his mother, which he had killed
23 in a separate incident.

24 Q Do we know how much -- what his rate of fire
25 aside from dividing 154 into five minutes was?

1 and that may well actually be the relevant issue.

2 If you had a very long time to continue
3 shooting, then the possession of a large capacity
4 magazine would be even less relevant or, likewise, the
5 possession of a rapidly firing gun would be even less
6 relevant because you had more time when you could have
7 been shooting.

8 So I want to stress: These are only the
9 times they actually did shoot.

10 Q And how do we know that?

11 A How do we know the time spans when they were
12 shooting?

13 Q Yes.

14 A Well, we know it usually from eyewitness
15 accounts, which are, in turn, transmitted to police which
16 are, in turn, transmitted to news media outlets.

17 Q And do we know -- and my question is more about
18 the rate of fire. So we know that the shooter in the
19 Newtown shooting fired, from this -- and I'm on page 39
20 of Exhibit 1 -- 154 shots in approximately five minutes.

21 And so your assumption from this is that he
22 fired 30 rounds per minute during that time; right?

23 A Right, about two seconds per round. And news
24 media accounts indicate it was at very close range. He
25 was shooting children who were no more than a few feet

1 away from him.

2 Q And so when you do this analysis, do you assume
3 that that was a steady rate of fire over the course of
4 that five minute?

5 A Don't make any assumption about how steady it
6 was at all because I think that's essentially irrelevant
7 to the issue of how many people will be hurt.

8 Q Do you think it's realistic to have a steady
9 rate of fire in a situation like this?

10 A Certainly realistic to expect it to be
11 possible, but I have no basis one way or another for
12 knowing in this particular incident how steady the fire
13 was -- rate of fire was.

14 Q Would it would surprise you to hear that --
15 withdrawn.

16 So just to be clear, your conclusion here is
17 that a magazine with a capacity of over 15 rounds
18 arguably affected the number of persons killed or
19 wounded in just one of the 58 mass shootings occurring
20 in the U.S. from 1994 to 2013?

21 A That's correct, and the Kip Kinkel incident in
22 Oregon.

23 Q Let's move on to conclusion 3.

24 You say that: Limits on magazine capacity
25 are likely to impair the ability of citizens to engage

1 in lawful self-defense in those crime incidents
2 necessitating that the victim fire many rounds in order
3 to stop the aggressive actions of offenders.

4 Are you aware, as you sit here today, of any
5 incident in which a victim has had to fire 15 or more
6 rounds in order to stop the aggressive actions of
7 offenders?

8 A No.

9 Q And let me clarify that. That would be
10 civilian. I know there are plenty of times with a SWAT
11 team. But that would be -- you're not aware of any
12 incident in which a civilian has had to fire 15 or more
13 rounds?

14 A I'm not aware of whether there are or are not
15 any given number of those incidents.

16 Q As you sit here today, you can't name any?

17 A That's correct.

18 Q We talked earlier about whether ordinary
19 everyday crimes are typically crimes of opportunity. And
20 we know the mass shootings are well thought out,
21 typically, or at least planned for.

22 Your second sentence here, you say: In
23 contrast to mass shooters, victims of crimes generally
24 cannot plan for or anticipate crimes to occur at a
25 specific time and place; why is that?

1 A Because they're not in control of the event.

2 And the aggressor is the person who is in
3 control of the event. They determine that a crime will
4 be attempted in a particular time and place and the
5 victim is not alerted in advance so that they can make
6 preparations for it.

7 Q So is it your position that it's not possible
8 to prepare for a home invasion?

9 A No, you can prepare for it. You just can't
10 prepare for particular times and places, for particular
11 incidents to occur at a particular time. So your
12 preparations have to be generic, in a way.

13 You know, you just have to do what you can
14 that's feasible in planning for a wide variety of
15 possible victimization events. But you can't plan as a
16 mass shooter plans, which is planning to commit a
17 particular crime at a particular place at a particular
18 time.

19 Q You can prepare to defend yourself in a
20 particular place, though; correct?

21 A Yes, in a very generic way.

22 But, for example, you know, there are very
23 few people who would be willing to routinely carry
24 three guns for self protection; in fact, I've never
25 heard of anybody willing to do that. Two maybe and

1 probably much more commonly one, but for victims to
2 carry as many guns routinely -- not in anticipation of
3 a specific event happening at a particular time and
4 place -- but the only way they could prepare would be
5 in a routine, generic way.

6 And it's just highly implausible they would
7 routinely, on a daily basis, be carrying three guns in
8 public places for the purpose of a possible
9 victimization event occurring.

10 Q How about two? Is it common for people to
11 carry a backup gun?

12 A I don't know. I know that's common among
13 police officers, but among civilians, we don't really
14 have any data on it. I suspect it's rare, but I don't
15 know that for a fact.

16 Q Is there anything in Colorado's law that you're
17 aware of that would discourage someone from carrying more
18 than one gun on them?

19 A I'm not aware of it one way or the other.

20 Q Is there anything in Colorado's law that would
21 prevent or prohibit someone from carrying multiple
22 magazines with them?

23 A I'm not aware of it one way or another. I'm
24 not sufficiently familiar with Colorado law.

25 Q Would you agree that the need for self-defense

1 is most acute in the home?

2 A No, I would not.

3 Q So you disagree with Justice Scalia on that?

4 A I have no idea what Justice Scalia said on it,
5 but he's not really qualified to make a judgment. He
6 knows the Constitution, federal law quite well; but he is
7 not expert on crime or self-defense.

8 Q Where is the need for self-defense most acute?

9 A It's probably most acute in public places
10 because that's where the victimization rate is highest.

11 Q What percentage of everyday violence offenders
12 carry multiple guns with them?

13 A I have no idea. I'm not aware of any relevant
14 data sources on that. We only know that about mass
15 shooters because there's a special interest in it and
16 because they're especially heavily covered in the news
17 media. But for ordinary kinds of violence and ordinary
18 kinds of offenders, I'm not aware of any information that
19 bears on that issue.

20 Q So at the top of page 6, you say:

21 Consequently, if a potential victim's one gun or
22 magazine's capacity was limited to 15 or fewer rounds,
23 this means they would be unable to implement the alternative
24 tactics available to criminal aggressors planning to have
25 multiple guns and magazines ready for their use.

1 large numbers of rounds, having the capacity to shoot
2 large numbers of rounds is carrying multiple guns into
3 the situation where they're going to shoot or carrying
4 multiple magazines or both.

5 Q And so earlier, you said that you have no data
6 or no knowledge of what sort of equipment an everyday
7 violent criminal carries with him. So I'm not
8 understanding where the criminal aggressors are actually
9 engaging in these alternative tactics.

10 MR. COLIN: Foundation.

11 A Well, you're referring to the wrong contrast.

12 The contrast here is between mass shooters
13 and ordinary and civilians. And the reason the focus
14 is on mass shooters is because it's mass shootings
15 where a large capacity magazine is most likely to make
16 a difference. And so that's the contrast here, not
17 ordinary criminal aggressors. So you've got to take
18 this in context. It's in the context of opinion No. 2,
19 which was all about mass shooters.

20 BY MR. GROVE:

21 Q So let's broaden the focus a bit and just talk
22 about everyday ordinary violent criminals.

23 I think you agreed earlier that, based on the
24 Reedy and Koper study, there was a correlation between
25 the number of shots discharged in an incident and the

1 I'm not sure how -- can you explain how the
2 second part of that sentence follows from the first?

3 A Well, the substitute that would be -- the
4 possible alternative courses of action to having a single
5 magazine that carried large numbers of rounds would be,
6 for example, carrying either multiple magazines or
7 multiple guns. And yet that's impractical for most
8 people because it's obviously more cumbersome to have
9 multiple guns than just one gun or multiple magazines,
10 rather than just one. It's just not as easy for people
11 to routinely do that.

12 If people were anticipating a particular need
13 for self-defense at a particular time and a particular
14 place, then, of course, they could prepare by carrying
15 multiple guns or multiple magazines; but if they don't
16 know an event is going to occur at a particular time
17 and place that they can plan for, then the only way
18 they could have guns and magazines available is if they
19 were sort of routinely carried without advance
20 knowledge of a particular victimization incident
21 occurring.

22 Q What are the alternative tactics available to
23 criminal aggressors that you are referencing in this
24 sentence?

25 A Well, the alternative tactics for shooting

1 size of the magazine, the capacity of the firearm used;
2 is that right?

3 A (Views document.)

4 Actually, no, I didn't know that. I think I
5 responded to that question before. The response was
6 that Koper only contrasted pistol versus revolver. And
7 so we know, on average, pistols have more rounds; but
8 there was no direct correlation between number of
9 rounds and either number of wounds inflicted or number
10 of victims. So we don't know one way or the other, in
11 other words.

12 Q Let's look at the results. And I'm back on
13 exhibit -- I can't remember what exhibit this was.

14 A It's 6 if you mean Reedy and Koper.

15 Q Yeah. Back on Exhibit 6.

16 And so under the results, it says: More
17 shots were fired in attacks with pistols than attacks
18 with revolvers. And I think we're on the same page,
19 that pistols on average have a higher capacity than
20 revolvers; correct?

21 A Yes.

22 Q And so I guess I'm not clear, taking this out
23 of the mass shooting context, whether this alternative
24 tactics available to criminal aggressors, whether your
25 average everyday violent felon sticks up a liquor store

1 or something like that, takes advantage of these
2 alternative tactics.

3 MR. COLIN: Foundation.

4 A Well, he wouldn't need to. I mean, because
5 he's not planning on shooting large numbers of rounds,
6 unlike a very non-ordinary mass shooter.

7 So he's -- typically wouldn't have any reason
8 to carry either multiple guns or multiple magazines.
9 Because, as I pointed out before, when we're talking
10 about ordinary violence involving ordinary criminals,
11 actually, the most common number of rounds fired in gun
12 crimes is zero because they're usually just assaults in
13 the sense of a threat.

14 And then the most common is one and then the
15 next most common is two, and the average is extremely
16 low, so something in the order of two.

17 BY MR. GROVE:

18 Q Okay.

19 A So why would they need multiple guns or
20 multiple magazines if they're only going to fire zero,
21 one or two rounds?

22 Q So back to the top of page 6 here in Exhibit 1,
23 why does a limitation on magazine capacity mean that an
24 ordinary person who was trying to defend himself would be
25 unable to plan to have multiple guns and magazines ready

1 convenience? What do you mean by unable?

2 A Well, not likely to happen, actually, probably
3 would be a more precise way of saying it, given human
4 nature and people not wanting to carry around 5 pounds of
5 gun or, you know, 3 pounds of ammunition loaded up in
6 magazines.

7 Q But you're not aware of any legal or physical
8 bar to carrying multiple guns and magazines ready for
9 use?

10 A Well, I'm not aware of a legal obstacle, but
11 I'm aware of the physical reality that it would be a lot
12 more difficult to carry multiple guns or multiple
13 magazines. And it would be a physical difficulty because
14 it entails a lot of weight and a lot of bulging in your
15 clothing if you're going to carry them underneath your
16 clothing.

17 Q How much does a sub compact weigh?

18 MR. COLIN: Foundation.

19 A What do you mean by a sub compact?

20 BY MR. GROVE:

21 Q Say, a baby Glock.

22 A I don't know. I mean, I think it's probably in
23 the vicinity of 3 or 4 pounds, but I don't know and more
24 leaded, but I'm guessing. I only know that whatever it
25 is, it's double when you have two of them than when you

1 for use?

2 A Well, because if you have that limitation, then
3 the only way you can be prepared to fire more than 15
4 rounds in self-defense is if you had multiple magazines
5 or multiple guns.

6 And the only way you could do that, given in
7 a situation where you couldn't have anticipated that
8 event occurring at a particular time and place, is if
9 you routinely carried multiple guns and/or multiple
10 magazines.

11 Q And does Colorado's law prohibit you from
12 planning to have multiple guns and magazines ready for
13 use?

14 A I don't know of any of such restriction. The
15 real limitation would be that it's just really difficult,
16 inconvenient. A gun is heavy enough just to carry one
17 around on your person; and magazines are heavy too, the
18 ammunition in them to be precise. The ammunition in the
19 magazines is also very heavy.

20 So to double or even triple that burden is
21 just something very few people would be willing to do.
22 So that's the kind of commonsensical underlying
23 assumption I'm making. I admit it's an assumption, but
24 it seems kind of self-evident.

25 Q So unable to implement is a matter of

1 have one of them and triple when you have three of them
2 rather than one.

3 Q Well, a sub compact weighs less than a full
4 frame handgun; right?

5 A Yes.

6 Q So it wouldn't really be double, would it, if
7 you have one full frame and one sub compact?

8 A Well, no, but I was talking about a different
9 comparison: If you had two compacts versus one, then
10 that's twice as much weight and twice as much bulging in
11 your clothing and so on.

12 Q People do carry backup handguns; correct?

13 MR. COLIN: Foundation.

14 A I know that police officers do. I don't know
15 whether that's common among civilians. I suspect that
16 very likely some do but also suspect that's quite unusual
17 among civilians.

18 BY MR. GROVE:

19 Q And, but that's their choice; correct?

20 MR. COLIN: Foundation.

21 A I don't quite understand the question. In what
22 sense do you mean it's their choice?

23 BY MR. GROVE:

24 Q I'm just hung up on the unable to implement.
25 It seems to me that...?

1 A Oh, I see what you mean.

2 Well, is it a matter of free will, yeah, it's

3 a matter of free will; certainly it's not a matter of

4 being mandated by law or forbidden by law if that's

5 what you are getting at.

6 Q At the end of this section, it says:

7 Supporting evidence: These points are self-evident

8 followed logically from widely-accepted empirical facts,

9 therefore, they do not need further empirical support.

10 What widely accepted empirical facts did you

11 rely on here?

12 A Well, that last sentence, which you haven't

13 addressed in that same paragraph that immediately

14 precedes that assertion is perhaps the most self-evident

15 one because it's true by definition.

16 Persons who are law abiding would be unable

17 to adapt the -- adopt the adaptation of getting an

18 illegal banned large capacity magazine like from out of

19 state or from a criminal source or whatever because --

20 and it's true by definition because if they did so,

21 they wouldn't be law abiding.

22 And the empirical reality would be that

23 people you would characterize as noncriminal do crime

24 less than people you would characterize as criminals.

25 That would certainly be widely accepted and

1 (Brief recess was taken.)

2 (Lunch recess was taken.)

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1 self-evident.

2 Q Does this last sentence refer to more than just

3 the immediately preceding sentence?

4 A Well, the assertion that if I had elaborated,

5 as I have here, on that issue of unable to implement as

6 to what I meant, I think it would have been self-evident

7 to virtually everyone that people would find it harder to

8 carry two or three guns or multiple magazines than

9 carrying just one.

10 And so certainly at the margin, there's bound

11 to be some people who would decide: I'm not willing to

12 do that. And in my personal opinion, it would be lots

13 and lots of people. But it seems indisputable that

14 there would be at least some unwilling to carry two

15 guns or multiple magazines rather than just one.

16 Q How often do gun fights occur among -- in

17 violent crime incidents?

18 A Rarely. Most violent incidents that involve

19 guns involve only one party using the gun. And so it

20 tends to be one sided, whether it's the victim using the

21 gun or the offender using the gun. But only a small

22 fraction of violent -- gun-related violent account --

23 events involve both parties shooting.

24 (Exhibit No. 11 was marked for

25 identification.)

1 CERTIFICATE OF REPORTER

2

3

4

5

6 STATE OF FLORIDA)

7 COUNTY OF LEON)

8

9 I, LISA D. FREEZE, Notary Public, certify

10 that I was authorized to and did stenographically

11 report the proceedings herein, and that the transcript

12 is a true and complete record of my stenographic notes.

13 I further certify that I am not a relative,

14 employee, attorney or counsel of any of the parties,

15 nor am I a relative or employee of any of the parties'

16 attorney or counsel connected with the action, nor am I

17 financially interested in the action.

18 WITNESS my hand and official seal this 5th

19 day of November, 2013.

20

21 *Danielle Freeze*

22 LISA D. FREEZE, CRR, NOTARY PUBLIC

23 2894 REMINGTON GREEN LANE

24 TALLAHASSEE, FL 32308

25 850-878-2221

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