

In The Matter Of:
John B. Cooke, et al. v.
John W. Hickenlooper, etc.

Kevin Davis
October 18, 2013



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1	IN THE UNITED STATES DISTRICT COURT	1	W I T N E S S I N D E X
2	DISTRICT OF COLORADO	2	PAGE
3	JOHN B. COOKE, et al.,	3	CROSS-EXAMINATION
4	Plaintiffs,	4	KEVIN DAVIS
5	-vs-	4	BY MR. LEE
	JUDGE MSK/MJW		4
	CASE NO. 13-CV-1300		
6	JOHN W. HICKENLOOPER, Governor of the State of Colorado,	5	E X H I B I T I N D E X
7	Defendant.	6	EXHIBIT
8	- - -	7	Defendant's Exhibit 1, Davis report
9	10 Deposition of KEVIN DAVIS, taken as if upon cross-examination before Pamela S. Greenfield, a 11 Certified Realtime Reporter, Registered 12 Diplomate Reporter and Notary Public within 13 and for the State of Ohio, at the offices of 14 Mehler & Hagestrom, 50 South Main Street, Suite 15 720, Akron, Ohio, at 8:10 a.m. on Friday, 16 October 18, 2013, pursuant to notice and/or 17 stipulations of counsel, on behalf of the 18 Defendant in this cause.	8	78
19		9	Defendant's Exhibit 2, Hood/Davis e-mail string
20		10	224
21	MEHLER & HAGESTROM Court Reporters	11	Defendant's Exhibit 3, Tactical-Life.com "Lifesaving Backup Guns" article
22		12	229
23	CLEVELAND AKRON 1750 Midland Building 720 Akron Centre 101 West Prospect Avenue 50 South Main Street Cleveland, Ohio 44115 Akron, Ohio 44308	13	Defendant's Exhibit 4, The New York Times, "11 Years of Police Gunfire, in Painstaking Detail" article
24	216.621.4984 330.535.7300	14	231
25	FAX 621.0050 FAX 535.0050	15	Defendant's Exhibit 5, Cerar report
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1	APPEARANCES:	1	KEVIN DAVIS, of lawful age, called by the
2	Marc F. Colin, Esq. Bruno, Colin & Lowe, P.C. 1999 Broadway Suite 3100	2	Defendant for the purpose of cross-examination,
3	Denver, Colorado 80202 (303) 831-1099	3	as provided by the Rules of Civil Procedure,
4	Mcolin@brunolawyers.com,	4	being by me first duly sworn, as hereinafter
5	On behalf of the Plaintiffs;	5	certified, deposed and said as follows:
6		6	CROSS-EXAMINATION OF KEVIN DAVIS
7	John T. Lee, Esq. Assistant Attorney General 1300 Broadway, 10th Floor Denver, Colorado 80203 (720) 508-6000 John.Lee@state.co.us,	7	BY MR. LEE:
8		8	Q. Could you please state your name and spell it for
9		9	the record.
10	On behalf of the Defendant.	10	A. Kevin R. Davis. D-A-V-I-S.
11		11	Q. Good morning, Mr. Davis. Thank you for coming.
12		12	My name is John Lee. I represent Governor -- the
13		13	defendant in this lawsuit, Cooke v. Hickenlooper.
14		14	I'm sure you went over with Mr. Colin some of the
15		15	procedures today, but just so we're on the same
16		16	page, I just want to go over a couple of ground
17		17	rules at the outset.
18		18	As you know, this is going to be my one
19		19	chance to speak to you, and part of the reason
20		20	why we have depositions for experts is just as a
21		21	matter of fairness, it's necessary for both sides
22		22	to understand your opinions as best we can.
23		23	At some point today it might seem possible
24		24	that the answers to my questions are obvious, but
25		25	it's very important to me since it's my one

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<p>1 chance to talk to you to understand your opinions 2 as best I can, so it's my hope that you will 3 assist me in that today.</p> <p>4 A. That's fine.</p> <p>5 Q. As part of that trade-off I want to be fair to 6 you. So if I say something you don't understand 7 or you think is unfair, please let me know.</p> <p>8 A. Will do.</p> <p>9 Q. So the court reporter is recording everything we 10 say today so please try to provide audible 11 answers.</p> <p>12 A. Will do.</p> <p>13 Q. Avoid shaking your head or nodding your head 14 because that's hard for the reporter.</p> <p>15 A. I will.</p> <p>16 Q. I'm going to assume you understood the questions 17 I asked today unless you tell me you don't. Is 18 that fair?</p> <p>19 A. That's fair.</p> <p>20 Q. And you understand that today you are under oath?</p> <p>21 A. I do understand.</p> <p>22 Q. Have you ever testified under oath before?</p> <p>23 A. I have.</p> <p>24 Q. Have you ever given a deposition before?</p> <p>25 A. I have.</p>	<p>1 giving an opinion at trial if you do not disclose 2 it at this deposition?</p> <p>3 A. I do.</p> <p>4 Q. Okay. Great. Mr. Davis, when's the first time 5 that you heard about this case?</p> <p>6 A. I was contacted by plaintiffs' counsel, 7 Mr. Kopel, and he informed me about the basis for 8 the case.</p> <p>9 Q. Do you know when?</p> <p>10 A. I was originally contacted in June of this year.</p> <p>11 Q. What discussion did you have?</p> <p>12 A. Just a background information about the case. I 13 was somewhat familiar with the pending 14 legislation. Mr. Kopel informed me more about 15 the specifics and gave me background information.</p> <p>16 Q. Did you talk to anyone else other than Mr. Kopel?</p> <p>17 A. In June or --</p> <p>18 Q. In June?</p> <p>19 A. No. It was -- originally I was contacted, 20 e-mailed by another trainer, an associate of mine 21 who asked if I would be interested in working on 22 a case. He would refer plaintiffs' counsel to me 23 if I was interested. The specifics of this case 24 weren't mentioned, but he's the one that referred 25 me to Mr. Kopel.</p>
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<p>1 Q. How many times?</p> <p>2 A. More than a dozen.</p> <p>3 Q. During those depositions you understood you were 4 under oath?</p> <p>5 A. I did, yes.</p> <p>6 Q. And did you tell the truth during those 7 depositions?</p> <p>8 A. I did.</p> <p>9 Q. And have you ever testified at trial?</p> <p>10 A. Yes.</p> <p>11 Q. And did you tell the truth in those trials?</p> <p>12 A. Yes.</p> <p>13 Q. Is there anything today that would prevent you 14 from thinking clearly and testifying truthfully 15 today?</p> <p>16 A. No.</p> <p>17 Q. Is there anything that would prevent you from 18 answering my questions?</p> <p>19 A. No.</p> <p>20 Q. Okay. Are you willing today to tell me all of 21 the, at this deposition -- are you willing and 22 able to state all the opinions at this deposition 23 that you believe you will express at trial?</p> <p>24 A. I am.</p> <p>25 Q. And do you realize that you may be prevented from</p>	<p>1 Q. Okay. Who was that trainer?</p> <p>2 A. Guy Rossi.</p> <p>3 Q. When you talked with Mr. Kopel, what made you 4 decide to be part of this case?</p> <p>5 A. Well, I'm a believer in the Second Amendment. I 6 believe I have specific expertise in the area of 7 law enforcement firearms usage, as well civilian 8 self-defense, so I believe I had expertise in the 9 area.</p> <p>10 Q. So after June, what was the next thing you did in 11 this case?</p> <p>12 A. There was a series of e-mails back and forth 13 between plaintiffs' counsel and myself. I also 14 had a telephonic meeting with other attorneys, 15 in -- I don't know how many, in on the 16 conversation. Basically seeing if they wanted to 17 use me as an expert.</p> <p>18 Q. And were those original e-mails, were those with 19 Mr. Kopel?</p> <p>20 A. Originally, yes.</p> <p>21 Q. And what did those go over?</p> <p>22 A. Well, the basic information. I was to supply a 23 vitae, give him some of my background, and then 24 there was a telephone meeting with Mr. Kopel and 25 then there was another telephone meeting with</p>

1 other attorneys, plaintiffs' counsel involved in 2 the case. 3 Q. Other than the named counsel in this case, have 4 you spoken with anyone else about this case? 5 A. I've spoken with the counsel present today, 6 Mr. Colin, but other than that, I don't believe 7 so. 8 Q. So it's just -- 9 A. Other than family members, I mean, you know. It 10 interrupted -- the telephonic meetings 11 interrupted my vacation, so I had to explain to 12 my wife. 13 Q. So the e-mails and the telephone call with 14 plaintiffs' counsel, these were in July? 15 A. They were in June when I was still on vacation, 16 correct. 17 Q. So no one else other than Mr. Kopel and 18 Mr. Colin? 19 A. I don't believe so. 20 Q. What did you do in this case during June -- or 21 during July? 22 A. I originally, once I was retained by plaintiffs' 23 counsel I began working, researching material 24 about the case and trying to find out more 25 information. So that was more of a research	Page 9 1 Q. Did they ask you to give any specific opinions? 2 A. Yes, written opinions. 3 Q. What were those opinions? 4 A. They are listed or given in the, in written form. 5 Q. Did they ask you to provide any other opinions 6 that are not included in the written report? 7 MR. COLIN: I'm sorry. Are you 8 asking if we provided him his opinions? 9 Q. No. Did they ask you to author any other 10 opinions? 11 MR. COLIN: Thank you. 12 Q. I apologize. 13 MR. COLIN: That's okay. 14 A. I don't believe so. It was just focused on just 15 that subject matter of my written opinion. 16 Q. And how are you using that term, "subject 17 matter," to include what? 18 A. I'm sorry. Could you rephrase? I'm not sure 19 what you're asking. 20 Q. When you say they asked you to offer an opinion 21 on "the subject matter," what are you referring 22 to? 23 A. Well, on the matter of litigation. 24 Q. So just on the lawsuit? 25 A. Well, no, not just on the lawsuit, but
Page 10 1 phase, beginning to understand that they would 2 want a written opinion from me on this case; so 3 that was preparation to write the opinion. 4 Q. Anything else during July? 5 A. It may have been some degree of work on the 6 opinion, but I can't recall how much in July. 7 Q. What kind of things did you do to research during 8 July? 9 A. Well, I, in addition to researching the material 10 that the plaintiffs' counsel provided to me, I 11 did research on the law in Colorado, as well as 12 starting to formulate my opinions and research in 13 terms of firearms usage, firearms encounters and 14 that type of information. 15 Q. So going back to June when you were speaking with 16 Mr. Kopel and Mr. Colin, what did they ask you to 17 do? 18 A. Once again I was, once I was retained, it was: 19 We want you to start working on a written 20 opinion. 21 We'd have conversations about where, you 22 know, my thoughts on the subject matter, what 23 areas that I might explore in terms of a written 24 opinion, but it was more about formulating my 25 strategy for my opinion.	Page 10 1 specifically about why the lawsuit is not in 2 keeping with use of firearms, both law 3 enforcement off-duty encounters, retired law 4 enforcement and civilian firearms encounters. 5 Q. Did they ask you about how the law potentially 6 affected any other topics or issues other than 7 what you just mentioned? 8 A. I don't believe so. I was focused intently on my 9 subject area. 10 Q. What did they provide you with? 11 A. In addition to the link to the Colorado gun case 12 and some of the filings there, background 13 information I've also received on, throughout the 14 case on requests for dismissal and other 15 litigation back and forth from the Colorado 16 Attorney General's office filings, as well as 17 plaintiffs' filings on the case throughout that. 18 Q. So have you read and reviewed all of plaintiffs' 19 filings in this case to date? 20 A. I don't know if I've gotten all of them, but I've 21 read everything that was submitted to me at this 22 point. 23 Q. Okay. We'll get into that in more detail later. 24 So did you review the legislative history for the House Bill?

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<p>1 A. I don't believe I did. I believe I read or was 2 provided the, the law and that's about it from 3 Colorado.</p> <p>4 Q. Okay. And when you say "the law," you mean House 5 Bill 1224?</p> <p>6 A. And 1229 both, yes.</p> <p>7 Q. Were you ever asked to offer any opinions on 8 House Bill 1229?</p> <p>9 A. In terms of the background investigations, no. 10 My focus was on the physical aspects of firearms 11 and self-defense.</p> <p>12 Q. So just so we're on the same page, so all, the 13 only materials that you reviewed were House Bill 14 1224, House Bill 1229, the Attorney General's 15 technical guidance, the additional technical 16 guidance, and most of the -- or most or all of 17 the pleadings that plaintiffs had filed; is that 18 correct?</p> <p>19 A. That's correct.</p> <p>20 Q. And, again, just so we're clear, so you have not, 21 other than the opinions in your written report, 22 you've reached no other opinions in this case?</p> <p>23 A. I was not asked to and did not offer any, no.</p> <p>24 Q. Have you been asked to conduct any research in 25 relation to this case?</p>	<p>1 I've been consulted as an expert in both the 2 defense of law enforcement officers and agencies 3 in terms of shootings and the use of firearms.</p> <p>4 Q. Okay. Let's go through some of those 5 consultations.</p> <p>6 So have you ever been consulted on, by 7 agencies on issues other than use of force?</p> <p>8 A. Policy development, defensive tactics, suspect 9 control.</p> <p>10 That's pretty much my subject matter, and 11 SWAT tactics and special weapons and tactics.</p> <p>12 Q. What do you mean by "policy development"?</p> <p>13 A. Working with agencies to develop use of force 14 policies primarily.</p> <p>15 Q. Any other beyond use of force policy developments 16 that you've been consulted on?</p> <p>17 A. Over the years I've worked with other trainers, 18 other agencies on offshoots of use of force 19 policies, chemical munitions policies, special 20 weapons and tactics, team policies, those types 21 of things.</p> <p>22 Q. And I understand you've also testified as an 23 expert witness in a number of cases, correct?</p> <p>24 A. I have.</p> <p>25 Q. And some of those cases were in regards to use of</p>
Page 14	Page 16
<p>1 A. As part of my opinion, yes.</p> <p>2 Q. What kind of -- have you been asked to conduct 3 any surveys?</p> <p>4 A. I'm sorry?</p> <p>5 Q. Have you been asked to conduct any surveys?</p> <p>6 A. No.</p> <p>7 Q. So what makes you feel like you are an 8 appropriate expert in this case?</p> <p>9 A. Well, I have over 30 years of law enforcement 10 experience, that includes firearms experience as 11 a law enforcement officer. Throughout that time 12 I have attended thousands of hours of advanced 13 training in firearms, as well as instructional, 14 firearms instructional methods.</p> <p>15 I am certified in the State of Ohio as a 16 firearms instructor in all weapon systems. I 17 spent 12-and-a-half years on the Akron Police 18 Department SWAT team where I was team leader and 19 lead instructor. I have been teaching use of 20 force and armed control tactics for somewhere 21 around 20 years. I've written hundreds of 22 articles on the subject matter.</p> <p>23 I'm the subject matter expert on officer 24 survival for Officer.com, LawOfficer.com. I've 25 written a book on use of force investigations and</p>	<p>1 force?</p> <p>2 A. Correct.</p> <p>3 Q. Were they -- do you know how many times?</p> <p>4 A. I do not.</p> <p>5 Q. Were they for the police department or on behalf 6 of the officer charged in those cases?</p> <p>7 A. Yes. In addition to cases in which I worked in 8 defense of the officer for the Fraternal Order of 9 Police in Ohio; so in addition to cases for the 10 police department defending officers or for other 11 agencies defending their officers, I've worked 12 for the Fraternal Order of Police and the Ohio 13 Patrolmen's Benevolent Association in defense of 14 officers at arbitration hearings, disciplinary 15 hearings and at criminal trials.</p> <p>16 Q. And in criminal trials, those, what kind of 17 issues do those trials involve?</p> <p>18 A. Use of force. Everything from the use of 19 nondeadly force to deadly force.</p> <p>20 Q. By law enforcement?</p> <p>21 A. By law enforcement, correct.</p> <p>22 Q. Have you ever testified on the use of force by 23 someone who was not involved in law enforcement?</p> <p>24 A. In civilian use of force? No, not that I can 25 recall.</p>

1 Q. Have you ever testified as an expert on an issue 2 other than a case involving use of force? 3 A. On an offshoot, I have testified in a criminal 4 trial for the state on the use of firearms in a 5 shooting that was a domestic violence incident 6 which the subject shot his wife and I testified 7 for the prosecution in that case on the physical 8 encounters and as well as the perceptual 9 distortions under stress, et cetera, that went 10 on. So it was on an offshoot of a use of force, 11 but it was not involving law enforcement; it was 12 testifying for a victim in a state's prosecution. 13 Q. What were the conclusions that you offered in the 14 case? 15 A. I'm sorry? 16 Q. What were the conclusions you offered in that 17 case? 18 A. The conclusions were that the encounter could not 19 have happened as the suspect stated that it had 20 and my examination of the firearms and the method 21 in which the suspect alleged to have shot his 22 wife. 23 Q. And how did the suspect claim the encounter 24 happened in that case? 25 A. It was from a distance further than what it was	Page 17 1 beginning? 2 A. If I can remember back at the beginning. I will 3 try at the beginning and work forward. 4 Q. Okay. 5 A. In 1982 I was first commissioned as a deputy 6 sheriff for the Summit County Sheriff's 7 Department. I had gone through the Portage 8 County Sheriff's Academy, I was age 20. When I 9 turned 21 in July, somewhere in the fall of '82 I 10 was commissioned by Summit County as a deputy. I 11 worked there for a number of years during that 12 period of time. 13 I worked corrections at the Summit County 14 jail. I worked uniformed patrol for the 15 Sheriff's Office in northern and southern Summit 16 County. I worked different details such as 17 warrant details where we would go out and attempt 18 to arrest felony warrant suspects, but the 19 primary duties during that period of time were 20 corrections and patrol, those two. 21 Q. Okay. 22 A. In 1990 I was hired by the Akron Police 23 Department, 1990 after I graduated from my second 24 basic police academy, I was assigned to night 25 shift patrol from 7:30 at night till 3:30 in the
Page 18 1 and that other specifics that were not supported 2 by the evidence when we examined the use of the 3 firearm. 4 For instance we, he had intimated or had 5 testified under oath that shots were fired close 6 range. That was not supported by the evidence 7 that we found in the case and what we did find 8 was that it, through examination on a range, that 9 the gun was fired from a further distance which 10 would not support his testimony. 11 Q. So other than that case and use of force cases, 12 have you testified in any other types of cases as 13 an expert? 14 A. I don't believe so, no. 15 Q. How about as not as an expert? 16 A. Oh, as a police officer, I've testified in, 17 hundreds of times in cases. 18 Q. Let's go back a little bit to your experience. 19 So you have over 30 plus years in law 20 enforcement, correct? 21 A. That is correct. 22 Q. I kind of want to go through the different 23 positions that you've held. Would it be easier 24 to start at what you do now and then go 25 backwards, or would you like to start from the	Page 18 1 morning where I worked the downtown district in 2 this area, as well as east side of Akron, and I 3 worked that for several years until a new unit 4 was formed called the Uniformed Narcotics Unit 5 that subsequently became known and is known today 6 as the Street Narcotics Uniform Detail or SNUD 7 unit. The SNUD unit was assigned to work 8 primarily street level narcotics enforcement 9 within the City of Akron. I did that for 10 six-and-a-half years. 11 During that period of time, I did everything 12 from undercover narcotics purchases, reversals 13 where police officers would pose as dope dealers 14 to lure customers in, high profile sweeps in high 15 crime areas. 16 Somewhere around '92 or thereabouts, I became 17 a member of the Akron Police Department's SWAT 18 team. That was concurrent duties with my patrol 19 and with my SNUD assignment. I was in with the 20 SWAT team for 12-and-a-half years. I came up 21 through the ranks and became a trainer for the 22 SWAT team as well as a team leader. I did that 23 for 12-and-a-half years. 24 About 15 years ago, an opening became 25 available in the Akron Police Department Training

1 Bureau and that was where my passion lay with 2 training police officers so I moved over to the 3 training bureau and I've been there ever since. 4 Q. Can we go over some of your duties when you 5 became a SWAT leader? 6 A. Sure. 7 Q. What were your duties? 8 A. Well, the team leader is -- there is a team 9 commander. At that time it was a captain or one 10 or two captains that were commanders and then at 11 the end of my tenure there were two lieutenants 12 were co-commanders. 13 After that there were about four of us that 14 were team leaders. I was the only non-supervisor 15 team leader on the team. My job was to assist in 16 specific tasks. For instance, the commander 17 would say we have a narcotics search warrant that 18 we're going to execute in a couple days and our 19 job would be as team leaders to arrange the 20 reconnaissance of the target location, formulate 21 a plan and during the execution of that narcotics 22 search warrant to oversee the operation of the 23 SWAT team operators involved. 24 Q. So would you say that you had served as an 25 overseer over the other SWAT team leaders? Would	Page 21 1 fired calls or situations in which we were going 2 after violent people that had fired at police 3 officers. 4 Q. You mentioned response to barricaded suspects. 5 Could you tell me what that entails? 6 A. Well, it could be a shooting that had happened, 7 say a domestic disturbance in which a subject in 8 a house has fired shots at a family member or has 9 resisted arrest on a felony warrant from 10 uniformed police officers, he has retreated back 11 into his house or apartment, refuses to surrender 12 to the uniformed officers. That's when SWAT's 13 called out. 14 Q. Do you know how many times you were called out to 15 respond to barricaded suspects? 16 A. I do not. I would say over a dozen times or more 17 during my tenure. 18 Q. Do you remember a time when either you or members 19 of your SWAT team were required to take a shot at 20 a barricaded suspect? 21 A. Yes. 22 Q. How many times? 23 A. I was involved in one shooting on September 11th, 24 2001 in which we had a barricaded subject in a 25 motel in Copley, Ohio, which is to the west of
Page 22 1 that be a correct assessment? 2 A. That's kind of a, it is true, but I think it's a 3 little bit more than that because you're actually 4 directing, and although I was not a supervisor, 5 my job was to supervise tactical operators, so 6 it's more a supervisory position. 7 Q. So you'd supervise the other SWAT team leaders 8 for their, during their operational duties or 9 missions? 10 A. SWAT operators, not team leaders. 11 So as a team leader oversees the members of 12 the team. 13 Q. I'm sorry, thanks for clarifying that. And under 14 what circumstances when you're at SWAT was SWAT 15 utilized? 16 A. A variety of different situations. 17 We worked in stakeout details. If we had a 18 rash of bank robberies in a section of town, we 19 would set up, you know, attempts to thwart bank 20 robberies or apprehend bank robbery suspects. 21 We worked in presidential details and 22 dignitary protection. We worked in narcotic 23 search warrant. That was our primary focus, and 24 we did response to barricaded subjects. We went 25 after violent felons and we responded to shots	Page 22 Page 24 1 Akron. We had pursued him throughout the day. 2 He had, was a violent home invader and we had a 3 targeted location, north Akron, earlier in the 4 day and felt intelligence -- when we didn't find 5 him there, we developed intelligence that he was 6 in a motel room in Copley. 7 We locked it down, meaning that we surrounded 8 the area with SWAT operators. We evacuated the 9 rooms around the general area and then we 10 attempted to have the subject surrender. 11 He refused to do so. I fired one round of 12 chemical munitions through the front window of 13 the residence and he came out shooting. He had 14 two guns in his hand and he was shot and killed. 15 Q. Do you know what kind of guns he had? 16 A. From my perspective they were big guns. 17 Revolvers, I believe. 18 Q. Were there any other occasions when you were in 19 SWAT where you or a team member were forced to 20 fire a shot? 21 A. There were several incidents during my tenure of 22 SWAT in which we were involved with armed 23 encounters. 24 Another incident was we were shot at during a 25 narcotics search warrant, but I was not on the

1 team that was involved in the other shootings. I 2 was assigned to SWAT, but I was not involved in 3 the call-out or call-outs. 4 Q. Any time when you directed your team to a 5 barricaded suspect incident where someone from 6 your team was required -- 7 A. To shoot? 8 Q. -- to fire a shot, yeah. 9 A. No. 10 Q. In your duties as a law enforcement officer 11 before you were in SWAT, were you ever, did you 12 ever fire your firearm at a suspect or -- 13 A. No. No. 14 Q. So after SWAT, you became a, you became involved 15 in training? 16 A. Concurrently, yes. 17 Q. Concurrently? 18 A. Yeah, I had been off the SWAT team somewhere 19 around five or six years, so I was still a member 20 of the SWAT team as I was assigned to the 21 training bureau. 22 Q. And what were some of your responsibilities as a 23 member of the training bureau? 24 A. Well, I'm the senior firearms instructor on 25 staff.	Page 25 1 curious when you say that you teach driving, is 2 that for like police chases? 3 A. Well, it's response driving, emergency response 4 as well as pursuit driving as well as backing up 5 and everything else. That's where most accidents 6 occur is backing up. 7 Q. I want to kind of go through, you mentioned a 8 number of different firearm classes that you 9 train on for the Akron department. I kind of 10 want to just go through what you teach. 11 So on the scope rifle, what kind, how do you 12 train on the scope rifle? 13 A. I was a member of the Akron Police Department 14 SWAT sniper team so I was a sniper assigned to 15 the team. During my time with the team, I was 16 asked to become an instructor for the team so I 17 trained in the scope rifle and have been a member 18 of the sniper team. That was during my tenure in 19 SWAT. Not currently. 20 Q. So when you did teach, when you did teach a scope 21 rifle course, what kind of things did you teach? 22 A. Well, there's everything from the fundamentals of 23 marksmanship through equipment, minutes of angle, 24 a variety of different things involved in the use 25 of a precision rifle.
Page 26 1 I have been doing firearms instruction longer 2 than my coworkers at the time and currently. 3 I was certified to train all different weapon 4 systems for the police department, including 5 scope rifle, carbine, submachine gun, pistol, 6 revolver and shotgun. All of those have been 7 certified and have done instruction on all of 8 those. 9 I'm also the senior use of force instructor. 10 I train Akron police officers in the legal 11 parameters of use of force as well as suspect 12 control tactics. 13 I have been teaching response to active 14 shooters for a number of years, also known as a 15 rapid deployment. I've taught that for a number 16 of years. And I teach building searches, taught 17 car stops. I'm a driving instructor, but I'm not 18 the best, and usually involved in the tactical 19 operations in terms of the deployment of patrol 20 officers and officers. 21 I've taught supervisors in the use of force 22 investigations and I've also represented the City 23 of Akron in civil litigation involving use of 24 force. 25 Q. Well, before we get into some of those, I'm just	Page 26 1 Q. How would you, what are the elements of 2 marksmanship? 3 A. Fundamentals of marksmanship. 4 Q. Thank you. 5 A. Well, for every firearm the fundamentals include 6 platform or stance, grip, sight alignment, sight 7 picture, breathing, trigger management, 8 followthrough and recovery. I think I've got all 9 of them. 10 Q. And then you mentioned you also taught angles? 11 A. Minutes of angle. 12 When you're, minutes of angle is a ballistic 13 measurement used primarily in precision rifle 14 work to enable the shooter to fire very small, or 15 very precision shots at varying distances and 16 minutes of angle is a ballistics term. 17 Q. So help me understand the term a little better. 18 So minutes of angle means it covers distance from 19 where the shot is fired and where it lands? 20 A. Well, it's a little bit more complicated than 21 that. 22 There are 360 degrees in a circle and we use 23 the circle as the means to measure precision 24 rifle fire or precision fire with any firearm. 25 We subtend each angle into 60 degrees so if we go

1 around, there are over 27,000 degrees or minutes 2 of angle, I'm sorry, in a degree or in a 360 3 degree circle; so for instance at 100 yards the 4 standard unit of measurement is a rifle should be 5 able to shoot one minute of angle at 100 yards. 6 That's essentially one inch. As you go back to 7 200 yards, one minute of angle equals two inches. 8 300 yards, three inches, et cetera. 9 So the basics are how to divide and measure 10 accuracy from a distance. 11 Q. So the point of the class was to you to improve 12 accuracy, I assume? 13 A. To understand, a sniper has to understand that at 14 different distances, the rifle is going to shoot 15 to different points of aim and you have to 16 compensate, and you have to learn how your rifle 17 shoots. That's called developing the dope of the 18 rifle so that at varying distances, you 19 compensate for that, including temperature, wind 20 direction and wind speed and all of those things 21 are factored in. 22 Q. Did your class involve instruction on a variety 23 of rifles? 24 A. It's mostly with Akron Police Department and for 25 most snipers, the Remington 700, so it's not a	Page 31 1 Q. And as to the firearm that you used when you were 2 on SWAT? 3 A. The Remington 700, correct. 4 Q. And I thought, and correct me if I'm wrong, you 5 said that you taught both a snipe rifle and a 6 carbine class? 7 A. That's correct. 8 Q. How does the carbine class differ from the 9 scoping class? 10 A. Different weapons used for different reasons. As 11 I stated, an AR15 with a scope can be used in an 12 urban sniping situation or close range sniping 13 situation. Inside 100 yards they can be fairly 14 accurate. 15 Carbines can also be used as patrol rifles. 16 I have not only taught members of the Akron 17 Police Department, but I was an adjunct 18 instructor for the State of Ohio, the Ohio Peace 19 Officers Training Academy for about four years. 20 I developed a five-day carbine instructor program 21 and I taught that for over four years for the 22 state. 23 Carbines can be used in anything from, you 24 know, touching distance or across the room or 25 across the width of a car to a distance. Usually
Page 30 1 variety of different rifles. It's specifically 2 that make and model. 3 Q. Do you know why that weapon is chosen for that 4 use? 5 A. It's exceedingly accurate. It's a good, well 6 made rifle. 7 Q. Do you know if departments used other rifles? 8 A. Other departments? 9 Q. No. Your department in previous years. 10 MR. COLIN: For SWAT operations or 11 sniping operations? 12 Q. For sniping operations, yes. 13 A. As the team developed, the early snipers involved 14 in the team used surplus deer rifles or other 15 rifles. As the technology improved, we went to 16 the Remington 700 and have stayed with that. 17 Q. And do you know what other agencies use? 18 A. Oh, a variety of different carbines or rifles, 19 very expensive models, Accuracy International, a 20 variety of different carbines from AR15 platforms 21 with scopes on them. Sig Sauer, there's a 22 number -- nowadays there is a number of sniper 23 rifles available more so than when I was 24 involved. The technology has improved and more 25 quality of manufacturers are out there.	Page 32 1 up to about 150 yards for most officers. 2 Q. Okay. Other than just becoming familiar with the 3 weapon, any other goals of that course? 4 A. Oh, certainly. The operational usage of the 5 carbine -- we're talking carbine or sniper? I'm 6 sorry. 7 Q. Carbine. 8 A. All right. Carbine is the changes of the patrol 9 rifle or the carbine in law enforcement. How to 10 develop -- this was an instructor based course, 11 so it was how to teach the carbine to other 12 officers, how to evaluate performance, how to run 13 the gun, which is how to make it operate and be 14 able to teach others how to keep the gun up and 15 running, how to accurately fire it at a variety 16 of different positions. 17 How do you incorporate or work with a partner 18 or other officers while using a carbine, how to 19 make rudimentary, how to retain the carbine 20 and, once again, the fundamentals of marksmanship 21 were always one of the first things we'd cover. 22 Q. You mentioned that one of the goals was to teach 23 the advantages of carbine. What are those 24 advantages? 25 A. Well, there's a variety of different advantages

1 with the carbine. 2 First and foremost, it's, probably the person 3 that came up with the modern patrol rifle or 4 police carbine program is Clint Smith who's a 5 former law enforcement officer and runs a, is a 6 private firearms trainer that runs a program 7 called Thunder Ranch and Clint has over the years 8 said that the reason we carry pistols is because 9 we can. They've been carried on our person and 10 they're portable and accessible, but we use our 11 pistol to fight our way to the rifle meaning that 12 the advantages of the rifle or the carbine are 13 numerous for both law enforcement as well as 14 citizens, private citizens. It's more 15 intimidating. 16 In law enforcement we tend to point guns at 17 people a lot and the intimidation factor allows 18 the situation to be controlled without gunfire so 19 intimidation is a good thing. Ballistically, 20 it's vastly superior to the handguns carried by 21 law enforcement used in the civilian sector. The 22 .223 or 5.56, which is the military designation 23 for the round, penetrates very well but doesn't 24 overpenetrate. 25 For instance, the 5.56 round penetrates less	Page 33	Page 35
1 through structures than the .40 caliber handgun 2 round, so ballistically it improves performance 3 on target when involved in a shooting. The 4 carbine also in the configuration of a standard 5 AR15 M4 allows the operator or police officer or 6 citizen to have up to 30 rounds or more on the 7 carbine at one time which allows the police 8 officer or citizen to fire more rounds before 9 they're forced to reload, so that's one thing. 10 It is more accurate because you have four 11 points of contact on the carbine. You have both 12 hands, a cheek weld and a shoulder mount so it 13 helps stabilize the weapon system, it's more 14 accurate. The sight radius is greater so that 15 improves accuracy. The ergonomics of the design, 16 especially in the AR15 M4 are very conducive to 17 use. It can be mounted with accessories like 18 white lights to improve performance and in 19 low-light situations. 20 Very devastating, very effective weapon 21 system. 22 Q. You said that one of the benefits was to make it, 23 one of the benefits of a rifle in your course was 24 because it's more intimidating than a revolver. 25 Did you teach any tactics on how to use a	Page 34	Page 36

<p>1 rounds accurately on target in a shorter period 2 of time because you don't have to align the front 3 sight within the aperture of the rear sight and 4 then align that on target. It superimposes a red 5 dot or a reticle, an illuminated reticle out 6 there so when the subject's using the red dot or 7 the reticle, that's where the rounds are going to 8 hit.</p> <p>9 Q. Any other accessories you recommend during the 10 courses?</p> <p>11 A. Yeah. There's a variety of different accessories 12 in terms of the ability to carry spare ammunition 13 either on the duty belt, on a bag that's thrown 14 over the shoulder during a shooting situation and 15 other accessories that may not necessarily, 16 aren't vital, but are worthwhile.</p> <p>17 Q. Accessories that you recommend that aren't, that 18 you consider are not vital but you would 19 recommend someone to have, what would those 20 include?</p> <p>21 A. Well, for instance, there's a little \$5 piece of 22 rubber called a gapper and underneath the trigger 23 guard of an AR15 is a little slot that has a 24 tendency to give you a blister when you shoot a 25 lot and with a \$5 part, it prevents blisters and</p>	<p>1 A. There are a variety of different manufacturers. 2 It can be -- when we first started it guys were 3 using, going to surplus stores and getting bags 4 that were designed to carry Claymore mines in the 5 military. They were small enough with a strap 6 that could go over the shoulder because when an 7 officer bails out or uses the rifle, if they have 8 time they have a 30 round magazine in the 9 carbine, but they need spare ammunition available 10 as well and that's what the bag is used for. 11 The bag can also carry if they're responding 12 to active shooters or active killers, things like 13 first aid supplies or what have you, but by and 14 large it's just used to carry ammunition. 15 Q. Do you recommend having an extra bag of 16 ammunition at all times? 17 A. When you, if possible, yes, if possible. It's 18 strictly a time issue. If you bail out of the 19 patrol car, for instance and are under fire right 20 then, then you don't mess around with going to 21 the trunk to get your spare ammunition. But if 22 at all possible we recommend that officers deploy 23 with more than one magazine, more than 30 rounds. 24 Q. Are there any drawbacks in having -- I imagine 25 the bag over your shoulder would, would that</p>
<p>1 makes your shooting a lot more enjoyable. 2 Other than that, that's pretty much it. 3 There are lasers out there, there are a variety 4 of other different products. We talk about them 5 but really just the sling, the white light and 6 the red dot sights are the things that I would 7 recommend that officers install on carbines. 8 Q. And that, so that would be the complete list of 9 things you'd think a competent shooter should 10 have? 11 A. Well, there's other things of course, you know, 12 depends on what the rifle comes with or how it 13 comes. A standard M16 M1 -- A1 or A2 comes with 14 a, you know, forearm that's not conducive to 15 mounting equipment like white lights so there are 16 quad rail systems that you can install as 17 forearms that would facilitate mounting white 18 lights and slings, et cetera. 19 Also an adjustable butt stock allows the 20 shooter to more comfortably use the rifle 21 regardless of their body size so those things 22 are, if they are not installed on the rifle, I 23 would recommend them. 24 Q. And you also mentioned, I think you said, a bag 25 over the shoulder. What kind of bag is that?</p>	<p>1 affect your shooting at all? 2 A. No. It's on the off side. There's no effects 3 that impair your carbine performance while using 4 the bag. 5 Q. Do you recommend that a certain number of 6 ammunition be held in the bag? 7 A. Well, we recommend the standard best practices 8 nowadays is to insert 28 rounds in a 30 round 9 magazine. We do that so that the magazines can 10 be inserted when the carbine is loaded. That 11 allows the spring to compress slightly when you 12 insert the magazine and that's pretty much the 13 standard. 14 There are certain instructors would say just 15 go ahead and load with 30 rounds. They've never 16 had a problem, but by and large we load with 28 17 and my personal recommendation is to deploy with 18 at least two spare magazines. 19 Q. So in your course, you recommend that officers 20 carry 28 rounds in a 30 magazine, correct? 21 A. In a 30 round magazine, correct. The carbine 22 operates better and the loading is better in my 23 experience with 28 rounds. 24 Q. How does it make it operate better? 25 A. Well, in terms of the operations. In terms of</p>

1 the operations when the bolt is locked to the 2 rear, there is no problem with inserting a 30 3 round magazine; however, if we do what's called a 4 preemptive load or a tactical load where we've 5 not shot the carbine dry and we're putting a new 6 magazine in, it helps to have 28 rounds in the 7 magazine because when the magazine goes in, the 8 rounds compress and there's, it's more efficient, 9 it's more efficient in your reloads. 10 Q. How does it make it more efficient in the 11 reloads? 12 A. As I stated, when the magazine inserts and locks, 13 it has to, when you insert the magazine in to the 14 magazine well, it has to lock in place. In order 15 for that to happen, the spring has to compress a 16 little bit. With 28 rounds in versus 30 -- it 17 will work with 30 but the best practices and 18 standard is 28 rounds. 19 Same thing in submachine gun magazines. 20 Because of this, we load 28 rounds in submachine 21 gun magazines for the same reason. 22 Q. So just the more room allows an easier locking? 23 A. Yes, just compresses. It will work but, you 24 know, it, our -- by and large it's more efficient 25 and works a little bit better if you download the	Page 41	Page 43 1 you, how many you put in there, so it's kind of a 2 drag to count every time you, so it's usually 3 throw a bunch of mag rounds in and when you get 4 to the point where you get about a half inch 5 depression on your rounds, you're about 28 6 rounds. 7 Q. Okay. Do you think that ballpark measurement 8 that you just discussed, do people do that 9 outside of a carbine class when they fill their 10 magazines? 11 A. Outside of a carbine class? You'd have to be 12 more specific. 13 Q. Well, you said, you, I think you mentioned that 14 shooters often overfill their magazines. 15 Was that in reference to just a carbine 16 class? 17 MR. COLIN: Foundation objection. 18 Go ahead. 19 A. No, I didn't say overfill magazines. I said we 20 try to intentionally in a carbine class or with 21 the use of the carbine load 28 because it 22 improves the efficiency of the weapon. 23 Other than that, I wouldn't -- most of the 24 time, for duty deployment it's a different story. 25 We want you to count out 28 rounds or, depending
1 magazines by two rounds. 2 Q. Would it load if you put more rounds in, so if 3 you put 31 rounds in a 30 magazine would it still 4 load? 5 A. Well, most shooters don't count the rounds out so 6 we actually check this by inserting the thumb on 7 the top round and pressing down. If we get about 8 a half-inch compression, then that's pretty good. 9 I've seen magazines that will take more than 30 10 rounds and of course there's commercially 11 available magazines that will take, you know, 100 12 rounds or more but 28 rounds is, here again, the 13 standard. 31 rounds may work. 14 Q. So when putting the rounds into the magazine you 15 said most shooters don't actually count out the 16 rounds. They just kind of do it by feel? 17 A. Well, when you're in a carbine class and you're 18 loading magazines all day long, it's kind of a 19 drag to count them out. Modern magazines, for 20 instance like Magpul, have windows at the side of 21 the magazine where you can see how many rounds 22 there are or they have slots in the back where 23 there's different numbers to count. 24 Most military magazines don't have a view 25 port and don't have a way to ascertain that if	Page 42	Page 44 1 on the circumstances, 30 rounds so we want to 2 know more precisely how many rounds are in the 3 magazine. 4 Q. In your carbine class do you ever offer as a 5 recommendation whether shooters should or should 6 not fill their magazines with different size 7 bullets than what the magazine, than what's 8 standard in the magazine? 9 A. Well, I don't understand the question. I'm 10 sorry. Can you rephrase? 11 Q. Yeah. Well, maybe it's if we just get on the 12 same vocabulary. 13 So magazines are designed for certain size 14 bullets, correct, or they're standard? 15 A. Well, there's, in terms of round count, 16 magazines -- for instance, the standard AR15 17 magazine is, service magazine is a 30 round 18 magazine. That's the capacity, that it will fill 19 up to 30 rounds. As you said, some might take 31 20 rounds or even 32, but specifically they're 21 designed to handle 30 rounds. 22 The ammunition that's used in the specific 23 carbine is a certain chamber size. In most 24 patrol rifles or patrol carbines that would be 25 .223 or 5.56.

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<p>1 Inside that caliber there are different 2 bullet weights. There's everything from less 3 than 50 grains to up to about 77 grains in 5.56 4 so you have different bullet weights if that's 5 what you're asking.</p> <p>6 Q. I was more referring to size.</p> <p>7 A. Well, what I'm trying to say is there's 8 different, there's caliber size, 5.56, and 9 there's bullet weight. Those are two different 10 things. That's the size. Those are the two 11 sizes involved.</p> <p>12 Q. Okay. And for rifles or for the rifle that you 13 teach in your carbine class, is there a certain 14 size bullet?</p> <p>15 A. Within, in the 5.56 calibers is there a certain 16 size? I would recommend -- there's a variety of 17 good ammunition used. I don't like anything 18 lighter than about a 55 grain projectile and in 19 that area there are also good bullets, good, 20 effective rounds that are a little bit heavier 21 than 55 grains and a little bit lighter than 55 22 grains.</p> <p>23 Q. But the rifle is capable of accepting other size 24 rounds?</p> <p>25 A. Other bullet weights.</p>	<p>1 recommend that officers carry spare magazines?</p> <p>2 A. Yes.</p> <p>3 Q. You also teach a pistol revolver class, correct?</p> <p>4 A. Yes.</p> <p>5 Q. Can you tell me a little bit about what you teach 6 in those classes.</p> <p>7 A. Everything from, once again, the fundamentals of 8 marksmanship up through the ability to run the 9 gun. And what I mean by that, to load and unload 10 the gun, to reload the gun, to be able to use the 11 handgun, whether pistol or revolver.</p> <p>12 Everything from close range back to a 13 distance. How to use cover. How to coordinate 14 with other subjects or other partners and those 15 types of things.</p> <p>16 Q. And what is kind of the overarching goal that you 17 hope your attendees learn at the end of the 18 class?</p> <p>19 A. Learn the basics of the skills that will allow 20 them to win a gunfight.</p> <p>21 Q. And what are those skills in reference to a 22 pistol?</p> <p>23 A. We have, once again, the fundamentals of 24 marksmanship. The ability to draw and present 25 from a holster. The ability to accurately fire</p>
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<p>1 Q. Bullet weights, correct?</p> <p>2 A. Yes.</p> <p>3 MR. COLIN: I think you guys are 4 talking apples and oranges. The number of 5 grains, essentially the amount of gunpowder 6 in the cartridge and you're talking -- he's 7 talking about weight which goes to the 8 number, the amount of gunpowder in the 9 cartridge so to speak.</p> <p>10 I think you're saying can you put 11 a round for a .22 in a .223 magazine or a 12 round for a .38 or a .45, so I'm just not 13 sure you guys are talking on the same page.</p> <p>14 MR. LEE: I got you. Thank you.</p> <p>15 MR. COLIN: So I just wanted to 16 save everybody going down the wrong trail.</p> <p>17 A. I would concur.</p> <p>18 The caliber is one thing. That's the 19 diameter of the bullet. That's 5.56 or .223 20 depending on whether you're using metric or other 21 measurements.</p> <p>22 The bullet weight has to do with the size of 23 the projectile that's fired and that would be 55 24 grains, 77 grain, et cetera.</p> <p>25 Q. So as part of your instruction, do you always</p>	<p>1 regardless of the distance, out to a reasonable 2 distance. The ability to load and reload the 3 gun, clear malfunctions and operate under stress.</p> <p>4 Q. What would be a reasonable distance for a 5 revolver?</p> <p>6 A. Well, it depends on how good you are. When I 7 came on the police department, we were required 8 to qualify out to 25 yards. That's no longer the 9 case in the State of Ohio. It's, the maximum 10 distance for handgun is 50 feet so that has 11 changed in terms of the state qualification.</p> <p>12 I would say that an officer or a citizen 13 would be served by the ability to shoot at 25 14 yards and in. I've seen, and shots have been 15 fired at distances further than that, but that 16 certainly depends on the ability of the shooter.</p> <p>17 Q. And what kind of accuracy are you looking to your 18 attendees to learn when they're within 25 yards?</p> <p>19 A. Well, if they're talking a police officer, 20 ultimately it's that they have the ability to 21 pass the state qualification course which is a 22 target dictated by the State of Ohio which has 23 preferred areas in the target inside the vital 24 area of the hips and the body and the head, those 25 are scored as one point.</p>

1 Anything in the periphery is zero and 2 anything outside of the target is minus one, so 3 misses count against them. 4 You know, in terms of more advanced training, 5 it's the ability to get combat effective rounds 6 on target in a reasonable amount of time. 7 Q. Okay. And in that test, what score do you need 8 to achieve to pass? 9 A. It's 80 percent, you know, in order to pass the 10 state qualification courses. 25 round course. 11 20 is the lowest. Below 20 and the officer has 12 failed the course. 13 Q. So in your duties as a training officer, you also 14 mentioned that you teach a shotgun course? 15 A. Correct. 16 Q. What are some of the goals of a shotgun course? 17 A. Once again, we cover the fundamentals of 18 marksmanship. We're primarily using pump 19 shotguns so the ability to load and unload and 20 operate the pump shotgun so the pump shotgun in 21 my agency only has five rounds in the magazine, 22 too, which means that the ability to reload under 23 stress. We have four additional rounds in the 24 stock area so the ability to load under stress. 25 The ability to use the shotgun at everything	Page 51 1 A. It's not buck shot at 50 feet. It's two slugs. 2 There's a preferred area on the target which is 3 once again the lateral pelvis, center mass and 4 the head. 5 Q. And both have to hit to pass? 6 A. Both have to hit, correct. 7 Q. Any other firearm or types of firearm classes 8 that you teach? 9 A. In law enforcement, that's pretty much it, the 10 pistol, the shotgun, the carbine at this point in 11 time. 12 I have taught submachine gun. I haven't 13 taught it recently, but I did -- for the State of 14 Ohio did run some submachine gun courses. 15 Q. When did you teach the submachine gun course? 16 A. I haven't worked for the state since 2009, I 17 believe, so it's been several years ago since I 18 ran one. Probably 2008, 2009. 19 Q. Do they still teach that class, do you know? 20 A. I don't know what they're, what -- the staffing 21 has changed. The State of Ohio campus in London, 22 Ohio still does, but where I worked was the 23 Richfield campus and I don't know whether they're 24 doing submachine gun instructor programs anymore. 25 Q. In your class, what kind of topics did you cover?
Page 50 1 from close range to further more accurate shots 2 with the use of slugs and to be combat effective 3 with the patrol shotgun. Once again, there is a 4 state qualification course that they have to 5 pass, as well. 6 Q. And how would one, what's required to pass the 7 state qualified shotgun test? 8 A. Well, it's an eight round course of fire. The 9 officer fires two rounds at 10 feet, two rounds 10 at 20 feet and two rounds at 30 feet and then 11 fires, that's with buck shot and then at 50 feet 12 they have to fire two rounds with a slug. 13 Q. What kind of accuracy is required? 14 A. Well, 100 percent of their buck shot rounds have 15 to be within the exterior lines of the silhouette 16 and at 50 feet their two slug rounds have to be 17 inside the preferred area on the silhouette. 18 Q. So the two rounds at 30 feet has to be completely 19 within the silhouette? 20 A. Has to be within the exterior lines, correct. 21 Q. So if you miss one, then you don't pass? 22 A. One pellet, you don't pass. 23 Q. And then, sorry, I, it just missed me. 24 When you said from 50 feet two rounds, the 25 buck shot has to be where to pass?	Page 52 1 A. Once again the fundamentals of marksmanship as 2 applied to the submachine gun, the ability to 3 load, unload and keep the submachine gun up and 4 running. The ability to use the submachine gun 5 in everything from contact distance back to more 6 accurate shooting at further distance, the 7 ability to do rudimentary and retain the long 8 gun or the submachine gun and those types of 9 topics to allow the students to become combat 10 effective with the submachine gun. 11 Q. Did you go over situations where a submachine gun 12 might be used? 13 A. I'm sorry. Could you rephrase? 14 Q. In your class, did you cover situations in which 15 you believed the submachine gun should be 16 utilized? 17 A. Submachine gun is primarily restricted to 18 tactical operations involving SWAT teams and 19 those are primarily the students that we saw, 20 either tactical team members or firearms, since 21 it was a firearms instructor class, or 22 instructors that would be teaching tactical 23 operators. 24 Q. Of those classes we went over, are any of those 25 required?

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<p>1 A. All of them are required by the State of Ohio. 2 In other words, an officer in the State of 3 Ohio in basic academy has to be able to qualify 4 with both the duty pistol and the shotgun in a 5 basic academy. In an in-service training, 6 officers are required to qualify annually with 7 both the handgun as well as the shotgun or any 8 other weapon system that they're carrying. It 9 could be the carbine or submachine gun as well, 10 as well as a sniper rifle if you're a sniper on a 11 tactical team. 12 So all of those are required. 13 Q. In the written report that I received, you 14 mention that you are a certified instructor in, 15 firearm instructor for revolver, semi-auto 16 pistol, shotgun, carbine, submachine gun, scope 17 rifle, defensive tactics, use of force, active 18 shooter, rapid deployment instructor, SWAT basic 19 and advanced training instructor, chemical 20 munitions, impact weapons, building searches and 21 more? 22 A. That's correct. 23 Q. What's the more? 24 A. Well, I've taught all those classes either 25 in-house for the Akron Police Department or as an</p>	<p>1 classes regarding the dynamic encounters and the 2 physiological effects of the sympathetic nervous 3 system on human performance, how did you do that? 4 A. How did I teach those classes? 5 Q. Yes. 6 A. Almost all my firearms classes for several years 7 I wrote the curriculum and taught a two-day 8 program for all new firearms instructors within 9 the State of Ohio. It's called firearms 10 instructors and requalification officer program 11 and part of that was teaching instructors what 12 the physiological effects of stress are on the 13 human body so that they would understand so that 14 they have a better understanding of what the 15 human being does in times of mortal danger, how 16 that, those changes impact the physical actions 17 of officers, their ability to perform under 18 stress so all of those -- and most of my classes, 19 that's included somewhat. 20 It's included in training firearms 21 instructors, it's included in training use of 22 force investigators or people that are involved 23 in use of force investigations. I teach it to 24 basic academy cadets so they know what's 25 happening to themselves when they're involved in</p>
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<p>1 adjunct instructor for the State of Ohio. All of 2 those courses. 3 The more courses would be drivers training, 4 I'm certified as a police pursuit driving 5 instructor. I'm certified to teach use of force 6 investigations -- or I taught those, I'm not 7 certified, but I taught instructional level 8 classes for the State of Ohio. 9 Let's see. I was once a fitness, certified 10 fitness instructor meaning that I could teach 11 classes in basic academy on police fitness. I'm 12 also certified by the State of Ohio to teach and 13 direct narcotics investigations. There may be 14 more, but that pretty much sums it up. 15 Q. All those classes that you mentioned and the one 16 which we previously discussed, are any, your 17 experiences in those classes are any of those 18 particularly helpful to your opinions in this 19 case? 20 A. Well, I think all of it, you know, factors in, my 21 experience as well as my instructional skills in 22 terms of dealing with crime and crime control and 23 the use of force by law enforcement as well as 24 civilians. I think those all factor in. 25 Q. Okay. And when you mention that you've taught</p>	<p>1 a violent encounter. I've taught it to civilians 2 so that they understand the physiological effects 3 of stress. 4 Q. How do you teach the cadets? Do you use 5 simulation or? 6 A. Well, first of all, we start out with classroom 7 lecture and talking about how the brain operates 8 under stress and the cascading effect of changes 9 in the body under stress, and then what the ideal 10 goal in training is to give them confrontation 11 simulation training at some point. 12 You know, this can be done with the use of 13 padded suits with an antagonist wearing a red man 14 suit or a fist suit or it's an instructor that 15 confronts them and simulates mental patients, 16 simulates a violent felon, what have you and they 17 have to control and arrest this person. They 18 have to deal with the physiological effects 19 they're experiencing. 20 We also do something called the hooded box 21 drill in which the officer goes into a room 22 that's been specially prepared, a hood is lowered 23 down over their head and the lighting is subdued, 24 music is playing loudly in the background and 25 role players come out in front of them and when</p>

1 the hood comes up, they're told to control the 2 situation. They're given a variety of different 3 situations. The hood comes up and somebody just 4 takes a swing at them, you know, in a padded 5 suit. They have to control that person. The 6 hood comes up and they're dealt with a hostage 7 situation where, you know, somebody's down on 8 their knees getting ready to be executed by a 9 simulated antagonist or a suspect. It could be 10 encountering a drunk, a non-shoot situation, a 11 domestic. 12 So in the hooded box drill we're trying to 13 get into something called stress inoculation. We 14 expose them to the dangers, let them feel what 15 it's like and then we recycle them through again 16 so that they understand that they can operate 17 despite this response. 18 Q. So you believe that's something that can be 19 taught, how to control? 20 A. Certainly. Everyone experiences fear to some 21 degree. It's just the way we're hard wired; 22 however, with training, that can be controlled. 23 It's never completely mitigated and it depends on 24 the impact. It could be, personally you don't 25 want to respond to a fight call after you've	Page 57	Page 59 1 tend to get better? 2 A. With training. That's why we train because 3 training makes a difference. 4 Q. Have you ever had a student that didn't get 5 better? 6 A. Yes. 7 Q. How many times? 8 A. I couldn't say over the years, I've been doing 9 this a long time, but probably a half a dozen 10 times. 11 Q. Do you know, do you have a ballpark guess of how 12 many people you've taught? 13 A. Oh, no. The Akron Police Department has over 400 14 officers now. I've been there going on 24 years, 15 so I've been training about 20. Hundreds of 16 people for both the, if not thousands now trained 17 for Akron as well as the State of Ohio, so I've 18 trained a lot of people. 19 Q. So it would be fair to say that a fairly small 20 percentage of the students you've taught have not 21 gotten better after training? 22 A. Correct. 23 Q. Do you have any idea why they were unable to get 24 better? 25 A. I think, some have physical restrictions,
1 drank a large vente coffee from Starbucks. The 2 combination of caffeine and adrenaline is not a 3 good thing. Lack of sleep, fatigue, all these 4 things can factor into performance under stress. 5 We never totally get over the impact. 6 Q. And when you teach the course, it sounds like you 7 go through stages, correct? 8 A. Stages? 9 MR. COLIN: Vague. 10 Q. When you teach the course, do you go through 11 progressive simulations? 12 A. Yeah. We don't necessarily -- our intent is to 13 improve the student, not to trash the student, 14 and so the instructors are given directions and 15 experience and that the end result is we always 16 let the student win. Sometimes it's challenging 17 for them to win and they have to recover from 18 maybe some mistakes they've made, but the object 19 is to empower the officer, build them up, not 20 tear them down. 21 Q. So are the officers graded during this course at 22 all? 23 A. No, not in terms of an actual grading form or 24 method, no. 25 Q. But in your experience, do the students generally	Page 58	Page 60 1 however, most of, in my experience it's been 2 nonphysical reasons that I couldn't speculate 3 about. You know, their ability to handle fight 4 or flight. Their intent or drive to be a police 5 officer. Their motivation to be a police 6 officer, to do this. Those are the types of 7 people that tend not to rise to the occasion. 8 Q. For the officers who are unable to get better 9 during the course, did you find that concerning? 10 A. Concerning to the point that my supervision was 11 alerted to that. You know, it's my job to, most 12 of the scenarios over the years have been 13 videotaped and for the reason that we can later 14 on document their performance, I would alert my 15 supervision to it. 16 Q. Do you know would there be any consequences to 17 their being unable to get better at that? 18 A. I don't believe anyone has ever been terminated. 19 What they did was up to them. You know, it was 20 out of my purview. 21 Q. But you did alert your supervisors about their 22 inability to progress in the training? 23 A. Correct. 24 Q. And why would you feel the need to alert your 25 supervisors about that?

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<p>1 A. Well, not only for that trainee's well-being, but 2 also for other officers that work, would work 3 around that person as well as the potential of, 4 that the department to have some type of 5 liability if and when they know there's a problem 6 with a cadet or a student and they choose not to 7 do anything about it.</p> <p>8 So there is some liability there, as well.</p> <p>9 Q. Liability in that it would affect their 10 performance as a law enforcement officer?</p> <p>11 A. Well, their inability to protect themselves or 12 their inability to perform their duties, yes.</p> <p>13 Q. And perform their duties with a firearm?</p> <p>14 A. It could be a firearm, yes. I mean, there are, 15 as well as physical control skills.</p> <p>16 Q. And I suppose that would be more concerning for a 17 person in law enforcement because they have 18 additional duties than your average civilian, 19 correct?</p> <p>20 A. Oh, certainly. I mean, their job is to enforce 21 the law so they have to have the physical ability 22 to enforce the law. It's a job requirement.</p> <p>23 Q. So in your opinion if someone was unable to 24 control their physiological responses, they would 25 be unable to enforce the law?</p>	<p>1 name of John Benner and a firearm advocacy group 2 in Ohio called the Buckeye Firearms Association 3 actually provided the training free of cost to 4 the teachers and faculty and staff members that 5 attended. We did several of those programs this 6 year.</p> <p>7 Q. Any other firearm courses you've taught to 8 civilians?</p> <p>9 A. I've done private work with different civilians 10 and people that would, either as favors or as for 11 pay to work with individuals, non law 12 enforcement.</p> <p>13 Q. What kind of things did you teach?</p> <p>14 A. Carbine instruction as well as pistol work.</p> <p>15 Q. And did the topics you taught differ from the 16 topics you taught to law enforcement?</p> <p>17 A. Primarily, no. It's still the fundamentals of 18 marksmanship in addition to the ability to run 19 the gun. It's pretty consistent.</p> <p>20 Q. Were there any differences?</p> <p>21 A. Well, civilian sector work is mostly done from 22 concealment, for instance. But other than that, 23 I mean their handgun is concealed, but other than 24 that, no, it's pretty much the same.</p> <p>25 Q. So when you're teaching someone to shoot who's</p>
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<p>1 A. No, I don't think that's an accurate statement.</p> <p>2 Q. Okay. Yeah, then let me rephrase. It could 3 compromise their ability?</p> <p>4 A. Certainly. It would impair their performance.</p> <p>5 Q. Have you taught any firearm courses to non law 6 enforcement?</p> <p>7 A. Yes.</p> <p>8 Q. What, who have you taught?</p> <p>9 A. I've taught to civilians. I was contracted to 10 teach a course that ultimately resulted in the 11 students getting their concealed carry permit in 12 the State of Ohio. The program is only 12 hours, 13 or 12 hours are required for a student to attend 14 before they can get their permit. This course 15 was taught over a number of days to exceed that. 16 It was a martial arts group that came to me and 17 asked, they wanted more training to exceed the 18 state minimums, but ultimately to get their 19 concealed carry permit.</p> <p>20 In addition I've taught teachers in the 21 FASTER training program in Ohio.</p> <p>22 Q. What's the FASTER training program?</p> <p>23 A. I can't recall. The fire, faculty and staff -- 24 it's actually in my vitae, but it's a program 25 designed by a trainer out of southern Ohio by the</p>	<p>1 not in law enforcement, you try and teach them 2 the same things you teach to a law enforcement 3 officer?</p> <p>4 A. That is correct. What works for law enforcement 5 works for the civilian sector as well.</p> <p>6 Q. And would that include your recommendations on 7 equipment?</p> <p>8 A. Certainly.</p> <p>9 Q. For law enforcement, have you taught any courses 10 regarding use of force that do not involve 11 firearms?</p> <p>12 A. Yeah. Use of force investigations at the very 13 least.</p> <p>14 Q. I guess, I mean I'm speaking about an officer 15 actually using force.</p> <p>16 A. I'm sorry. Can you --</p> <p>17 Q. Well, as opposed to using a rifle like martial 18 arts, batons?</p> <p>19 A. Oh, use of nondeadly force?</p> <p>20 Q. Yes.</p> <p>21 A. Yes.</p> <p>22 Q. Okay. What kind of classes have you taught?</p> <p>23 A. I've taught suspect control, defensive tactics. 24 I for a number of years was an instructor/trainer 25 with pressure point control tactics so everything</p>

1 from the use of pressure points, joint locks or 2 come-alongs, take-downs, strikes, neck 3 restraints, handgun retention, handgun 4 take-aways, pepper spray. I was a taser 5 instructor for a few years. Use of impact 6 munitions or kinetic impact munitions like bean 7 bags, chemical munitions in terms of SWAT teams. 8 I think that's about it on a nondeadly force. 9 Q. Have you taught civilians any self-defense 10 courses that didn't involve firearms? 11 A. Yes. 12 Q. Okay. And what are those or where have those 13 been? 14 A. Through the police department I've been asked to 15 teach different groups. I've taught, I can't 16 even recall all the different groups. I've 17 worked with the Children's Services Board here in 18 Summit County. Their caseworkers that go out in 19 the field. They had experienced a rape of one of 20 their caseworkers and they brought me in to teach 21 their civilian employees how to defend 22 themselves. I've taught medical personnel how to 23 defend themselves, security personnel. 24 Q. When you taught the civilian employees, did you 25 also teach them anything regarding firearm use?	Page 65 1 A. Yes. 2 Q. What were those discussions? 3 A. Just about how he thought I was doing. 4 Q. We discussed previously that you teach classes on 5 the sympathetic nervous system. Do you have any 6 medical training? 7 A. Beyond basic first aid and emergency medicine in 8 terms of treating combat wounds, no. 9 Q. And do you have training on treating combat 10 wounds? 11 A. In terms of stopping blood flow, emergency first 12 aid, those types of courses or classes, yes. 13 Q. So how to deal with a medical injury? 14 A. Correct. 15 Q. How many gunfights have you been in? 16 A. Gunfights where a subject shot back? 17 Q. Why don't we start with how many times have you 18 been shot at. 19 A. A couple different times. 20 Q. Can we go over those? 21 A. I'm sorry. You asked what? 22 Q. We were going over the different times that 23 you've been shot at. When was the first time you 24 were shot at? 25 A. A narcotic search warrant a number of years ago.
Page 66 1 A. When I was specifically contracted to do that, 2 yes. 3 Q. If it was up to you, would you have taught both 4 physical self-defense and use of a firearm in a 5 self-defense course? 6 A. It depends. As a contract instructor, I covered 7 the material as requested by the client. If it 8 was just self-defense, the use of nondeadly 9 force, then that was covered. If it was a 10 request for additional things including the use 11 of deadly force, then I would cover that. 12 MR. LEE: This would be a good 13 time for a quick break. Off the record. 14 - - - 15 (Thereupon, a recess was had.) 16 - - - 17 Q. Back on the record. Mr. Davis, anything happen 18 during the break that would make you unable to 19 understand my questions? 20 A. No. 21 Q. Did anything happen that would make you unable to 22 testify truthfully? 23 A. No. 24 Q. Did you have any conversations with Mr. Colin 25 about your deposition?	Page 66 1 Q. And what were the circumstances of the shooting? 2 A. We had executed a search warrant on an apartment 3 in the city's west side. 4 As we made entry, we were told that the 5 subject, the dealer, the narcotics dealer was 6 armed. We deployed a, breached the door, 7 employed a flash bang grenade and at some point 8 as the subject was moving away from the first 9 room we entered, he fired a shot at us. 10 Q. Then what happened? 11 A. He was taken into custody. 12 Q. So no shots were fired by law enforcement? 13 A. Correct. 14 Q. How was he apprehended? 15 A. Aggressively. 16 Q. Aggressively through what physical action? 17 A. I believe about three or more SWAT operators hit 18 him. 19 Q. Tell me about when was the next time you were 20 shot at. 21 A. That would have been September 11th, 2001, the 22 encounter that I mentioned earlier. 23 Q. We've already been over that one so how about the 24 time after that? 25 A. I don't recall -- that I can recall, no other

1 incidents. 2 Q. So those are the only two times you've been shot 3 at? 4 A. That's correct. 5 Q. So you've never been shot at in your personal 6 capacity? 7 A. I'm sorry? Elaborate. 8 Q. When you're not working as a law enforcement 9 officer? 10 A. I think a couple years ago, within two years my 11 wife and I were, I was off duty in the house and 12 someone fired rounds we believe from a shotgun at 13 or around our property and the pellets whistled 14 in the trees, we heard the shotgun blast and 15 rounds pass through the trees above the house. 16 Q. Did you go outside? 17 A. I did. 18 Q. Did you see the shooter? 19 A. I did not. 20 Q. Any other times when you've been shot at when you 21 were not on duty? 22 A. No. 23 Q. How often do you practice shooting? 24 A. Actually firing the gun? 25 Q. Yes.	Page 69 1 topic areas. 2 Q. And how frequently do you practice nonlethal 3 force? 4 A. Not as much as I should. I don't know. On a 5 regular basis. I'd say once or twice a month. 6 Q. Do you ever practice changing magazines? 7 A. Yes. 8 Q. How often? 9 A. As part of my firearms instruction and as part of 10 my own skill training, probably every time I 11 operate the gun, I insert and load the magazine, 12 so about every time I touch the gun. 13 Q. Do you know how fast you can shoot a magazine? 14 A. A couple seconds. 15 Q. By a couple of seconds, less than four? 16 A. Certainly less than four. 17 Q. Less than three? 18 A. I would say around two seconds depending on, 19 there's different ways to exchange magazines. In 20 an emergency reload when the gun is, the slide is 21 locked back, a couple seconds. 22 Q. Is the two seconds pretty constant for you? 23 A. Hopefully. 24 Q. You mentioned in your report that you worked as 25 instructor at the Department of Homeland
Page 70 1 A. I work on the range on a regular basis. I'd say 2 when I'm working on the range, I fire possibly 3 one to two times a week at the most. 4 Q. Other than firing, are there other ways that you 5 regularly practice? 6 A. Yes. 7 Q. What are those ways? 8 A. Engaging in dry fire practice which is the 9 drawing and pressing of the trigger of the pistol 10 or whatever the firearm without actually firing a 11 shot. 12 Q. And how often do you do that? 13 A. Daily. 14 Q. Why do you think that's important? 15 A. Skills are perishable. I'm a firearms 16 instructor. My skills need to be up there to 17 demonstrate techniques. I believe -- and these 18 techniques have saved my life and I believe that 19 it's vitally important that I'm good at it. 20 Q. Any other skills that you practice? 21 A. Yes. 22 Q. What are those? 23 A. Empty hand control skills in terms of boxing, 24 martial arts, various other uses of impact 25 weapons, knife defense, a variety of different	Page 70 1 Security, correct? 2 A. Not the Department of Homeland Security. 3 Homeland Security Corporation, which was a 4 private corporation formed after 9/11. I was an 5 instructor for them. 6 Q. So that was the question, I was curious whether 7 it was public or private. 8 A. I was certified through the Department of 9 Homeland Security as an instructor through the 10 Federal Law Enforcement Training Center in 11 Glynco, Georgia. 12 Q. And you recently authored a book, which I 13 purchased. 14 A. Well, thank you. 15 Q. What was your purpose in writing the book? 16 A. I had worked on a number of cases in defense of 17 officers where very poor investigations by law 18 enforcement personnel resulted in criminal 19 charges being levied against the officer and my 20 hope was that law enforcement would read the 21 book, officers would have a better understanding 22 of use of force and investigations, unions that 23 defend them as well as the investigators that are 24 tasked with investigating their actions so that 25 everyone would be better served by a professional

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<p>1 investigation.</p> <p>2 Q. So you feel that patrol officers would benefit</p> <p>3 from reading the book?</p> <p>4 A. I do.</p> <p>5 Q. In what ways?</p> <p>6 A. Well, first of all, it's sad but it's a truism</p> <p>7 that patrol officers by and large in many</p> <p>8 agencies don't have a working knowledge of the</p> <p>9 constitutional parameters in use of force,</p> <p>10 including Fourth Amendment, Tennessee versus</p> <p>11 Garner, Graham versus Connor and the legal</p> <p>12 foundations for use of force, so they certainly</p> <p>13 make better decisions under stress if they're</p> <p>14 more informed about the use of force and they,</p> <p>15 also understanding about the perceptual</p> <p>16 distortions that take place and perceptual</p> <p>17 narrowing and the after-effects of use of force</p> <p>18 in terms of an investigation, what they'll go</p> <p>19 through so to give them working knowledge of what</p> <p>20 to anticipate.</p> <p>21 Q. So your book covers when to use force, how to use</p> <p>22 force and then how to cope with using force?</p> <p>23 A. And how to investigate, professionally</p> <p>24 investigate a use of force. It also goes into</p> <p>25 reporting, how the officer should word their --</p>	<p>1 there's not that many police involved shootings.</p> <p>2 Larger agencies that have shootings tend to get</p> <p>3 good at it or they continue to screw the thing up</p> <p>4 over a long period of time, they never do, and</p> <p>5 most of the investigators that are tasked with</p> <p>6 looking at officer involved shootings work on</p> <p>7 suspect shootings and oftentimes they treat</p> <p>8 officers like they do suspects and here again the</p> <p>9 officer is victimized by the process.</p> <p>10 Q. So one of the big problems in your view is that</p> <p>11 agencies are just not familiar enough with the</p> <p>12 process because it doesn't happen very often?</p> <p>13 A. There's not a lot of training that goes on in</p> <p>14 this whole process, there isn't. The book was</p> <p>15 based on a course that I've taught for a number</p> <p>16 of years and I wanted to make the information</p> <p>17 that I had found out over the course of a number</p> <p>18 of years, having personally been involved in a</p> <p>19 shooting as well as being the subject matter,</p> <p>20 expert the response and how bad things have gone,</p> <p>21 I, in learning about how to -- there is a better</p> <p>22 way to do it, there is a better way to</p> <p>23 investigate, et cetera.</p> <p>24 Q. But in your opinion, police shootings are not</p> <p>25 frequent?</p>
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<p>1 not, I shouldn't say how they should word their</p> <p>2 report but the information that they should</p> <p>3 contain in their report post incident.</p> <p>4 Q. For a patrol officer that might be in a situation</p> <p>5 where they'd have to use lethal force, what do</p> <p>6 you hope they'd get from your book?</p> <p>7 A. Well, fortunately for law enforcement, very few</p> <p>8 officers ever have to go through a shooting.</p> <p>9 That is both the good thing and the bad thing.</p> <p>10 It's the bad thing because most agencies</p> <p>11 conduct incompetent investigation post incident</p> <p>12 and oftentimes the officer is victimized by the</p> <p>13 process. They instead of looking at the officer</p> <p>14 as the victim of a potential murderer or</p> <p>15 felonious assault, they are looked at as the</p> <p>16 suspect in a crime and the officer understands</p> <p>17 what their rights are, the book clearly indicates</p> <p>18 what the officer's rights are in interviews, how</p> <p>19 to work with their defense counsel, how to make</p> <p>20 correct statements, you know, et cetera, so it</p> <p>21 educates the officer in terms of the process.</p> <p>22 Q. You mentioned that you think the investigations</p> <p>23 are incompetent. How are they incompetent?</p> <p>24 A. Because most agencies don't have to do them on a</p> <p>25 regular basis, and that's a good thing. I mean</p>	<p>1 A. I think it's fortunate.</p> <p>2 Q. I'd agree with that.</p> <p>3 I think one of my last foundational</p> <p>4 questions. You're being paid \$2,000 per case</p> <p>5 review, correct?</p> <p>6 A. I believe that was the, that's the amount in</p> <p>7 addition to the work that I've done, hourly work</p> <p>8 I've done in terms of the opinion.</p> <p>9 Q. And how many case reviews have you done so far?</p> <p>10 A. Just one.</p> <p>11 Q. And how many hours have you put into the case so</p> <p>12 far?</p> <p>13 A. Oh, I've put in countless hours. How many hours</p> <p>14 have I put in versus how many hours have I</p> <p>15 billed?</p> <p>16 Q. Well, if you want to tell me about both, I'd like</p> <p>17 to hear it.</p> <p>18 A. I think I've worked countless hours on the case</p> <p>19 that I have not billed and I think I billed for</p> <p>20 around 20 hours, I believe.</p> <p>21 Q. And can you give me a breakdown of how many of</p> <p>22 those hours are before the report versus after</p> <p>23 you filed your report?</p> <p>24 A. No. Most of the, of course in the original</p> <p>25 stages the research, much of that was not billed,</p>

1 it was just informational research. 2 Once I was hired as an expert and tasked with 3 completing the report, most of that time was 4 billed. 5 Q. And in your research have you considered anything 6 specific about gun shooting data in Colorado? 7 A. I have looked at officer killed specific to 8 Colorado and have reviewed what information I 9 could find on Colorado concealed carry permits 10 and information in terms of violent crime in 11 Colorado. 12 Q. And did you include those documents in your 13 references in your report? 14 A. No. It was just background information that I 15 looked at, make myself more aware of the state. 16 Q. Did those documents influence the opinions you 17 reached in this case at all? 18 A. No, I don't believe so. 19 Q. Do you have, have you provided either Mr. Colin 20 or Mr. Kopel or any of the plaintiffs' lawyers 21 with the names of those sources that you cited? 22 A. No. 23 Q. Can you do so? 24 A. I believe so. Some of them are included in the 25 references in my report.	Page 77 1 A. That is correct. 2 Q. So when you say that a common choice for 3 defensive arms has become the semi-automatic or 4 pistol, who do you mean for? 5 A. I mean for both law enforcement and private 6 sector, or civilians. 7 Q. Would that also include criminal suspects? 8 A. I don't think a study has ever been done on that 9 so I couldn't speculate. 10 Q. Do you know if a study's been done documenting 11 that it's become a common choice for law 12 enforcement to have semi-automatic weapons? 13 A. Yes. 14 Q. What study is that? 15 A. Well, to begin with in a study that was involved 16 in post incident after the FBI Miami shootout 17 which resulted in the FBI transitioning to 18 semi-automatic handguns, that was in around 1987 19 or the incident happened in 1986. After that a 20 commission was formulated of FBI agents subject 21 matter experts at the FBI National Academy in 22 Quantico and after that, they published, you 23 know, information about firearms and law 24 enforcement, calibers in law enforcement, 25 stopping power, et cetera. Also information
Page 78 1 Q. The ones not cited, I would ask that you do so 2 for Mr. Colin can provide me copies. 3 A. That's fine. 4 Q. Okay. Great. 5 Can we mark this as Exhibit 1. 6 - - - - 7 (Thereupon, Defendant's Exhibit 1, Davis 8 report, was marked for purposes of 9 identification.) 10 - - - - 11 Q. Mr. Davis, do you recognize the document that was 12 just handed to you? 13 A. I do. 14 Q. What is it? 15 A. It is my written opinion reference the case in 16 question. 17 Q. Could you give it a look and confirm for me that 18 it is a true, full, correct and accurate copy of 19 your report? 20 A. It appears to be so, yes. 21 Q. So let's begin with your first opinion and that 22 is: "In the last several decades, a common 23 choice for defensive arms has become the 24 semi-automatic pistol or rifle with a magazine 25 holding more than 15 rounds," correct?	Page 78 1 about, in terms of gun sales to law enforcement 2 by the gun manufacturers so. 3 Q. And that covered what date range? 4 A. I'm sorry? 5 Q. The report, what dates did that cover? 6 A. The FBI report? 7 Q. Yes. 8 A. The incident happened in 1986. The report was 9 sometime I believe in '87 or after when that 10 committee was convened and the report was 11 generated. 12 Q. So its subject matter all referred to data prior 13 to 1987? 14 A. Since then other, you know, the proliferation of 15 these types of firearms in law enforcement have 16 increased. It would be more of an anomaly for a 17 law enforcement officer to carry a revolver 18 nowadays than a semi-automatic pistol, so that is 19 pretty much throughout law enforcement. 20 Q. Okay. On the 1987 report, is that included in 21 your references? 22 A. The book In Defense of Self and Others is when 23 two of the people involved in the report were 24 subject matter experts involved with the FBI at 25 the time. John Hall and Urey Patrick. So, yes.

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<p>1 Essentially yes.</p> <p>2 Q. Essentially yes?</p> <p>3 A. Yes.</p> <p>4 Q. But is the report itself reproduced in the book?</p> <p>5 A. Not completely, no.</p> <p>6 Q. In what ways does the book account differ from</p> <p>7 the report itself? Is it just less complete?</p> <p>8 A. It's more thorough, goes into different areas and</p> <p>9 is, the book came out about four or five years</p> <p>10 ago so it is more up to date than the report that</p> <p>11 was generated originally.</p> <p>12 Q. Is there anything in the '87 report that's not in</p> <p>13 the book?</p> <p>14 A. I couldn't say.</p> <p>15 Q. Did you provide the '87 report to Mr. Colin or</p> <p>16 Mr. Kopel?</p> <p>17 A. I don't believe I, most of it is on-line. I</p> <p>18 don't know that I have a hard copy that I</p> <p>19 referred to.</p> <p>20 Q. If you could, I'd ask that you provide one so</p> <p>21 they can give it to me.</p> <p>22 A. That's fine.</p> <p>23 Q. It also sounded like you were referencing to</p> <p>24 other studies beyond the '87 FBI report. Where</p> <p>25 are those other studies?</p>	<p>1 Q. Are you relying on reports that are not included</p> <p>2 in, that were not included in your written</p> <p>3 report?</p> <p>4 A. Can you rephrase?</p> <p>5 Q. In reaching your opinion one, did you rely on</p> <p>6 reports that aren't expressly referenced in your</p> <p>7 written report?</p> <p>8 A. Not specifically, no, just generally.</p> <p>9 Q. So when you say generally, you did rely on some</p> <p>10 of those reports that aren't listed --</p> <p>11 A. Not for this report, no.</p> <p>12 Q. Okay.</p> <p>13 A. I mean, they're in my experience having read them</p> <p>14 and gone over them, but I can't specifically tell</p> <p>15 you what I've read in the past.</p> <p>16 Q. So then what source did you rely on in reaching</p> <p>17 your conclusion post 1987 that the common choice</p> <p>18 for defensive arms has become the semi-automatic</p> <p>19 pistol or rifle?</p> <p>20 A. Well, I've attended a variety of different</p> <p>21 training programs including semi-auto pistol</p> <p>22 instructor training programs, a variety of</p> <p>23 different courses throughout the years in law</p> <p>24 enforcement, a variety of different texts that</p> <p>25 I've read over the years about the semi-automatic</p>
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<p>1 A. Well, other studies have been involved, you know,</p> <p>2 in the purchase by other agencies in terms of,</p> <p>3 including the Akron Police Department, of</p> <p>4 semi-automatic pistols. Every agency that I'm</p> <p>5 aware of as a primary firearm carried on duty is</p> <p>6 using a semi-auto pistol and various studies have</p> <p>7 been done in law enforcement, you know, by</p> <p>8 individual agencies to make the recommendation</p> <p>9 for semi-auto pistols so, I know the New York</p> <p>10 City Police Department has transitioned to</p> <p>11 semi-auto pistols, the Los Angeles Police</p> <p>12 Department, about every agency has as well as our</p> <p>13 own studied the trends in law enforcement, the</p> <p>14 benefits of going to a semi-auto pistol and made</p> <p>15 the transition from revolvers to semi-auto</p> <p>16 pistols.</p> <p>17 Q. And do you know that based on your experience or</p> <p>18 based on reports you've read?</p> <p>19 A. Both.</p> <p>20 Q. Can you specify what reports you've read that</p> <p>21 allowed you to reach those conclusions?</p> <p>22 A. We're going back around 1990 when these</p> <p>23 transitions really came in, it would be a number</p> <p>24 of years ago. I can't recall all the reports</p> <p>25 that I read.</p>	<p>1 pistol in police work, for instance, Massad</p> <p>2 Ayoob's book, which I reference, and there's</p> <p>3 other training programs and things that I've read</p> <p>4 over the years as well as my personal experience.</p> <p>5 Q. So your opinion is based on training programs,</p> <p>6 materials, and other references that are not</p> <p>7 included in your report?</p> <p>8 A. Not referenced in the report?</p> <p>9 Q. Expressly referenced in the report, yes.</p> <p>10 A. As background information in terms of my</p> <p>11 experience, yes.</p> <p>12 Q. Okay. So we talked about that the semi-automatic</p> <p>13 pistol and rifle has become a common choice for</p> <p>14 civilians, law enforcement, has it not become a</p> <p>15 common choice for any groups, to your knowledge?</p> <p>16 A. I'm not aware of a, an agency in my experience</p> <p>17 where the semi-auto pistol is not the primary</p> <p>18 sidearm for that agency. Oftentimes agencies</p> <p>19 allow other weapons to be carried, possibly in</p> <p>20 detective roles or other roles but the semi-auto</p> <p>21 is the primary, as well as the carbine is also</p> <p>22 becoming more widespread in law enforcement and</p> <p>23 it now in my experience is eventually replacing</p> <p>24 the shotgun, police shotgun.</p> <p>25 Q. And what's the basis for your opinion that those,</p>

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<p>1 that the semi-automatic pistol and rifle has 2 become a common choice for civilians?</p> <p>3 A. That also is based on my training of law 4 enforcement agencies, the courses that I've 5 attended on firearms instruction and my reading 6 over the years in terms of the use of the 7 defensive actual physical defensive use of 8 firearms in encounters by civilian sector as well 9 as training programs.</p> <p>10 Q. Can you specifically provide to me what you 11 considered? Like what specific, what were those 12 sources that you just talked about?</p> <p>13 A. Oh, there's a variety of different things. A 14 couple different sources are cited. Massad 15 Ayoob's books on, you know, carrying concealed, 16 et cetera.</p> <p>17 There's several different references that I 18 mention in the back.</p> <p>19 Q. But you did consider materials other than what 20 you expressly reference in your report at 21 arriving at your conclusion?</p> <p>22 A. I read a tremendous amount. It's my subject 23 matter or is the area in which I am, I make my 24 living, so I read a variety of different things. 25 I cannot possibly list all the periodicals and</p>	<p>1 enforcement, is there any study supporting that 2 number?</p> <p>3 A. Oh, I don't, there's not even studies on police 4 shootings; so I don't think there's any study 5 that definitively says what kind of gun they're 6 carrying.</p> <p>7 Q. So there's no accurate report to justify that 8 number?</p> <p>9 A. There's tracking of gun sales, what we know is 10 about 65 percent of the agencies in the United 11 States use a Glock automatic pistol so we can say 12 that they only make pistols, not revolvers so 13 that gives you an indication of at least a 14 baseline of how many semi-auto pistols are out 15 there.</p> <p>16 Q. But in your view there's no reliable study giving 17 a hard number?</p> <p>18 A. No, not that I know of.</p> <p>19 Q. Is that the same for civilians?</p> <p>20 A. Civilians it would be even harder so, yeah, I'm 21 not aware of any study.</p> <p>22 Q. So you base your number on civilians on your 23 knowledge of sales?</p> <p>24 A. Well, not just sales. Also on my personal 25 experience instructing civilians in firearms</p>
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<p>1 on-line articles, et cetera, that I've read.</p> <p>2 Q. And I assume you don't have those with you here?</p> <p>3 A. We wouldn't, it wouldn't fit in my car. I'm 4 sorry.</p> <p>5 Q. Explain to me what you mean by common, by "common 6 choice"?</p> <p>7 A. That means more common than uncommon. That means 8 that are more likely to be used and carried than 9 not.</p> <p>10 Q. So 51 percent?</p> <p>11 A. Oh, I think it's beyond that. I don't think 12 there's any accurate studies in terms of 13 percentage. I would say that the, in the law 14 enforcement realm over 90 percent of law 15 enforcement officers, I think that's conservative 16 carry semi-auto pistols. Civilian sector I would 17 say more than 51 percent. Certainly the majority 18 are now carrying and using semi-auto pistols and 19 with carbines, I think now in law enforcement 20 it's probably over 50 percent of agencies are now 21 fielding carbines. In the civilian sector, based 22 on sales of semi-auto pistols they're pretty 23 widely used as well. I couldn't speculate on the 24 percentages.</p> <p>25 Q. Okay. When you said 90 percent in law</p>	<p>1 instruction. By and large civilians emulate what 2 law enforcement does in terms of the types of 3 guns they carry.</p> <p>4 Q. And when we're talking about sales information, 5 what specifically are we talking about?</p> <p>6 A. Gun sales. I mean, that's my answer.</p> <p>7 Q. From who? I'm sorry, from who?</p> <p>8 A. I'm sorry?</p> <p>9 Q. Gun sales from who?</p> <p>10 A. Well, the industry tracks gun sales and that has 11 been published before in terms of the number of 12 guns sold and the types of numbers of guns that 13 are sold by the industry, but I don't have any 14 hard numbers.</p> <p>15 Q. You mentioned some had been published. Do you 16 know where?</p> <p>17 A. I think the gun industry publishes numbers, 18 manufacturers publish numbers, but I can't recall 19 specifics.</p> <p>20 Q. But you think it's, looking at those numbers that 21 would get you to the about 51 percent number?</p> <p>22 A. I would say majority. You know, I don't know how 23 many beyond, you know, 51 percent, beyond the 24 majority, I couldn't say.</p> <p>25 Q. And in reaching that number, you also mentioned</p>

1 that it's from your own experience in instructing 2 civilians? 3 A. That's correct. 4 Q. So in your experience in instructing civilians, 5 how many had semi-automatic pistols or rifles? 6 A. In terms of semi-automatic pistols, I'd say 7 probably 95 percent or above had pistols. Very 8 few were revolvers are carried or at least were 9 used for the courses. In terms of rifles, I've 10 only taught a limited number of civilians in 11 rifles so I couldn't speculate as to how many 12 people in my classes owned rifles as well. 13 Q. When we're talking about these numbers, which 14 classes are you referring to? 15 A. I'm sorry? 16 Q. So when we're determining percentage, it's the 17 amount of people, of course, that have these 18 weapons out of the group of people that you're 19 teaching, correct? 20 A. From my personal experience, yes. 21 You know, it's the people that show up and 22 engage in firearms training that have semi-auto 23 pistols. 24 Q. So when you say that probably 95 percent of the 25 people have pistols --	Page 89 1 semi-automatic pistol or rifle, what do you mean 2 by "defensive arms"? 3 A. Arms used in self-defense, whether carry 4 concealed or for home defense. 5 Q. So that excludes guns used for recreation? 6 A. No. I think that certainly those same guns that 7 people use for self-defense are used in 8 recreational shooting as well as competition. 9 Q. Would that change the percentages? 10 A. Percentages of what? I'm not sure what you're 11 asking. 12 Q. Oh, the percentages that we've already discussed? 13 A. I'm still not sure of the question. 14 Q. For example, do you think more than 95 percent of 15 law enforcement officers have semi-automatic 16 pistols or rifles for recreational purposes? 17 A. Yes, I think that the majority of law enforcement 18 use for recreational shooting as well as their 19 own on the job or use semi-auto pistols, a large 20 percentage of law enforcement officers also have 21 semi-auto carbines or rifles. 22 Q. So I guess what I'm asking you is so when you 23 conclude that X amount of percentage of people 24 have these guns for defensive arms, is it just 25 arms for self-defense or do you think it's the
Page 90 1 A. More than 95 percent, correct. 2 Q. More than 95 percent, are you talking about all 3 your firearms classes that you taught? 4 A. With civilians, yes. In law enforcement, it's 5 well in excess. Semi-auto pistol instruction is 6 to the point where very few revolver classes are 7 ever even given in terms of the State of Ohio. 8 Very few students, instructor students want the 9 class because semi-auto pistols are so widely 10 used. 11 Q. And do you think that number for civilians would 12 hold for people who did not attend gun classes? 13 A. I would say it would be a fair representation but 14 I couldn't, you know, I couldn't speculate on 15 what people own that, you know, that I don't know 16 or have not instructed. 17 Q. Are you aware of any studies that confirm that 18 causal relationship? 19 A. I'm not sure what you're asking. 20 Q. Oh, that the guns possessed by people who take 21 firearms classes correlates to the guns people 22 possess who do not take firearm courses? 23 A. No, I'm not aware of any study. 24 Q. Okay. So when you reached the conclusion that a 25 common choice for defensive arms has become the	Page 90 1 same number for nonself-defense? 2 A. I couldn't speculate, but it's certainly, you 3 know, of the people that own guns, a large 4 percentage own semi-automatic pistols, those same 5 percentage of people engage in recreational 6 shooting with those guns as well as using that 7 gun for self-defense. 8 Q. Do you think people commonly choose to own both a 9 semi-automatic pistol and a rifle for 10 self-defense? 11 A. No. I think that primarily the gun use for 12 self-defense, the firearm is going to be the 13 handgun with the long gun, either carbine or 14 shotgun, used, you know, by some people for home 15 defense as well, but I think the majority of 16 people that own a gun for self-defense own a 17 handgun. 18 Q. Why do you think that? 19 A. It's just the majority of guns that are used in 20 the self-defense situations tend to be handguns. 21 Q. So when we're talking about your percentage that 22 51 percent or more of civilians own these type of 23 guns, among the 51 percent, how many do you think 24 own semi-automatic pistols as opposed to rifles? 25 A. Well, I would think here again the majority of

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<p>1 people that own handguns for self-defense own 2 semi-auto pistols. I couldn't speculate on the 3 number of people that own carbines and use those 4 for self-defense but certainly based on gun sales 5 and, you know, throughout the United States there 6 are a large number of carbines out, you know, 7 being used by civilians.</p> <p>8 Q. But you did say that most people would use their 9 handgun for personal self-defense or property 10 self defense?</p> <p>11 A. I think that's --</p> <p>12 Q. More common?</p> <p>13 A. Certainly concealed carry when they're away from 14 their home if they have a concealed carry permit 15 they're not concealing a long gun. They're 16 concealing a handgun. The handgun also is more 17 readily available in the home, more easily 18 accessible than a long gun.</p> <p>19 Q. Why would they not conceal a long gun when 20 they're outside the home?</p> <p>21 A. Well, they would certainly draw attention to 22 themselves if they did so. I think that, you 23 know, the idea is to be discrete about one's 24 carry.</p> <p>25 Q. And you said that the handgun is more accessible</p>	<p>1 Q. Why a person would possess a handgun for 2 self-defense more commonly than a long gun?</p> <p>3 A. Well, there is the perception that a handgun, 4 more people have training in handguns than in 5 pistols and I think there's a perception that 6 they're more easily used, a handgun can be fired 7 with one hand not just two hands. And they're 8 more easily manipulated, et cetera, so that the, 9 you know, there's the perception that the handgun 10 penetrates less than a carbine does so there's a 11 variety of other issues where people tend to use 12 handguns more for self-defense of the home than 13 long guns.</p> <p>14 Q. You mentioned that you believe that there's 15 perception that handguns are more easily used 16 than a long gun. Why is that?</p> <p>17 A. Well, a long gun, whether a pump shotgun or a 18 carbine, a rifle, have a little bit more 19 complicated manual of arms than some pistols. A 20 pistol, for instance, a striker fire pistol like 21 the Glock or a Smith & Wesson M&P can be picked 22 up as long as there's a round in the chamber, 23 they're a point and shoot type weapon. With carbines and shotguns you tend to have 25 safeties that have to be manipulated, they may</p>
<p>1 in the home. Why is that?</p> <p>2 A. Well, it can be accessed a little bit easier just 3 by virtue of its size. 4 You know, it can be carried on the person or 5 secured in a lockbox nearby so that it can be 6 more easily accessed than a long gun that is 7 usually placed in some type of storage whether a 8 gun safe or a closet or what have you. People 9 don't walk around their homes with their long 10 guns in their hand.</p> <p>11 MR. COLIN: Happens in my house.</p> <p>12 Q. What percentage of people do you think keep their 13 long guns in a safe?</p> <p>14 A. Once again, I couldn't speculate. I am sure that 15 if you were to compare safe sales to long gun 16 sales, less people buy safes than they buy long 17 guns so unfortunately not all people secure their 18 long guns in safes.</p> <p>19 Q. But you would agree that it's fair to say that 20 most people keep their handguns accessible in 21 their homes more so than long guns?</p> <p>22 A. I think because of their size, that's true, yes.</p> <p>23 Q. Any other reasons why?</p> <p>24 A. Why a person would carry a handgun for -- I'm not 25 sure what you're asking.</p>	<p>1 have to be loaded if there's not -- most times 2 they're not carried with rounds in the chamber so 3 they have to be loaded prior to shooting but a 4 handgun can be safely carried and left in the 5 home in a safe manner loaded and ready to go.</p> <p>6 Q. And when you say it's become a common choice for 7 civilians to purchase semi-automatic pistols or 8 rifles with a magazine of, holding more than 15 9 rounds, do they purchase that because of the gun 10 or because of, or because the magazine holds more 11 than 15 rounds?</p> <p>12 MR. COLIN: Speculative.</p> <p>13 A. I think that the gun is designed, the reason that 14 civilians tend to purchase these weapons is 15 because they emulate what law enforcement 16 carries. When people look at guns to carry for 18 self-defense, they'll look at their local law 19 enforcement agencies or trends of law enforcement 20 agencies nationwide and they say well, what are 21 they carrying and oftentimes it's, you know, in 22 the case of gun sales in the United States, it's 23 the Glock or the Smith & Wesson M&P that law 24 enforcement are carrying. Those guns tend to carry 15 rounds or more.</p>

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<p>1 The gun is designed around the size of the 2 hand and the ability to be effective and those 3 guns also have rounds or magazines in excess of 4 15 rounds.</p> <p>5 Q. So when you gave me the percentage of 51 percent 6 of civilians own semi-automatic pistols or 7 rifles, that referred to 51 percent owned those 8 pistols and rifles with magazines holding more 9 than 15 rounds?</p> <p>10 A. No. That originally was, I mean I can't 11 speculate as to the number of civilians that own 12 pistols with 15 rounds or greater magazines. I 13 can't. Or I, I don't have those numbers.</p> <p>14 What, the original question was how many 15 civilians carry semi-automatic pistols and I gave 16 an answer in excess of 51 percent I believe; but 17 carbines I didn't have an answer for.</p> <p>18 Q. So that conclusion that it's 51 percent is only 19 in regards to the category of gun?</p> <p>20 MR. COLIN: Foundation objection.</p> <p>21 He keeps saying more than. You keep saying 22 51 percent. That's my objection.</p> <p>23 A. Can you ask it again? I'm sorry. Can you 24 repeat?</p> <p>25 Q. Yeah. So when you reached the conclusion that a</p>	<p>1 A. Once again I didn't say that 51 percent owned 2 carbines. I said that semi-automatic pistols are 3 the majority of the handgun carry or purchased 4 and used for self-defense in this country. 5 Carbines I can't speculate on. In terms of round 6 count of magazines, I know that a fair number of 7 those, and I couldn't speculate on percentages, 8 are in excess of 15 rounds.</p> <p>9 Q. Are you aware of any studies --</p> <p>10 A. Not to my knowledge.</p> <p>11 Q. -- documenting that?</p> <p>12 A. Not to my knowledge.</p> <p>13 Q. So do you have an opinion on how many civilians 14 own a pistol with a magazine of just 15 rounds?</p> <p>15 A. Just 15 rounds or 15 rounds or less?</p> <p>16 Q. 15 rounds or less?</p> <p>17 A. I couldn't speculate.</p> <p>18 Q. And the same for 16 or more?</p> <p>19 A. Also I couldn't speculate.</p> <p>20 Q. Do you know how common it is that people choose 21 those guns with a magazine capacity of 30?</p> <p>22 A. You mean carbines?</p> <p>23 Q. Yes. Carbines.</p> <p>24 A. Okay. Well, once again, if they're buying that 25 platform, an AR style of platform, then they come</p>
Page 98	Page 100
<p>1 common choice for defensive arms has become the 2 semi-automatic pistol or rifle and that you 3 believe 51 percent of civilians have made that 4 choice?</p> <p>5 A. Or more, correct.</p> <p>6 Q. Or more, that conclusion does not turn on the 7 amount of capacity in the magazine?</p> <p>8 A. No. I think that's a fair statement. I think 9 that, for instance, if a civilian makes the 10 decision to buy a carbine, an AR15 M4 for 11 self-defense and millions of people have done so 12 in the United States, that those, the service 13 magazines that are provided with those, the arm, 14 the firearm is designed around a 30 round 15 magazine. That's the service magazine that comes 16 with the rifle and so it's designed around that.</p> <p>17 When people make the decision to buy a Glock 18 17 or a Smith & Wesson M&P, they make the 19 decision to buy that pistol, it is designed 20 around the magazine count of 17 rounds.</p> <p>21 Q. So when you say 51 percent of civilians own a 22 semi-automatic pistol or rifle, do you know how 23 many of those people own magazines of more than 24 15 rounds with those guns?</p> <p>25 MR. COLIN: Foundation objection.</p>	<p>1 from the manufacturer with 30 round magazines. 2 Unless prohibited by law.</p> <p>3 Q. And do you know if the magazines, or strike that. 4 Okay. So let's specify. So when you talk 5 about it becoming a common choice for the last 6 several decades, what time frame are we talking?</p> <p>7 A. I think once again when you, for law enforcement 8 this trend started in the late 1980s and I would 9 say the civilian sector has lagged behind that 10 but only by a few years.</p> <p>11 Q. Do you know how many years?</p> <p>12 A. I couldn't speculate.</p> <p>13 Q. What was the common choice for law enforcement 14 before the early 1980s?</p> <p>15 A. Revolvers.</p> <p>16 Q. Do you know what the common choice was in 1789?</p> <p>17 A. I would speculate revolvers as well.</p> <p>18 Q. 1850?</p> <p>19 A. Once again we're in the revolvers.</p> <p>20 Q. How about for civilians?</p> <p>21 A. How about for civilians?</p> <p>22 Q. Their common choice in 1789? Same? Revolvers?</p> <p>23 A. There were no -- you know, the modern semi-auto 24 pistol was invented or came about somewhere in 25 the 1911 or thereabouts, in that period of time</p>

1 so up until that time, it was revolvers. 2 Q. Well, let's start going through the opinion. 3 When you say that the general public has been 4 largely influenced by the firearms and caliber of 5 firearms carried by officers in the integral 6 course, can you explain why there's that 7 relationship? 8 A. Well, I think that civilians look to law 9 enforcement in terms of the guns they carry 10 because they want something that's going to be 11 reliable and effective and all those attributes 12 that a law enforcement officer wants. That and 13 that's pretty much as well as the military, so 14 you have both the guns that are being used in law 15 enforcement as well as the military are impacting 16 the civilian market. 17 Q. Are there any ways in which what the military 18 wants would be different than what law 19 enforcement wants from their firearms? 20 A. Well, the military is restricted by what they 21 carry in terms of bullets because they're not 22 allowed to use some of the modern ammunition or 23 the rounds that are more effective based on the 24 Hague Conventions and things that the United 25 States Government has agreed to; so in terms of	Page 101 1 sales of those same guns being sold to the 2 civilian sector as well as the public sector. 3 Q. And are we referring to the same sales 4 information that we were discussing earlier? 5 A. Just sales information released by the gun 6 manufacturers and the industry, yes. 7 Q. Did you cite to those in your report? 8 A. No. There is no specific studies that I referred 9 to. 10 Q. But you did consider those in reaching the 11 opinion? 12 A. In background information in my readings, yes. 13 Specifically, no. 14 Q. What years did you consider? 15 A. I've been involved in firearms instruction for 16 over 20 years; so all the periodicals and e-mails 17 and news releases during that period of time that 18 I've read. 19 Q. So you base your opinion on 20 years of sales 20 information that you've come across? 21 A. As well as the practical experience in the field. 22 Q. And have you provided those documents to 23 Mr. Colin or Mr. Kopel? 24 A. I don't have those documents. It's not anything 25 that I've ever saved.
Page 102 1 effectiveness, the nine millimeter pistol is by 2 and large the most popular pistol in law 3 enforcement and the nine millimeter pistol is by 4 and large the most widely used in the military in 5 this, by this nation's military. 6 Q. But you do think that the civilian market in 7 addition to looking at what law enforcement 8 carries, they also look to what the military 9 carries in choosing a firearm? 10 A. I think there's some truth to that if available. 11 I mean obviously if the weapons are strictly 12 weapons of war that are restricted for civilian 13 carry, then those are prohibited but in terms of, 14 you know, handguns and long guns, I think that is 15 true. 16 Q. So civilians would look to what personal handguns 17 the military carries in deciding what handguns or 18 what personal arms they would also purchase? 19 A. The, I think that's true, yes. 20 Q. So when you say that civilians follow the trend 21 of law enforcement in purchasing handguns, what's 22 your basis for reaching that conclusion? 23 A. The sales and the use of those handguns by 24 civilians. We see those handguns being used in 25 training programs for civilians and we see the	Page 102 1 Q. And when you say also it's based on your 2 experience, how so? 3 A. Once again, my personal experience in training, 4 you know, civilians with firearms. Those are the 5 handguns that they show up at the courses with. 6 Q. Do you think that civilians also follow the law 7 enforcement trend when it comes to purchasing 8 magazine, purchasing magazines? 9 A. Well, a magazine capacity has to do with the 10 handgun carried so when they purchase magazines, 11 they're purchasing magazines that are for the 12 handgun for the rifle that they want to shoot. 13 For instance, a Glock 17 magazine will fit in a 14 Glock 19 pistol and will fit in a Glock 26 pistol 15 but it's not designed to be carried in those. It 16 can be used, but most people that buy magazines, 17 whether for carbines or for handguns, buy them 18 specifically for that design. 19 Q. But again that conclusion's just based on your 20 experience of seeing -- 21 A. Well, I guess they could buy magazines that they 22 didn't use in guns. You know, but that makes no 23 sense. Why would somebody buy a magazine that 24 they didn't intend to use in a firearm? So my 25 point is that they buy those magazines that work

1 in the firearms that they carry or that they use. 2 Q. So you just reached your conclusion logically? 3 A. Yes. 4 Q. Do you think that civilians also look to law 5 enforcement in determining what nonlethal weapons 6 to use? 7 A. I certainly think that's true to some degree but 8 I think that's true, yes. 9 Q. And is that for the same reason that they look to 10 police for what firearms to purchase? 11 A. Yes. 12 Q. So in the second paragraph of your report you 13 list that criminal suspects have not been limited 14 in the arms or capacity of arms they carry, 15 correct? 16 A. That is correct. 17 Q. And I'm just curious, what do you mean by 18 "criminal suspect"? Are we talking about someone 19 who has already used the gun? 20 A. I mean someone engaging in an unlawful act. You 21 know, with a handgun or with a gun period. 22 Q. So someone who is suspected of committing a 23 crime? 24 A. Well, I think whether they've been arrested or 25 they're engaged in the act or a criminal suspect	Page 105 1 Q. Are you aware of any studies documenting that? 2 A. Of felons carrying guns? 3 Q. Or not being limited in the guns that they carry? 4 A. Well, there is no limit other than accessibility. 5 I mean what, they carry what they can get their 6 hands on, but they're not limited to a small 7 handgun or a handgun. They can carry whatever 8 they want to carry to complete their criminal 9 act. 10 Q. So the basis is they're not limited because 11 they're willing to break the law anyway so 12 they'll, they're willing to have whatever gun 13 whether it's lawful or not? 14 A. I think they're not, if they're not willing to 15 obey the law, then, which is the ultimate, you 16 know, in terms of controlling people and guns, 17 then I would say that they are not limiting 18 themselves. 19 Q. And would that also include the capacity of a 20 magazine? 21 A. Certainly the criminal suspects can access 22 whatever magazine that they can get their hands 23 on. 24 Q. Do you know what if any the impact of the federal 25 assault rifle ban had on preventing criminals
Page 106 1 that engages in criminal activity on a regular 2 basis, I think we can call them a criminal 3 suspect as well. 4 Q. Does your list include any others when you use 5 that term? 6 A. Criminal suspect? 7 Q. Yes. 8 A. Either those people who are actively committing 9 crimes, those people that regularly commit crimes 10 or those people that are going to commit crimes, 11 I think those are the three areas that I'm 12 addressing. 13 Q. Okay. And no others? 14 A. Not that I can think of. 15 Q. And what's the basis for that conclusion that 16 that group of people has not been limited in the 17 arms or capacity of arms that they have? 18 A. Well, they are criminal suspects by virtue of 19 breaking the law, ergo and therefore they don't 20 pay attention to laws in terms of the firearms 21 they carry. 22 For instance, it's against the law if they've 23 previously been convicted of a felony from having 24 a firearm and yet that happens on a regular 25 basis.	Page 106 1 from procuring assault rifles back when the 2 statute was in effect? 3 A. Very little which is ultimately what led to why 4 it was repealed because it had very negligible 5 effect on violent crime. 6 Q. And why was that? 7 A. Because, once again, criminal suspects don't 8 follow the law. 9 Q. Do you know what if any the impact of the federal 10 ban had on fully automatic guns has had on 11 preventing criminals from procuring fully 12 automatic guns? 13 A. Very few fully automatic firearms are used by 14 criminal suspects. Of those that are fully 15 automatic, probably a higher percentage would be 16 they've been illegally converted to do so, not 17 legally purchased. 18 I would say the number of criminal suspects 19 that use legally obtained fully automatic weapons 20 is a microcosm of one percent, it would be a 21 small number, but there are still guns out there. 22 Q. Is it small because of lack of access? 23 A. In order to obtain a fully automatic weapon, 24 other than the theft which happens from law enforcement officers, people break into homes and

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<p>1 steal law enforcement officer's weapons that are 2 a select fire or fully automatic, they also may 3 steal them from the military, which has happened. 4 Most of the fully automatic weapons are not 5 obtained legally. They've been, and of course 6 the fact they're carrying them without the proper 7 paperwork is a violation of federal law anyway.</p> <p>8 Q. But you would agree that most criminals do not 9 have fully automatic --</p> <p>10 A. Oh, that's true. Thank goodness, yes, that's 11 true.</p> <p>12 Q. So would you agree then that there's some 13 limitations on a criminal or on the level of 14 firearms that criminals carry?</p> <p>15 A. I have seen everything carried up, you know, to a 16 fully automatic Thompson submachine gun by folks. 17 To my knowledge I've never run into a LAWs rocket 18 or an RPG on the street, rocket propelled 19 grenade, but other than that, I've run into 20 everything carried by a variety of different 21 criminal suspects.</p> <p>22 Q. Well, you mention in the next paragraph the 23 Newhall Massacre. Why do you think that incident 24 is relevant to this case?</p> <p>25 A. Well, it was the beginning of, there were a</p>	<p>1 involved, were ex-cons. They were formulating 2 strategies, you know, it's been reported to 3 possibly conduct an armed, armored car robbery or 4 some type of bank robbery and they were very 5 violent. They were armed. Obviously they didn't 6 want to go back to prison. I think that the 7 officers, although they responded with a fair 8 amount of awareness, you know, at least one of 9 the highway patrolmen had a shotgun out, they 10 weren't prepared for the violent resistance and I 11 don't think their training had properly prepared 12 them to deal with the violent assault.</p> <p>13 Q. So their failure was based on more than just 14 being outgunned?</p> <p>15 A. I think that's a -- yes, I think that's a fair 16 statement.</p> <p>17 Q. Training being one of the reasons?</p> <p>18 A. Training, yeah, mindset, et cetera.</p> <p>19 Q. And just so we're on the same page. What sorts 20 of sources are you relying on for your knowledge 21 about the Newhall Massacre?</p> <p>22 A. The Newhall Massacre has been widely reported in 23 law enforcement training and one of my 24 references, the Streets of Rival series of books 25 refers to the Newhall Massacre and other, there</p>
Page 110	Page 112
<p>1 couple seminal events, several seminal events in 2 law enforcement that led to ultimately to take a 3 look at firearms training and the Newhall 4 Massacre was one of those where unfortunately 5 four California Highway Patrol officers were 6 killed by two criminal suspects that caused the 7 California Highway Patrol as well as law 8 enforcement to examine the way it conducted 9 firearms training as well as starting to look at 10 guns that were carried by law enforcement.</p> <p>11 Q. Do you know what the assailants were armed with?</p> <p>12 A. Revolvers, a variety of different weapon systems. 13 A semi-automatic 1911 .45; a revolver, I think a 14 .357 Magnum and possibly a shotgun, but -- I 15 can't recall, but they had several different 16 guns.</p> <p>17 Q. Do you know what the officers were carrying?</p> <p>18 A. They were carrying revolvers and as well as 12 19 gauge shotguns.</p> <p>20 Q. How many officers lost their lives in that 21 incident?</p> <p>22 A. Four.</p> <p>23 Q. Do you have an opinion as to why they did?</p> <p>24 A. Well, I think you had very violent criminal 25 suspects, both Twinning and Davis, the suspects</p>	<p>1 's videotapes that are available or videos that 2 are available on the incident as well.</p> <p>3 Q. Are the videos cited in your report?</p> <p>4 A. I'm not sure. I'm not sure. It may have been. 5 It may be in there.</p> <p>6 MR. COLIN: NCB Channel 4 Los 7 Angeles, California. It's in there.</p> <p>8 A. It's in there.</p> <p>9 Q. Why in your opinion is the Norco robbery relevant 10 to your conclusion?</p> <p>11 A. Well, it was an incident where once again law 12 enforcement came into contact with very violent 13 armed criminal suspects. The suspects were armed 14 with I think three carbines and at least one 15 shotgun as well as handguns and after their bank 16 robbery and getaway, their fire was devastating 17 against law enforcement.</p> <p>18 Law enforcement were seriously undergunned 19 because they had primarily six-shot revolvers and 20 shotguns. Only one real, there was an effective 21 officer who used an AR15, you know, against the 22 assailants. Ultimately it caused them to abandon 23 their getaway car and flee, but it was 24 devastating against law enforcement.</p> <p>25 Q. And why did that change the type of guns that law</p>

1 enforcement started carrying? 2 A. Once again the examination, you know, in the 3 background of law enforcement starting to look at 4 their arms equipment and their training. 5 Q. Do you know how quickly that shift followed that 6 incident? 7 A. I'm sorry? 8 Q. Do you know how quickly that shift towards better 9 guns followed? 10 A. Well, that was in 1980. 11 Probably the biggest impact on law 12 enforcement, because it was the most devastating, 13 was, followed in 1986 so it was definitely a 14 trend in law enforcement or, you know, that they 15 were starting to examine the guns and gear we 16 were carrying. 17 Q. Okay. So in your opinion it's really more that 18 these three incidents that you cite together 19 caused the shift rather than one individually? 20 A. I think in terms of seminal events in law 21 enforcement as to why. I mean if we didn't have 22 these seriously violent incidents, we might still 23 be carrying six-shot revolvers, you know. 24 Q. So in what ways has the shift towards 25 semi-automatic and long rifles made law	Page 113 1 normally carries in his handgun. 2 Q. But with a pistol you could carry more rounds 3 than what comes in the pistol, correct? 4 A. Well, you can carry loose rounds in your pocket. 5 It's effectiveness, though, that we're talking 6 about. 7 Q. But in terms of just number of rounds, is there a 8 reason why prior to 1987 officers didn't hold, 9 didn't have more rounds that they carried? 10 A. Well, they were carrying six-shot revolvers. 11 During that period of time handgun design had 12 not, many handguns weren't reliable that they 13 would malfunction with hollow-point ammunition. 14 It was only during that period of time when the 15 gun industry was looking at semi-automatic 16 handguns and law enforcement was asking for them. 17 I mean the demand by law enforcement drove the 18 marketplace to develop these handguns that were 19 effective and, you know, certainly an officer 20 that carries a handgun that has 18 rounds in, 17 21 rounds in the magazine, one in the chamber, he 22 can fire longer before he has to reload, you 23 know, three times longer compared with a 24 revolver. 25 Q. You also mentioned that one of the benefits of
Page 114 1 enforcement more effective? 2 A. Well, it's improved law enforcement safety. More 3 rounds on the officer, more rounds available on 4 the pistol before a reload is necessary has 5 improved officer safety. They can fire on, they 6 can fire consistently longer when they have more 7 rounds in their semi-auto pistol. 8 With the carbine, similar, the benefits of 9 the carbine that we've already mentioned in terms 10 of increased accuracy, intimidation value, 11 increased ballistic performance. All of those 12 and other things have improved officer safety 13 because we can be more accurate, put more rounds 14 on target and ultimately save officers' lives. 15 Q. When you say it provides officers with more 16 rounds, how many rounds are we talking about? 17 A. Well, in the majority of cases when we look at 18 the use of the Glock semi-auto pistol and the 19 Smith & Wesson M&P, we're talking 65 percent of 20 agencies nationwide carry a Glock. The biggest 21 seller in the Glock line is the Glock 17 which is 22 17 rounds in the magazine and one in the chamber. 23 Smith & Wesson M&P is the number two seller. 24 Same thing, 17 rounds in the magazine, one in the 25 chamber so 18 rounds is what an officer on duty	Page 114 1 the carbine is that they have higher accuracy? 2 A. That's correct. 3 Q. Why is that? 4 A. Well, longer sight radius and in terms of a 5 handgun, a handgun if we're talking about a Glock 6 17 or a Smith & Wesson M&P might only have a 7 sight radius of about five inches. A carbine is 8 normally a 16 inch barrel with a longer sight 9 radius and also carbines are more accurately 10 fired because they have four points of physical 11 contact with the carbine versus a handgun where 12 you're holding on with just one or two hands. 13 Q. In your opinion do carbines require more training 14 than the use of a pistol? 15 A. No. I think in the same amount of time we can 16 develop competency with both a handgun and a 17 carbine. 18 Q. Do you know in 1987 how common police training 19 with the revolver took place? 20 A. Unfortunately it's not changed too much. You 21 know, it's a sad statement that most agencies 22 shoot one to two times a year and that's about 23 it. So I would say that, you know, back then 24 about the same time the officers would go to the 25 range and have to qualify with their revolvers

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<p>1 once a year. Now it's once or maybe twice a year 2 with the semi-auto pistol.</p> <p>3 Q. Is required training of firearms more common now 4 than it was in 1985?</p> <p>5 A. The requirement? It's always been a requirement 6 as long -- my time in law enforcement goes back 7 to 1982. It was always a requirement that an 8 officer go through revolver training or handgun 9 training. It was always a requirement that the 10 officer have to qualify so that has not changed 11 but maybe the frequency and the time of training 12 has improved.</p> <p>13 Q. How about the level and quality?</p> <p>14 A. I would think that that's a truism, that firearms 15 training is better now than it used to be.</p> <p>16 Q. With more, with a higher frequency and better 17 training, do you think that also explains why law 18 enforcement now experiences increased accuracy 19 with a carbine?</p> <p>20 A. Oh, with the carbine, you have the inherent 21 accuracy potential of the weapon system but also 22 the training. That's certainly true but, you 23 know, military training, for instance, the Marine 24 Corps has pretty much stayed the same during that 25 period of time and they're fairly accurate. I</p>	<p>1 velocity, transfers more of its energy so it 2 ballistically has more impact on target. It 3 penetrates to a decent level without 4 overpenetration so you get an improved temporary 5 wound impact as well as a permanent wound impact.</p> <p>6 Q. Why is ballistic superiority important?</p> <p>7 A. Well, the object in both the civilian sector and 8 law enforcement and the military is to shoot 9 somebody to stop them, you know, to cease their 10 aggressive actions.</p> <p>11 Q. The ballistic superiority of a round does not 12 depend on the amount of said round in the 13 magazine, correct? It's the round itself?</p> <p>14 A. No. I think that having more rounds available is 15 certainly, first of all rounds fired that don't 16 impact the target don't count. That's number 17 one. So we're talking about hits on target.</p> <p>18 Of those hits on target, peripheral rounds 19 that don't impact vital areas frequently are not 20 going to result in quick incapacitation so of 21 those rounds fired, rounds have to hit vital 22 targets and having more rounds on board improves 23 the rounds that impact on target and improves the 24 rounds that impact the vital zones.</p> <p>25 Q. But having multiple rounds, the same</p>
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<p>1 don't think they've gotten any better in terms of 2 riflemen.</p> <p>3 Q. So when you say it's increased accuracy of a 4 revolver, it's both the weapon itself and 5 advancements in training. Is that fair?</p> <p>6 A. I would say that, you know, you have the inherent 7 accuracy potential of the weapon system, number 8 one and number two, that the training has 9 improved over the years, especially in the 10 civilian sector.</p> <p>11 Q. And in your opinion rifles and carbines also fire 12 a ballistically superior round, correct?</p> <p>13 A. Yes.</p> <p>14 Q. Can you tell me what you mean by "ballistically 15 superior"?</p> <p>16 A. There are different factors of a bullet impact on 17 target. You have a temporary wound channel and a 18 permanent wound channel and this is based on 19 penetration. A handgun round, which is typically 20 for most law enforcement in the United States, a 21 nine millimeter is around a thousand feet per 22 second or less. A 5.56 round is about 3200 feet 23 per second or less, so they're faster.</p> <p>24 On impact you have more what's called 25 hydrostatic shock. It transfers because of its</p>	<p>1 ballistically superior round does not in and of 2 itself make the round more ballistically 3 superior?</p> <p>4 A. No, that's not true because the one stop shop 5 shot is basically a myth that one round fired is 6 going to stop someone. So we're counting on, in 7 terms of ballistics, we're counting on multiple 8 rounds impacting the target area.</p> <p>9 Q. So when you use the term "ballistically superior" 10 you're talking about the overall cumulative 11 effect that all the shots will have on an 12 assailant?</p> <p>13 A. I'm talking about the impact of one effective 14 round as well as multiple rounds. Certainly if 15 one is more ballistically effective on target, 16 then multiple rounds are going to aid in stopping 17 the assailant even sooner.</p> <p>18 Q. I'm going to take you to the second to last 19 paragraph on this page when you write: "Today in 20 law enforcement, a high-capacity magazine fed 21 semi-auto pistol is carried by many police 22 officers with two spare magazines carried by each 23 officer."</p> <p>24 A. I'm sorry. You're on what page now?</p> <p>25 Q. I apologize. I'm on Page 5.</p>

<p>1 A. All right. So go back and --</p> <p>2 Q. You write that "A high-capacity magazine fed</p> <p>3 semi-auto pistol is carried by many police</p> <p>4 officers with two spare magazines carried by each</p> <p>5 officer."</p> <p>6 A. That's correct.</p> <p>7 Q. What's your basis for that conclusion?</p> <p>8 A. Standard law enforcement best practices.</p> <p>9 Q. In your department?</p> <p>10 A. Nationwide.</p> <p>11 Q. And how do you know it's nationwide?</p> <p>12 A. Because my business is firearms instruction law</p> <p>13 enforcement and that's the standard carry for</p> <p>14 most law enforcement officers is at least two</p> <p>15 spare magazines carried in addition to the duty</p> <p>16 pistol.</p> <p>17 Q. And by national standard, is there actually a</p> <p>18 protocol that provides for that?</p> <p>19 A. There are no national standards. There are only</p> <p>20 standards within agencies, policies and</p> <p>21 procedures.</p> <p>22 Q. So when you arrive at your conclusion that there</p> <p>23 is a national standard, you're relying on</p> <p>24 individual agencies' policies and procedures?</p> <p>25 A. I didn't say -- I said best practices and</p>	<p>1 states in terms of recommendations for officers</p> <p>2 carrying spare ammunition.</p> <p>3 Q. Do you have any basis for your conclusion that</p> <p>4 Colorado wouldn't be any different than other</p> <p>5 states?</p> <p>6 A. I've communicated to a couple of subject matter</p> <p>7 experts, one of which is cited in the report, you</p> <p>8 know, talked about the pistols carried and the</p> <p>9 firearms carried by Colorado law enforcement and</p> <p>10 that would indicate that, you know, they're in</p> <p>11 keeping with the rest of the nation.</p> <p>12 Q. So in addition to relying on the John Hood cite</p> <p>13 that you have in your report, did you rely on</p> <p>14 other communications with other people in</p> <p>15 Colorado?</p> <p>16 A. There was another subject matter expert that I</p> <p>17 contacted that I got permission to use his</p> <p>18 information after I had filed my report so when</p> <p>19 we had communicated back and forth, he was</p> <p>20 soliciting permission from his agency. He got it</p> <p>21 but only after the report was filed.</p> <p>22 Q. Can you tell me who that was?</p> <p>23 A. I can't recall his name offhand. I could.</p> <p>24 Q. If you could find that out and inform your</p> <p>25 attorneys.</p>
<p>1 standards. As you know, there is no national</p> <p>2 standard where an officer must carry at least two</p> <p>3 spare magazines. There is the best practices in</p> <p>4 law enforcement which is at least two spare</p> <p>5 magazines carried by a law enforcement officer.</p> <p>6 Q. So do you know how many law enforcement officers</p> <p>7 do carry two spare magazines with more than 15</p> <p>8 rounds?</p> <p>9 A. I don't know. There's never been a study. I</p> <p>10 couldn't speculate. I'd say the vast majority of</p> <p>11 uniformed officers carry at least two spare</p> <p>12 magazines.</p> <p>13 Q. So in that sentence what you mean is that that's</p> <p>14 best practice?</p> <p>15 A. I mean that that's actually what happens in law</p> <p>16 enforcement today.</p> <p>17 Q. But you don't know how many officers actually in</p> <p>18 fact do carry two spare magazines with 15 or</p> <p>19 more?</p> <p>20 A. No. The vast majority. That's all I could say.</p> <p>21 Q. So that vast majority include Colorado?</p> <p>22 A. I'm sure.</p> <p>23 Q. And why are you sure?</p> <p>24 A. You know, based on national, I don't think</p> <p>25 Colorado would do anything differently than other</p>	<p>1 A. That's fine.</p> <p>2 Q. But you did say you received that information</p> <p>3 after you filed your report?</p> <p>4 A. No. I received his -- he received permission to</p> <p>5 use his name in the report after I had filed the</p> <p>6 report. He gave me the information prior but I</p> <p>7 didn't include it because I couldn't cite him. I</p> <p>8 didn't have permission to cite him.</p> <p>9 Q. So is your report in part based on what he told</p> <p>10 you?</p> <p>11 A. No, that's not included in here. I included John</p> <p>12 Hood, which was sufficient for that point.</p> <p>13 Q. So this point is based exclusively on John Hood's</p> <p>14 e-mail?</p> <p>15 A. That specific information that he's cited with.</p> <p>16 Q. So what conclusions do you draw about Colorado</p> <p>17 from Mr. Hood's e-mail or from the source that</p> <p>18 you cited?</p> <p>19 A. They're in keeping with the rest of the country</p> <p>20 that the primary guns used in Colorado are Smith</p> <p>21 & Wesson M&P and Glock semi-automatic pistols.</p> <p>22 Q. Any others?</p> <p>23 A. No. I mean there is according to Mr. Hood also</p> <p>24 down here, I'm sorry, the last sentence: Patrol</p> <p>25 rifles are very common, and in his opinion more</p>

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<p>1 popular and common than the shotgun today.</p> <p>2 Q. Who is John Hood?</p> <p>3 A. He's listed as a subject matter expert with the</p> <p>4 Colorado POST, Police Officers Standards and</p> <p>5 Training.</p> <p>6 Q. Do you know what he does?</p> <p>7 A. He's a police officer. I can't recall the agency</p> <p>8 that he's with. I didn't write it down. In the</p> <p>9 report I didn't include it.</p> <p>10 Q. So the only conclusions you draw from Mr. Hood</p> <p>11 are the two that you expressly reference in the</p> <p>12 last paragraph?</p> <p>13 A. That's correct.</p> <p>14 Q. And how do those statements allow you to draw the</p> <p>15 conclusion that officers in Colorado are carrying</p> <p>16 high-capacity magazines or carrying more than two</p> <p>17 high-capacity magazines?</p> <p>18 MR. COLIN: Foundation objection.</p> <p>19 Go ahead.</p> <p>20 A. What, I don't draw that conclusion based on what</p> <p>21 Mr. Hood said.</p> <p>22 The question to Mr. Hood was what guns do</p> <p>23 Colorado law enforcement officers carry by and</p> <p>24 large and he listed the Smith & Wesson M&P and</p> <p>25 the Glock and that they were using, many agencies</p>	<p>1 And that is: "Due to the high incidence of</p> <p>2 low hit probability and movement in self-defense</p> <p>3 shootings, semi-auto pistols and carbines or</p> <p>4 rifles which hold more than 15 rounds provide the</p> <p>5 citizen the capability of more effectively</p> <p>6 neutralizing a deadly threat," correct?</p> <p>7 A. Correct.</p> <p>8 Q. Can you define what you mean by "high incidence"?</p> <p>9 A. In the majority of police shootings nowadays as</p> <p>10 well as civilian shootings, and this is based on</p> <p>11 dashboard cameras, surveillance cameras, et</p> <p>12 cetera, we see a number of, we see both the</p> <p>13 suspects as well as the victims or the officers</p> <p>14 moving during the gunfight. They don't stay</p> <p>15 stationary, by and large they tend to move and</p> <p>16 that has been verified by dashboard cameras and</p> <p>17 it's common in law enforcement.</p> <p>18 Law enforcement training has now emphasized</p> <p>19 shooting on the move, you know, and as does</p> <p>20 training for civilians so in that it's based on</p> <p>21 actual shootings.</p> <p>22 Q. How does movement affect hit probability?</p> <p>23 A. Well, a moving target is harder to hit and a</p> <p>24 citizen or officer moving has less hit</p> <p>25 probability than a stationary. It's easier to</p>
Page 126	Page 128
<p>1 had gone to patrol rifles.</p> <p>2 The two spare magazines carried by law</p> <p>3 enforcement is just a best practices and</p> <p>4 standards in law enforcement, at least two. It's</p> <p>5 so common that it's not even, I didn't even</p> <p>6 verify it. It's just common in law enforcement.</p> <p>7 Q. So there's nothing, you have no specific</p> <p>8 information about Colorado that would allow you</p> <p>9 to draw that conclusion as to Colorado?</p> <p>10 A. No.</p> <p>11 Q. Have you been asked to test the relationship</p> <p>12 between civilians purchasing similar arms to what</p> <p>13 law enforcement carries?</p> <p>14 A. No.</p> <p>15 Q. Are you aware of any tests ever being conducted?</p> <p>16 A. I've never seen any studies.</p> <p>17 Q. Any studies?</p> <p>18 A. No.</p> <p>19 Q. Other than what you expressly reference in your</p> <p>20 written report and what we've talked about today,</p> <p>21 are there any other conclusions you draw based on</p> <p>22 your first opinion?</p> <p>23 A. I don't believe so.</p> <p>24 Q. Well, let's turn to your third opinion, if you</p> <p>25 would.</p>	<p>1 hit a target standing in one spot than moving.</p> <p>2 Q. Do you know the precise change in hit probability</p> <p>3 for a stationary target as opposed to a moving</p> <p>4 target?</p> <p>5 A. I don't.</p> <p>6 Q. Does it just depend on the situation?</p> <p>7 A. I don't. That's almost invariably a response.</p> <p>8 People that are getting shot at don't want to</p> <p>9 stand there and take the shot. They tend to</p> <p>10 move.</p> <p>11 Q. So movement. Obviously when someone shoots,</p> <p>12 they're moving. So we're ducking, running</p> <p>13 around?</p> <p>14 A. It could be moving laterally. Could be ducking.</p> <p>15 Moving to cover. A variety of actions.</p> <p>16 Q. And just so we're clear, when you say "neutralize"</p> <p>17 a deadly threat," you mean stopping the threat by</p> <p>18 shooting the suspect?</p> <p>19 A. Correct.</p> <p>20 Q. What's the most effective way to neutralize a</p> <p>21 deadly threat?</p> <p>22 A. Most effective way? Is to not be in the gunfight</p> <p>23 to begin with.</p> <p>24 Other than that, it is shooting center mass.</p> <p>25 Q. What turns a threat into a deadly threat? What's</p>

1 the difference between the two? 2 A. Well, the difference would be someone that's 3 verbally threatening you with physical violence 4 versus somebody that you suspect based on 5 reasonable perception is armed or attempting to 6 gain access to a weapon system or somebody that 7 is actually armed that's threatening, so the 8 ability or the perceived ability to deliver a 9 deadly threat or serious bodily harm, death or 10 serious bodily harm. 11 Q. In the first sentence you mention that most 12 police shootings take place at close range. How 13 close are we talking about? 14 A. Well, majority of police shootings take place in 15 what we call the activity zone, the areas where 16 officers conduct field interviews, they arrest 17 and control people, so that's normally inside six 18 feet or in or around six feet in distance. 19 Q. Okay. So when you mention some of the statistics 20 from the New York report, I think that reflects a 21 distance of 45 feet. That would not be 22 considered close range? 23 A. No. Actually that's, 53 percent were inside 15 24 feet. 25 Q. But in your opinion anything inside six feet	Page 129	Page 131 1 Unfortunately there is no national database on 2 police officer involved shootings. 3 Q. So in reaching this conclusion you don't rely on 4 any other reports? 5 A. There are other reports. I think I've actually 6 included Oregon in there, but those are the bulk 7 of the listed, Mr. Aveni's, there's Metro-Dade, 8 you know, and other listed reports but there's 9 not a lot of published reports on law enforcement 10 officers in confrontations. 11 Q. Did you consider any reports that are not listed 12 in your report? 13 A. Not that I can recall. 14 Q. So in this conclusion you discuss Aveni, the 15 report from Aveni. What did that tell you about 16 hit rate? 17 A. Well, it verified what I already knew, that of 18 those rounds fired by law enforcement, only a 19 fraction actually hit the intended target so it 20 was, hit probability in armed confrontations is 21 low. 22 Q. And those figures take into account only shots 23 made by officers during their law enforcement 24 duties? 25 A. As compared to what, counselor? I'm not sure.	Page 130	Page 132 1 would be close range? 2 A. Well, I think anything inside 20 feet is normally 3 considered close range in law enforcement. 4 Q. And what's the basis for that? 5 A. As statistics have broken down in firearms 6 training over the years an emphasis has been 7 placed on training officers to deal inside 20 8 feet. That's majority of shootings, somewhere 9 between 85, 90 percent of all shootings take 10 place inside 20 feet. Of those, majority take 11 place inside closer distance, you know, ten feet, 12 six feet, inside that range but the vast majority 13 of all police shootings take place inside 20 14 feet. 15 Q. And what statistics are you referring to? 16 A. Oh, that's been cited by the FBI. That's 17 included in my report. You know, officers down 18 studies each year, killed in action reports by 19 the FBI. There's several other reports that I've 20 cited. 21 Q. So the reports that you rely on to reach that 22 conclusion are the FBI report, the California 23 report and the New York City police report, 24 correct? 25 A. Those are the, the best documented.
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1 The greater, certainly the greater the training 2 programs, the improvement of the hit probability. 3 Q. So with training, hit probability can go up? 4 A. Certainly. 5 Q. So just so we're clear, you think 25 percent is 6 the most accurate hit probability rate? 7 A. I think that's, within 25 percent or less is an 8 accurate number. It depends because the problem 9 with the New York City Police Department is how 10 they gather statistics and how they look at their 11 numbers. They've actually done away with talking 12 about hit probability in the last few years. 13 Q. Do you think the data that we have on law 14 enforcement hit probability translates to 15 civilian hit probability? 16 A. I would say that civilian hit probability is less 17 than law enforcement hit probability so less than 18 25 percent. 19 Q. And what do you think it would be? 20 A. I couldn't even speculate but it's certainly less 21 than 25 percent. 22 Q. 15? 23 A. I would just be speculating. 24 Q. Do you believe that the capacity of a magazine 25 impacts hit rate?	Page 133	Page 135 1 or a law enforcement officer is shooting at a 2 threat, they're trying to make every round count, 3 it's just that their skills deteriorate under 4 stress and coupled with the fact that the suspect 5 may be moving, the citizen or officer may be 6 moving, all those things factor in to decrease 7 hit probability. When you have more rounds 8 available out of more rounds fired, you're more 9 likely to get more rounds on target. 10 Q. So if I was shooting ten rounds or a hundred 11 rounds, my hit rate would be different in your 12 view? 13 A. Hit probability? Well, certainly the number of 14 rounds on target would depend on which rounds hit 15 so it's, we're only talking about the rounds that 16 hit. 17 Having more rounds available allows the 18 citizen or the officer to continue to fire in 19 defense of their life until they're forced to 20 reload. 21 Q. But the percentages of shots that I fired would 22 hit at the same percentage as I shot more rounds? 23 A. It's possible. Most shootings that take place, 24 for instance, out of a 30 round magazine with a 25 carbine doesn't necessarily mean that the officer
Page 134 1 A. Yes, I do. 2 Q. How so? 3 A. The more rounds that are on board the pistol, the 4 more rounds that an officer or a citizen can fire 5 before they have to reload. 6 Since only a small percentage of rounds 7 fired, 25 percent or less, actually hit their 8 intended target, having more rounds on board 9 increases officer and citizen safety. 10 Q. But the accuracy of each integral shot does not 11 improve with more rounds? 12 A. No. It, you know, in terms of shooting each 13 individual shot, whether in a self-defense 14 situation for a citizen or in an armed 15 confrontation for a law enforcement officer, the 16 officer or citizen begins shooting, they continue 17 to shoot until the suspect is either down or they 18 no longer perceive there's a threat or they're 19 wounded or they run out of ammunition. 20 Having more rounds on board increases hit 21 probability because a large number of rounds 22 fired miss their intended target. 23 Q. So it impacts hit probability in that if you fire 24 more rounds you'll hit more times? 25 A. Well, it's not just the -- I mean when a citizen	Page 134	Page 136 1 or the citizen is going to fire all 30 rounds or 2 all 28 rounds but allows them to continue to fire 3 in defense of their life until the threat is no 4 longer there. 5 Q. So in your view would I be more accurate as I 6 fired more shots? 7 A. Accuracy is a product of the fundamentals of 8 marksmanship. The problem is that they're 9 ideals. 10 When somebody's shooting back at you, you 11 tend to shoot a lot of rounds and you tend to 12 keep shooting until the threat's no longer there. 13 We can't predict how many rounds you're going to 14 fire. We can only say that having more rounds on 15 board the pistol allows you to be able to fire 16 more rounds until the threat's no longer there 17 before you have to reload. 18 Q. So in a real gunfight it's possible that the hit 19 rate could actually go down as you fire more 20 shots? 21 A. The New York City Police Department, you know, in 22 their shootings talks about hit probability or 23 completion rate is what they now refer to it. 24 They don't want to use hit probabilities. They 25 talk about different percentages but they say

1 that it decreases when the subject is shooting 2 back so when an officer perceives a deadly 3 threat, the man's got a gun, the man's got a 4 knife and he's threatening the officer, he's not 5 firing, hit probability is greater than when the 6 suspect is shooting back. 7 When, on a two-way range when the suspect is 8 firing at you and you're firing at the suspect, 9 hit probability deteriorates and round count 10 increases. 11 Q. Do you have an opinion as to how far it 12 decreases? 13 A. I'm sorry? I could only refer to some of the SOP 14 9 studies from New York City in terms of, and 15 they pretty much acknowledge this, that in actual 16 gunfights with suspects firing at officers and 17 our officers firing back, they have an increased 18 number of rounds as well as a decreased hit 19 probability but their accurate numbers, I 20 couldn't come up with. There is a deterioration 21 there, however. 22 Q. Do you know what your hit rate is? 23 A. On a stationary target? 24 Q. Yes. 25 A. Be more specific, please.	Page 137	Page 139 1 I work at it. I'm hoping that my performance 2 with my training is better. 3 Q. So practice and training can improve hit rate? 4 A. Certainly. 5 Q. How many rounds do you carry? 6 A. In my normal duty? 7 Q. Yes, when you're on duty? 8 A. I carry 46 rounds. 9 Q. And how does that break down? 10 A. I have, I carry a Glock 19, which is a 16-shot 11 pistol, and two spare 15 round magazines. 12 Q. Is there a reason why you chose to carry two 13 spare 15 round magazines as opposed to two 20 14 round magazines? 15 A. Well, the reason that, I don't know that, there's 16 probably 20 round magazines that are out there 17 for the Glock. They would just, in my current 18 assignment, stick up, you know, several inches 19 past and it would be ungainly to be able to carry 20 that. 21 Q. Would it also change how the firearm performed? 22 A. It would change the weight. It wouldn't be as 23 maneuverable certainly. 24 Q. At the very bottom of that opinion or that same 25 page you discuss the Miami shooting again?	Page 138	Page 140 1 Q. Or if you had to guess what your hit rate would 2 be in a gunfight? 3 A. In a gunfight? 4 Q. Yes. 5 A. Well, I'm hoping it would be sufficient to stop 6 the threat. That's all I'm concerned about. My 7 experience is that you shoot until the threat's 8 no longer there. Have I seen misses? Yes. In 9 actual gunfights. 10 You know, we all hope for the best, but we 11 train for the worst. 12 Q. Do you think you would be higher than 25 percent? 13 A. I would hope. 14 Q. Okay. Higher than 50 percent? 15 A. With God's luck or with God's grace. 16 Q. Higher than 75 percent? 17 A. I wouldn't. It would just be speculation and a 18 lot of it would be distance and what the 19 suspect's doing and what I'm doing and there's a 20 lot of variables in there. 21 Q. And what makes you think that your hit rate would 22 be higher than the average law enforcement 23 officer's hit rate? 24 A. Well, I've been training in firearms for over 30 25 years, have been an instructor over 20 years and
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1 pistol. It's a longer, heavier trigger press 2 than a semi-auto pistol so I would have to say 3 yes, they would have been more accurate, 4 potentially more accurate with semi-auto pistols. 5 Q. So they would have been more accurate if they had 6 a different gun? 7 A. I think that a semi-auto pistol versus a 8 revolver, yes, I think they would have been 9 potentially more accurate. There's no 10 guarantees, but potentially because of the 11 trigger manipulation, yes. 12 Q. But having a magazine with 16 or more rounds 13 would not have made their shots more accurate 14 that day? 15 A. It would not have affected their accuracy except 16 for the fact that when you fire six shots and you 17 have to stop and reload, you're under even more 18 physiological stress to get the reloads in and 19 I'm certain that in that situation affected their 20 accuracy potential. They could shoot more 21 sustained fire with semi-auto pistols versus the 22 revolvers. 23 Q. So when we're talking about movement in a 24 gunfight, it's your opinion that movement affects 25 the accuracy of shots fired, correct?	Page 141 1 behind some type of cover. 2 Q. And does that affect hit rate accuracy? 3 A. Certainly. 4 Q. Substantially so? 5 A. Well, say a suspect that takes cover behind a 6 vehicle as you indicated, that would reduce the 7 size of the target available to the law 8 enforcement officer from, you know, anything from 9 chest up to head up makes a smaller target which 10 is harder to hit especially under stress. 11 You know, the intervening cover may not or 12 may stop or slow bullets so that the rounds fired 13 may not ever, if they hit the car hood, car, you 14 know, wheels whatever may not get to the suspect. 15 Q. Are those same problems with cover that law 16 enforcement face also present in home 17 self-defense cases? 18 A. I would say so. You have doorways and variety of 19 different, walls and doorways in which the home 20 defender, the law abiding citizen is defending 21 their life and there's intervening cover for the 22 suspect as well as themselves. 23 Q. Do you have an opinion as to whether there's more 24 movement in a law enforcement case as opposed to 25 in a home self-defense case?
Page 142 1 A. Certainly. Most by both the citizen or officer 2 and the suspect. 3 Q. In what ways can it affect an officer? 4 A. It's harder to shoot a handgun or any gun while 5 one is moving versus from a stationary position. 6 Q. Does the terrain have an impact? 7 A. Certainly in terms of staying upright versus 8 falling down, you know. That's a big thing but 9 the movement causes the gun to jump up and down 10 and that impairs accuracy. 11 Q. How does the suspect's movement change accuracy? 12 A. Well, first of all, it may reduce the target area 13 that an officer has available in terms of if the 14 person is moving to the side, the side of a human 15 being is harder to hit than the front or rear of 16 a human being so it may change the width or the 17 size of the intended target. It also means that 18 the officer or citizen has to track the target as 19 it's moving. 20 Q. So on TV you know when you see a shootout, you 21 see criminals hiding behind cars, is that true in 22 regular and real life law enforcement gunfights? 23 A. I think that there are a percentage of shootouts 24 with both citizens and law enforcement where the 25 officers or the citizens or the suspects are	Page 142 1 A. That would just be speculation. 2 Q. Okay. So there's no studies you're aware of 3 documenting that? 4 A. In terms of, I think what we can focus in on is 5 that in shootings, regardless of law enforcement 6 or citizens, people don't tend to stand in one 7 spot. They tend to move. 8 Q. So other than what you expressly reference in 9 your written report or what we've talked about on 10 this conclusion, anything else you considered in 11 reaching conclusion number three? 12 A. I don't believe so. 13 Q. Did you reach any other conclusions other than 14 what we've discussed? 15 A. On? 16 Q. On number three? 17 A. On number three? 18 Q. Yes. 19 A. No. Not that I can recall. 20 MR. LEE: Off the record. 21 - - - - 22 (Thereupon, a recess was had.) 23 - - - - 24 Q. Back on the record. 25 Mr. Davis, anything happen during the break

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<p>1 that would cause you to be unable to testify 2 truthfully or understand my questions?</p> <p>3 A. No.</p> <p>4 Q. Okay. Let's turn to your fifth opinion which is: 5 Because of the adverse impact of the sympathetic 6 nervous system on performance, firearms that hold 7 more than 15 rounds allow citizens to more 8 effectively defend themselves, correct?</p> <p>9 A. Correct.</p> <p>10 Q. What do you mean by "performance"? Is that how 11 one shoots?</p> <p>12 A. A combination of things. Performance under 13 stress is, the sympathetic nervous system 14 reaction affects the way a subject thinks. The 15 way they react, the perceptual narrowing. It 16 changes blood flow in the body which inhibits 17 motor performance, people fatigue quicker, a 18 variety of different psychological mental 19 processing and physiological responses.</p> <p>20 Q. Okay. When you say "a variety of physiological 21 responses," what do you mean?</p> <p>22 A. For instance, physiological changes that take 23 place in the body, most notably is perceptual 24 narrowing. Normally we have a very wide 25 peripheral vision field.</p>	<p>1 possibility is there that we don't make good, 2 sound decisions.</p> <p>3 We may be unable or have reduced ability to 4 manipulate the firearms partly because of blood 5 flow changes and also as well as hand shakes or 6 tremors. A variety of different physiological 7 changes and impact.</p> <p>8 Q. Any others than what you've mentioned?</p> <p>9 A. There are. You know, changes include memory's 10 processed. I believe that there's up to a 11 certain level of excitement, if you will, it 12 enhances our memory, but after a certain level 13 when we go into a higher level of arousal, we 14 have a deterioration of memory, the ability to 15 remember things.</p> <p>16 I talked about the manipulation of the 17 pistol. That would be fine or complex motor 18 skills. Gross motor skills like pulling or 19 pushing or squatting, those are gross motor 20 skills and those actually improve to a certain 21 degree under stress. The actual eye lens from 22 what I understand, the contour of the eye lens 23 changes. We have an inability to focus on our, 24 on close things. We tend to focus in on the 25 threats.</p>
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<p>1 When human beings are threatened with death 2 or serious bodily harm or any other triggers for 3 SNS response, that visual field shrinks down and 4 we get tunnel vision so we are, although our 5 brain is, our visual field is, we're seeing 6 things off to the side, we're mentally not aware 7 of it because of the perceptual narrowing. We're 8 not aware of anything other than the threat in 9 front of us, et cetera.</p> <p>10 We also experience tunnel hearing, if you 11 will, or auditory occlusion. We may not hear the 12 gunfire fired by other officers in law 13 enforcement context. We may not think that our 14 gun is firing or it's somewhat subdued, we may 15 think something's wrong with it, it may be sort 16 of popping instead of the bang we're normally 17 used to. The guns fired at us can be louder than 18 our gunfire.</p> <p>19 In terms of the perceptual narrowing, we're 20 talking about that and then what we do is we get 21 the blood is wicked away from the extremities to 22 fuel the major organs for fight or flight. We 23 get, we stop thinking with the full potential 24 that we have and we start thinking with our 25 middle brain so we're not making or the</p>	<p>1 Q. And what's the basis for those various opinions 2 on the effect of the sympathetic nervous system?</p> <p>3 A. The basis? First of all, the first training I 4 received and impact of the sympathetic nervous 5 system in the limbic system as it's known is by 6 Dr. Paul Whitesell, a Ph.D. who is now a 7 commandant of the Indiana State Police. That was 8 probably the first training that I received in 9 it.</p> <p>10 I've also received training from Bruce 11 Siddle, Dr. Alexis Artwohl, Dr. Bill Lewinski and 12 others over the years and some work done by a 13 Dr. Sapolsky.</p> <p>14 Q. Well, let's go through how it affects some of 15 those categories that we were talking about.</p> <p>16 So how exactly does the sympathetic nervous 17 system affect one's mental processes?</p> <p>18 A. Well, once again I'm a journeyman or a novice in 19 terms of the medical aspects of it but from what 20 I understand, a hormone is secreted within the 21 brain and a cascading effect takes place within 22 the body, things like adrenaline, noradrenaline 23 and other chemicals are released into the 24 bloodstream. All of these things have been 25 tested by those doctors or researched by those</p>

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<p>1 doctors amongst others over the years.</p> <p>2 Q. So how does the cascading effect impact one's 3 mental processes?</p> <p>4 A. Well, the ability to process information, the 5 ability to make decisions, the ability to perform 6 motor skills, the ability to process information 7 based on perceptual narrowing, a variety of 8 different things as this cascades through the 9 body, the mental processes and also it impairs 10 the physical processes of a human being so that 11 that, in the feedback loop, you're thinking that 12 because you have perceptual narrowing that your 13 rounds aren't hitting target, they have no 14 effect, your gun isn't going bang, a variety of 15 different things.</p> <p>16 Q. Do you know what, specifically which neurons are 17 moving when this cascading effect is happening?</p> <p>18 A. Beyond my scope, counselor.</p> <p>19 Q. Okay. And you admit that you are a novice when 20 it comes to the medical background behind the 21 sympathetic nervous system?</p> <p>22 A. Certainly.</p> <p>23 Q. So how in your opinion does having 16 rounds or 24 more help citizens more effectively defend 25 themselves in regards to the sympathetic nervous</p>	<p>1 A. Benefits of the sympathetic nervous system?</p> <p>2 Q. No. Benefits of having a magazine of more than 3 16 rounds in combatting the adverse effects of 4 the sympathetic nervous system when using the 5 firearm?</p> <p>6 A. Well, the, once again the ability to stay in the 7 fight longer to be able to fire more rounds 8 before one has to manipulate the pistol is 9 probably the biggest benefit of a longer magazine 10 because performance deteriorates under stress and 11 accuracy falls off under stress, those extra 12 rounds could be life-savers.</p> <p>13 Q. So you've mentioned stay in the fight, less time 14 reloading magazines or you have to reload fewer 15 magazines?</p> <p>16 A. Correct. You'd have to --</p> <p>17 Q. Any others?</p> <p>18 A. You'd be able to shoot more rounds before you'd 19 be required to reload.</p> <p>20 Q. Okay. Any others?</p> <p>21 A. The ability to deal with more than one assailant 22 in terms of the rounds. You have the tunnel 23 vision which makes you focus in on one threat but 24 having more rounds on board or a larger magazine 25 allows you to deal with multiple suspects despite</p>
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<p>1 system?</p> <p>2 A. Okay. In regards to this, because of the adverse 3 reactions in the human body of the sympathetic 4 nervous system, having more rounds first of all 5 allows the citizen or the law enforcement officer 6 to stay in the fight longer before they have to 7 reload.</p> <p>8 Because deleterious effect, the physical 9 aspects of the hands tremor and shake and the 10 inability to perform motor skills, reloading is a 11 complex motor skill and having more rounds on 12 board the gun limits, will hopefully limit the 13 number of times that an officer or citizen would 14 have to reload. They're able to stay in the 15 gunfight without reloading longer.</p> <p>16 Also because of the impact of the SNS 17 response on accuracy, we get an accuracy fallout. 18 There is a reason why, in New York City we cite 19 somewhere less than 25 percent of all rounds hit 20 target because in times of peril human beings are 21 not as accurate as they are on a range, on a flat 22 range when people aren't shooting back.</p> <p>23 Q. Any others?</p> <p>24 A. Any other impacts? Well.</p> <p>25 Q. Or benefits?</p>	<p>1 the fact that you're experiencing tunnel vision 2 or performance deteriorations.</p> <p>3 Q. Why would having more rounds allow you to combat 4 the effect of tunnel vision?</p> <p>5 A. Well, if for instance I'm dealing with, I'm 6 experiencing tunnel vision and I am unaware of 7 another assailant. I'm unaware of other suspects 8 who are firing at me and I'm tunneled in, having 9 more rounds would allow me once I've neutralized 10 one threat or at the period of time when I become 11 more aware or aware of another threat to deal 12 with it or neutralize that threat.</p> <p>13 Q. But wouldn't that be the case if you had -- let 14 me rephrase that.</p> <p>15 How does having a magazine of 16 or more 16 better allow you to deal with a second threat 17 when you're in tunnel vision?</p> <p>18 A. Well, we're talking about not just tunnel vision 19 but the deleterious effect of stress on shooting, 20 and also on tunnel vision.</p> <p>21 In other words, if I'm confronted with what I 22 believe to be a solo threat because of tunnel 23 vision, I have tunneled in on the one suspect and 24 I'm not aware that there's a second suspect, 25 having more rounds allows me to deal with</p>

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<p>1 additional threats versus a smaller capacity 2 pistol that I may shoot dry on one suspect and 3 then when I do become aware of another threat, 4 have to reload in order to deal with it.</p> <p>5 Q. So just saves you time?</p> <p>6 A. Well, it's an increased performance.</p> <p>7 We know, for instance, that out of X number 8 of rounds fired on one threat, that only X number 9 of rounds, we'll say 25 percent actually hit 10 their target.</p> <p>11 If we're dealing with multiple threats, then 12 more rounds on board the gun allow the defender, 13 the law enforcement officer or civilian to more 14 effectively deal with those threats.</p> <p>15 Q. Okay. I actually had a definitional question so 16 in the second paragraph you discuss certain 17 responses to include tunnel vision and peripheral 18 vision field shrinkage. What's the difference 19 between the two?</p> <p>20 A. Well, auditory occlusion is tunnel hearing and 21 then peripheral vision field shrinkage is tunnel 22 vision. It's the same thing. Tunnel vision is 23 peripheral vision, we're tunneled in on the 24 threat but also we're unaware of, in tunnel 25 vision, for instance, when an officer looks at,</p>	<p>1 for a game, they tend to play better when they're 2 feeling that motivation, that energy. However if 3 they're overly stimulated then they tend, their 4 performance tends to fall off so there's an 5 improvement to a certain extent, then it falls 6 off.</p> <p>7 Q. Is there any, do you know of any studies 8 documenting that phenomenon when it comes to 9 shooting?</p> <p>10 A. Yes. I think I have been made aware of the 11 studies. I have seen some of the results of 12 those studies but they've never been published to 13 my knowledge, not that I can recall.</p> <p>14 Q. And when you say that it can originally improve, 15 do you mean improve your accuracy?</p> <p>16 A. To some extent I was made aware of a study 17 several years ago of special operations personnel 18 in the military in which those people that failed 19 the course were overly stimulated. Those people 20 that missed one or two rounds were 21 understimulated but the people that shot perfect 22 scores, that did the best, were the ones that 23 were motivated to get it right.</p> <p>24 Q. Is your conclusion that stress impacts one's 25 ability to use a firearm, is that generally well</p>
<p>1 down the barrel of a gun or a citizen looks down, 2 it can, tunnel vision can make that small pistol 3 look like a Howitzer so we're tunneled 4 specifically on the weapon system. We also lose 5 the peripheral vision as well.</p> <p>6 Q. Okay. And in that list you also list other 7 responses to include circulation changes in the 8 body leading to reduced ability to perform finer 9 complex motor skills and adverse impacts on 10 memory and more?</p> <p>11 A. Correct.</p> <p>12 Q. And we previously discussed "more," correct?</p> <p>13 A. We did.</p> <p>14 Q. Anything you didn't state that you include within 15 the term of "more"?</p> <p>16 A. Those are the primary responses, perceptual 17 distortions.</p> <p>18 Q. You previously mentioned that a change in 19 circulation or based on the sympathetic nervous 20 system one's motor skills could be improved, 21 correct?</p> <p>22 A. Improved to a certain extent and then it has an 23 adverse effect when the person is overstimulated. 24 For instance, an analogy would be that you're 25 a football player or football team is hyped up</p>	<p>1 accepted?</p> <p>2 A. That's generally well accepted.</p> <p>3 Q. In what field?</p> <p>4 A. Well, I think you've seen everything from, in my 5 field, in the law enforcement field in terms of 6 officer survival shooting, you know, performance 7 under stress that certainly has been true. I 8 think in competition shooting as well but I don't 9 think it's ever been studied.</p> <p>10 Q. So you mentioned one instance where the 11 sympathetic nervous system could change one's 12 motor skills through the course of a gunfight. 13 When you used the football analogy?</p> <p>14 A. Correct.</p> <p>15 Q. Are there other ways in which it can affect a 16 shooter's motor skills?</p> <p>17 A. Well, remember that the, it's not just fight or 18 flight, there's also a third component there 19 which Sapolsky mentions which is freezing. 20 If an officer or a citizen suspect's caught 21 completely off guard and not mentally prepared 22 for the encounter, they may just freeze in place 23 and that certainly has an adverse action on their 24 performance.</p> <p>25 Q. Do you think that having a magazine with a</p>

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<p>1 capacity of 16 or more rounds would combat 2 freezing?</p> <p>3 A. No, I don't think that would have anything to do 4 with freezing in place.</p> <p>5 Q. You also mentioned that the sympathetic nervous 6 system can cause the shooter to have an inability 7 to count rounds, correct?</p> <p>8 A. Correct.</p> <p>9 Q. Why is that?</p> <p>10 A. Because they're basically in a fight or flight 11 response or sympathetic nervous system response 12 thinking with a different part of their brain, 13 not the part of the brain where they can measure 14 and count.</p> <p>15 Q. So as a result do they continue shooting after 16 they have stopped the person they're shooting at?</p> <p>17 A. There is a response time to start shooting and 18 there's a response time to stop shooting.</p> <p>19 During that encounter my experience is that 20 they don't, once they perceive there's no longer 21 a threat, they process that, they stop but they, 22 it doesn't, having 16 rounds allows them to 23 continue to shoot until they've deemed that no 24 rounds are necessary -- no further rounds are 25 necessary.</p>	<p>1 effect on their performance and they're not 2 shooting well, then having more rounds gives them 3 the ability to continue to shoot and neutralize 4 the threat.</p> <p>5 Q. But if they're overwhelmed are they shooting 6 accurately?</p> <p>7 A. One would think not but it's not, I don't believe 8 that's necessarily so. I mean I would -- there's 9 no standard response in a human being, not 10 everybody reacts the same in times of peril. 11 Officers or citizens. So we have varying 12 degrees. So when we say overwhelmed, 13 overwhelmed, the ideal opinion would be to be 14 ineffective, to be completely freeze in place, 15 that would be overwhelmed. But other than that, 16 I mean there's varying degrees of effectiveness.</p> <p>17 Q. Is it your opinion that someone who is being 18 negatively affected by the sympathetic nervous 19 system is going to be less accurate in their 20 firing?</p> <p>21 A. I think that the statistics bear that out, that 22 officers and citizens firing when they're being 23 shot at in a gunfight have less accuracy 24 potential than normally.</p> <p>25 Q. Are they more likely to fire more rounds?</p>
Page 158	Page 160
<p>1 I don't see a trend for more shots being 2 fired after the person's no longer a threat.</p> <p>3 Q. And what do you base that conclusion on?</p> <p>4 A. That is just the Force Science research that I've 5 indicated in my references and studies that have 6 been done by Dr. Bill Lewinski and others in 7 terms of shooting accuracy and performance under 8 stress.</p> <p>9 Q. So just so we're clear, you do not believe that 10 the sympathetic nervous system causes shooters to 11 expend more rounds than they need?</p> <p>12 A. I believe it can. It certainly can but it also, 13 it improves their performance to a certain extent 14 and that it can and I do believe that people that 15 are overwhelmed by the sympathetic nervous system 16 response can shoot more rounds but I've not seen 17 a trend in law enforcement, just because they 18 have more rounds, that we're getting more 19 unintended shootings.</p> <p>20 Q. And obviously having more than 16 rounds would 21 not help someone who's overwhelmed by the 22 sympathetic nervous system in a gunfight?</p> <p>23 A. Well, just because they're overwhelmed doesn't 24 mean they're not in peril, they're not in a fight 25 for their life. If it has had a deleterious</p>	<p>1 A. I think they're more likely to continue to shoot, 2 I'm trying to, training versus reality. The 3 answer would be yes. We shoot more rounds in 4 real, in gunfights than we do in training 5 exercises.</p> <p>6 Q. You mentioned that you've seen good shooters 7 completely miss their intended target at 8 distances inside six feet, correct?</p> <p>9 A. I have.</p> <p>10 Q. What made you think they're good shooters?</p> <p>11 A. That's based on my opinion of what a good shooter 12 is, someone that has command of the firearm and 13 has demonstrated to me that they have.</p> <p>14 Q. And you think they missed because of the adverse 15 impact of the sympathetic nervous system?</p> <p>16 A. I think a variety of different things. The way 17 they shoot, you know, in terms of the technique 18 that they use falls apart somewhat under stress. 19 They don't access the pistol sites or the firearm 20 sites, they point shoot, a variety of different 21 things.</p> <p>22 Q. What weapons are they using?</p> <p>23 A. Well, we're talking training exercises where we 24 have, not just on the street but certainly that 25 has been true with actual shootings but in</p>

1 simulation or force-on-force exercises and 2 training in dynamic situations, I've seen 3 pistols, shotguns and carbines and some machine 4 guns miss. 5 Q. Does the type of firearm a person is using impact 6 the consequences of an adverse sympathetic 7 effect? 8 A. I don't think so. I think most what you have is 9 a response based on training that, we don't rise 10 to the occasion, we default to our level of 11 training and I think that as long as a person is 12 well trained, that they can handle the firearm 13 regardless of the sympathetic nervous system 14 reaction. 15 Q. Well, if I'm using a shotgun within six feet and 16 I'm being affected by the sympathetic nervous 17 system, am I more likely to hit my target because 18 I'm using a shotgun as opposed to a pistol? 19 A. There's a lot of different factors there that 20 would weigh in. It would depend often your 21 abilities with the shotgun first and foremost. 22 As long as you're competent with the shotgun that 23 you could still hit at six feet versus a pistol. 24 Q. But can the type of firearm better protect the 25 shooter against the adverse effects of the	Page 161 1 A. Yes. In that actions of suspects and untrained 2 shooters have been studied. In other words, 3 neophyte civilian shooters have been brought in 4 and studied as to their abilities, not just law 5 enforcement. 6 Q. Which studies do you cite include data about 7 civilian shooters? 8 A. Dr. Bill Lewinski and I cite the Force Science 9 group has probably done some of the best research 10 out there in terms of using citizens and focusing 11 on what people can do with guns in times of 12 stress. 13 Q. In your view are citizens more impacted by the 14 sympathetic nervous system than law enforcement 15 officers? 16 A. No. By and large, no. It depends on the 17 individual. It depends on their level of 18 training and composure in times of stress. 19 For instance, a doctor in an emergency room 20 can handle the stress of a life-threatening 21 situation because of his experience. An EMT 22 could do the same thing, so I imagine in 23 construction if something were, bad were to 24 happen in those types of situations, that they 25 would respond based on their training and
Page 162 1 sympathetic nervous system? 2 A. I don't, I think that's a training answer, not a 3 firearm answer. 4 We select different firearms based on other 5 factors and some of those factors are the ability 6 to use that under stress but as long as it's, the 7 manual of arms is such that it's fairly simple to 8 operate, then I think it would be a training 9 issue. 10 Q. And your opinions, are these drawn based on law 11 enforcement studies? 12 A. I think -- 13 MR. COLIN: Overbroad and vague. 14 Go ahead. 15 A. I think that it's a, friends of mine such as 16 Bruce Siddle and I am familiar with Dr. Lewinski 17 are in this field of study trying to ascertain 18 this stuff, trying to do new research in this 19 area. It's a fairly new area. We have, now have 20 the ability to do some of these studies we 21 haven't before. There's been no definitive study 22 that's come out that I'm aware of but certainly 23 they are supported by scientific research. 24 Q. Do any of those studies involve collecting data 25 from civilian shooters?	Page 162 1 experience better than a law enforcement officer 2 so the thing with law enforcement is that we tend 3 to get the adrenaline dump, get that sympathetic 4 nervous system reaction on a regular basis, at 5 least some law enforcement officers. Not all. 6 Q. So when you say that the sympathetic nervous 7 system leads to a deterioration of accuracy, how 8 frequently does that happen? 9 A. I would say based on examinations of actual 10 shootings, in almost every occasion there's some 11 adverse impact on accuracy. 12 Q. By how much? 13 A. Well, as I stated earlier, even highly trained 14 police officers and highly trained units have a 15 fall-off in their accuracy potential. New York 16 City we talked about 25 percent or less of all 17 rounds hit target. I've heard the LAPD somewhere 18 around 40 percent. Some people quote greater 19 numbers. I've seen greater numbers in actual 20 police shootings, including 100 percent hit rate 21 so, you know, I think it's almost universal that 22 there will be some adverse impact of SNS on a 23 shooter. 24 Q. And is the impact greater on a civilian shooter? 25 A. Depends. Depends on who the civilian is.

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<p>1 Q. Can the sympathetic nervous system also cause a 2 person to fire rounds more quickly?</p> <p>3 A. I think that the sympathetic nervous system 4 allows the body to do some amazing things. We've 5 heard situations where 80-year-old grandmothers 6 have lifted cars off of their grandchildren and 7 those types of situations. Amazing performance 8 has been attributed to the sympathetic nervous 9 system reaction, so I think it's entirely 10 possible that that could, in times of peril, a 11 shooter is going to be quick on the trigger 12 anyway and I think the SNS may feel that.</p> <p>13 Q. So in your very last sentence in this conclusion 14 you write: "Reducing the available round count 15 in a firearm being used by an armed law abiding 16 citizen firing in defense of their life means 17 that fewer rounds are available to stop a threat 18 at a time when the SNS is preventing optimum 19 performance," correct?</p> <p>20 A. Correct.</p> <p>21 Q. What do you mean by "optimum performance"?</p> <p>22 A. I mean optimum performance as in what an officer 23 or a citizen may do in a nonlife-threatening 24 situation on a flat range under controlled 25 circumstances.</p>	<p>1 16 rounds as it would to magazines with more than 2 16 rounds?</p> <p>3 A. Well, obviously you'd be able to shoot more 4 rounds before a reload was necessary with a 5 magazine of 15 or more rounds or more than 15 6 rounds.</p> <p>7 Q. Okay. So it would be fair to say that in your 8 opinion the sympathetic nervous system can affect 9 hit rate, the amount of shots someone takes when 10 they're firing under deadly threat and it can 11 impair their ability to count how many shots are 12 being fired?</p> <p>13 A. I think those are fair statements.</p> <p>14 Q. And all those things do you believe would lead to 15 exhausting a magazine?</p> <p>16 A. I think sympathetic nervous system reaction could 17 lead to decreased performance and more rounds 18 being fired, correct.</p> <p>19 Q. So you're more likely to expend a magazine 20 because of the sympathetic nervous system?</p> <p>21 A. Because you're in a fight for your life. That's 22 when you need the rounds the most and that's when 23 you're more likely to shoot the rounds, more 24 rounds.</p> <p>25 Q. So the sympathetic nervous system does have an</p>
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<p>1 Q. So even though a shooter is not acting under 2 optimum performance, that does not preclude them 3 from stopping a deadly threat?</p> <p>4 A. That is correct.</p> <p>5 Q. Can one also combat the adverse effect of the 6 sympathetic nervous system by having additional 7 magazines?</p> <p>8 A. Well, it certainly allows the person to shoot 9 longer in defense of their life but, once again, 10 if, and this has happened before where law 11 enforcement officers and citizens are shooting to 12 no avail. We talked about the LA -- I'm sorry, 13 the New York SOP 9 study. Out of X number of 14 shootings that they've had in the city in terms 15 of I think it was 36 shootings in 2011, that they 16 had they only hit suspects I think 28 times out 17 of those things and wounded 19 and killed 9 so 18 having more rounds, shooting more rounds 19 sometimes means that those rounds are 20 ineffective, that they're not hitting their 21 intended target; and having more, a larger 22 magazine capacity and more rounds on the person 23 allows the shooter to continue to stay in the 24 fight.</p> <p>25 Q. Would that apply to both magazines with less than</p>	<p>1 effect on how many shots you fire?</p> <p>2 A. Only because of, you know, hit probability. I 3 mean an officer or a citizen shoots until they 4 believe there's no longer a threat. If they're 5 not being effective in their gunfire, they're 6 going to shoot more rounds. They may shoot more 7 rounds because they're quick on the trigger 8 because they perceive their life's in danger. 9 Both of those would lead to more rounds being 10 fired.</p> <p>11 Q. So other than what we discussed in the references 12 that are expressed in your report, did you 13 consider anything else in reaching your opinion 14 in number, are we on five?</p> <p>15 A. Five.</p> <p>16 Q. Five?</p> <p>17 A. No, sir, I don't believe so. Not that I can 18 recall.</p> <p>19 Q. Any other related conclusions we did not discuss 20 that's not in your report on opinion five?</p> <p>21 A. On opinion five, no, I don't believe so.</p> <p>22 Q. Well, let's turn to opinion four.</p> <p>23 A. Go back to four?</p> <p>24 Q. Let's go back to four.</p> <p>25 A. Okay.</p>

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<p>1 Q. Okay. So in opinion number four you write: 2 "Because of response time in humans at times of 3 peril, firearms which hold more than 15 rounds 4 allow the citizen to continue to more effectively 5 fire until they perceive the threat no longer 6 exists." Is that correct? 7 A. That's correct. 8 Q. What situations do you include in your use of the 9 phrase "times of peril"? 10 A. I'm sorry. Ask again? 11 Q. Well, obviously we can face situations where we 12 might not be in peril; for example, when your 13 wife gives you dirty looks. So for example, when 14 you say the response time in humans in times of 15 peril, what do you mean by in "times of peril"? 16 A. Peril in this context means that the citizen or 17 the law enforcement officer believes that their 18 life or the life of another is threatened with 19 death or serious bodily harm. 20 Q. And why in your opinion is response time relevant 21 to whether persons should have a magazine with 16 22 or more rounds? 23 A. Because there is a time interval where we first 24 perceive a threat. And that perception is 25 reaction time. We perceive that we're being</p>	<p>1 They're allowed or they can shoot more rounds 2 before they confirm that the threat is down or no 3 longer in existence. 4 Q. How does reaction time help with that? 5 A. Reaction helps with that. It's just a process 6 that everyone goes through, so it's just a, 7 reaction time is a mental process that everyone 8 goes through. 9 Q. Would a person have the same reaction time 10 whether they had a 15 round magazine or a 16 11 round magazine? Would the reaction time be the 12 same? 13 A. Reaction time to start? 14 Q. Yes. 15 A. Yes, they'd have the same reaction time to start. 16 Q. Same reaction time to stop? 17 A. No, because they, they would be able to continue 18 to fire more rounds a longer, over a longer 19 period of time and neutralize the threat, the 20 capability to neutralize the threat with more 21 rounds. 22 Q. But how does that change their reaction time? 23 A. It gives them more time. 24 If I fire a two-shot pistol or a Derringer 25 which only contains two rounds, I only have that</p>
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<p>1 threatened with a man with a gun or a man with a 2 knife, what have you, the citizen believes that 3 his life's in danger or the life of another is in 4 danger. 5 Reaction time is that mental process to 6 perceive and to download a response. Movement 7 time is the time from the beginning to the end of 8 the movement. So say that we're confronted with 9 a deadly threat, the movement would be the draw 10 stroke to access our firearm to get it up on 11 target and to start shooting. 12 There is also a response time to when we 13 should stop. We continue to shoot or the citizen 14 continues to shoot until they believe that 15 there's no longer a threat. Then there is a 16 response time to stop which is get off the 17 trigger, so during that period of time, the 18 citizen or the law enforcement officer can fire a 19 goodly number of rounds based on their 20 perceptions. 21 Q. And why does having a magazine with a capacity of 22 16 or more help? 23 A. Because it allows the citizen or the law 24 enforcement officer to continue to shoot until 25 they perceive there's no longer a threat.</p>	<p>1 time to fire two rounds and then I have to stop 2 and reload. That's going to change the time and 3 interfere with my reaction time because I have to 4 focus on reloading and not being able to control 5 the threat. 6 Q. So in that situation, if you have a 16 round 7 magazine you're going to be able to fire and 8 react and shoot more shots than you would if you 9 had a 15 round magazine? 10 A. Certainly. Certainly. 11 Q. And that would hold true as you went up in 12 magazine capacity, so you would have a faster 13 reaction time with 20 rounds than you would with 14 15? 15 A. It wouldn't be a faster reaction time. You could 16 stay in the -- because you're also reacting to 17 your firearm and reacting to the fact that your 18 firearm is now unloaded and you have to reload, 19 so having a greater magazine capacity would allow 20 you to have an extended time interval while 21 you're shooting before that reload is necessary. 22 Q. And is there danger in having to reload more 23 times than not? 24 A. Certainly because you have to shift your focus from the threat to your firearm and you're</p>

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<p>1 susceptible to gunfire during that period of time 2 you're reloading the pistol or the firearm.</p> <p>3 Q. Does that place you in significant danger?</p> <p>4 A. Certainly in the middle of a gunfight not 5 shooting it places you in a significant threat.</p> <p>6 Q. You mention in opinion four that it's not 7 uncommon for police officers under the threat of 8 death or serious bodily harm to expend their 9 entire magazine of 17 rounds plus the chamber 10 round, correct?</p> <p>11 A. Correct.</p> <p>12 Q. What do you mean by "uncommon"?</p> <p>13 A. Uncommon is that even in locations such as New 14 York City where they're given 15 rounds as a 15 limit on their magazines, I believe over 16 somewhere around 15 percent of all of their 17 shootings are more than 15 rounds so during that 18 period of time, once again this indicates that 19 it's not uncommon for officers to shoot the gun 20 dry or to shoot more than 15 rounds.</p> <p>21 Q. Have you seen that happen before?</p> <p>22 A. Have I seen it happen before? No, I've never 23 been physically present when it's happened before 24 but I am aware of shootings where it has 25 happened.</p>	<p>1 carry more than 15 rounds are more effective at 2 stopping deadly threats from multiple attackers," 3 correct?</p> <p>4 A. That is correct.</p> <p>5 Q. At the outset what do you intend to include by 6 long guns, which firearms?</p> <p>7 A. Those long guns that carry more than 15 rounds. 8 I'm sorry.</p> <p>9 Q. So rifles, carbines?</p> <p>10 A. I believe rifles and carbines and carry more than 11 15 rounds are more effective, correct.</p> <p>12 Q. And why are they more effective?</p> <p>13 A. Well, we're specifically talking about multiple 14 attackers. We've talked about the deterioration 15 of performance under stress. We've talked about 16 low hit probability on single offenders or single 17 suspects, armed attackers; and with, dealing with 18 multiple attackers, having more than 15 rounds on 19 board allows the officer to deal with multiple 20 attackers more effectively.</p> <p>21 Q. Are there any studies documenting that 22 relationship?</p> <p>23 A. Well, there's studies in terms of the number of 24 incidents in which offenders -- or officers 25 encounter multiple offenders.</p>
Page 174	Page 176
<p>1 Q. And when, to the extent when they expend their 2 entire magazine of 17 rounds, do you also mean 3 that they needed to use, did they need to use all 4 17 rounds?</p> <p>5 A. There's -- "Needed to use," apparently they felt 6 when their life was being threatened that they 7 needed to keep shooting, that the threat was not 8 being neutralized, there have been shootings in 9 which officers have expended all of their 10 magazines, all of them and that includes all of 11 their 15 round or greater magazines.</p> <p>12 Q. Other than what's listed in the report on what we 13 discussed, did you cite any other sources for 14 your opinions?</p> <p>15 A. On opinion four?</p> <p>16 Q. Yes. Or did you --</p> <p>17 A. Not that I can recall.</p> <p>18 Q. -- rely on any other sources?</p> <p>19 A. Not that I can recall.</p> <p>20 Q. Any other conclusions you could draw based on 21 your opinion in four that's not expressed in 22 four?</p> <p>23 A. No, I don't believe so.</p> <p>24 Q. Let's turn to opinion number six. 25 You write: "Handguns and long guns which</p>	<p>1 For instance in the SOP 9 studies, they talk 2 about, you know, almost I think 36 shootings 3 involving 41 suspects, so the officers kill 4 summaries which I talk about in 2010, 74 suspects 5 killed 56 officers. In 2011, 77 killed 72 6 officers, so there are studies that indicate that 7 officers encounter multiple armed suspects.</p> <p>8 Q. Did those studies do a breakdown of states state 9 by state?</p> <p>10 A. Possibly. I don't have that, I'm not for certain 11 on that.</p> <p>12 Q. So you're unaware about that same data as it 13 applies to Colorado?</p> <p>14 A. From the FBI I am not certain on that specific 15 statistic.</p> <p>16 Q. Okay. And in the opinion you state that 17 "criminal suspects frequently run in packs or 18 operate with backup perpetrators while committing 19 crimes such as armed robberies, felonious 20 assaults, rape and more." Correct?</p> <p>21 A. Correct.</p> <p>22 Q. What's the basis for your opinion that criminal 23 suspects frequently run in packs?</p> <p>24 A. Well, by "packs" I mean two or more and that is 25 from my experience as a law enforcement officer</p>

1 for over 30 years, but also examining incidents 2 of violence, specifically armed robberies, 3 felonious assaults and other violent crimes, they 4 tend to be perpetrated by more than one suspect. 5 Q. Do you know how common multiple suspect home 6 invasion instances there are? 7 A. I don't specifically know that. I know there is 8 a, I've been aware of several but I'm not 9 specifically aware of numbers. 10 Q. Do you think it would track the same FBI data 11 that you rely on? 12 A. I don't believe so. I believe that may be the, 13 in terms of violent crime statistics versus 14 officers killed or assaulted, I believe that it 15 would be found in other tables or studies by the 16 FBI. 17 Q. How do you think the numbers would differ? 18 MR. COLIN: Speculative. 19 A. I'm not sure. 20 Q. So do you have any support for the conclusion 21 that handguns and long guns carrying 15 rounds 22 are more effective at stopping deadly threats for 23 civilians? 24 A. When dealing with multiple attackers? 25 Q. Yes.	Page 177 1 probability on those and depending on if we have 2 two attackers that are moving and firing at us 3 versus one, it would certainly, one would think 4 impact hit probability. 5 Q. Does hit probability continue to go down when 6 you're faced with more assailants? 7 A. I'm, I'm not aware of any study that would say 8 that but it certainly would be in keeping with 9 sympathetic nervous system reaction. You know, 10 one would be in more fear of one's life from two 11 armed men versus one. 12 Q. We already discussed the danger of persons when 13 they're changing a magazine in a gunfight. Does 14 that danger increase when they're faced with 15 multiple assailants? 16 A. Well, certainly depending on -- just yes. Simple 17 question -- or answer, yes. 18 Q. Does it substantially increase the danger that 19 they're faced with? 20 MR. COLIN: Vague. 21 A. I think in every category dealing with multiple 22 assailants increases the danger. 23 Q. So are you aware of any studies documenting that 24 having a magazine, having a magazine of 15 rounds 25 or less puts you at greater danger against
Page 178 1 A. Well, it's common sense that more rounds on board 2 would allow the citizen to be able to fire more 3 rounds in defense of their life against multiple 4 attackers. 5 Q. And do you have any authority for the proposition 6 that in home invasion cases civilians are likely 7 to expect attacks from multiple attackers? 8 A. I don't know that I deal specifically with home 9 invasions. I don't believe I mention that. 10 Q. When do you think civilians would be faced with 11 deadly threats from multiple attackers, in what 12 situations? 13 A. It could be everything from a riotous situation 14 to an armed robbery crew, a bank robbery crew, 15 simple mugger or a team of muggers, it could be a 16 variety of different situations. 17 Q. Does the presence of multiple assailants affect 18 hit rate? 19 A. Certainly dealing with multiple attackers is more 20 difficult for the citizen as well as the law 21 enforcement officers because of the stressors 22 involved. You not only have to control and stop 23 one threat. You have to control multiple 24 threats. That makes it difficult. That 25 difficulty would certainly seem to affect hit	Page 180 1 multiple assailants as opposed to having a 2 magazine with 16 or more? 3 A. Studies? No. 4 Q. When faced with multiple assailants do you 5 recommend using a certain type of gun? 6 A. Those decisions are made prior to the encounter. 7 That is why we recommend carrying a gun with 8 sufficient number of rounds available. The more 9 rounds available, the longer the citizen or the 10 longer the police officer can stay in the fight 11 before they have to reload. 12 Q. So when an officer is faced with multiple 13 assailants, they're more likely to shoot more 14 shots? 15 A. I think that's a great probability. 16 Q. And hit rate is likely to go down? 17 A. It won't exceed, you know, the averages I think 18 in terms of 25 percent, we could say if it's 19 going to go anywhere, it's going to deteriorate. 20 Q. So in that situation they're firing more shots 21 that are not hitting their intended targets? 22 A. Well, they're attempting to hit their target. 23 They're just not being successful in that 24 attempt. 25 Q. When they're taking the extra shots and they're

1 missing, where are those bullets going? 2 MR. COLIN: Vague. Speculative. 3 A. Well, if they're not hitting their target, their 4 intended target, then they're going elsewhere, 5 somewhere else. 6 Q. Do you think it's a good idea to defend one's 7 self by firing multiple shots at multiple 8 assailants even though you're not connecting? 9 A. Well, I think it's continuing to shoot in defense 10 of your life is always a good idea. 11 Q. Even if you're not hitting the target? 12 A. Well, oftentimes we can even impact the target 13 and have no visible change in the target's 14 behavior. You know, if we're not hitting, once 15 again the mechanism by which we stop somebody may 16 take some time. 17 In the FBI shooting in Miami, both Platt and 18 Matix were hit multiple times but until they were 19 shot enough times where they lost enough blood or 20 central nervous system shots were made, they 21 continued in the fight. 22 Q. Okay. So other than what you expressly reference 23 in your report, and what we've talked about, did 24 you rely on any other sources? 25 A. For number six?	Page 181 1 MR. COLIN: Foundation. 2 A. Certainly everything from frying pans to kitchen 3 knives have been used by citizens to defend 4 themselves. That relies a tremendous amount on 5 luck and not effectiveness. 6 Q. Why is it recommended that off-duty officers 7 carry at least one reload? 8 A. For a similar reason, because when you're on duty 9 and the officer carries the duty pistol, two 10 spare magazines, he has concealable body armor, 11 he may have access to a shotgun or carbine, he 12 has a radio and an ability to call for backup and 13 have other officers arrive. 14 Off duty, the officer is dependent on himself 15 until such time as help can be summoned. 16 Q. Do officers often carry backup guns as well? 17 A. I am aware of more than a few officers that carry 18 backup guns on and off duty. 19 Q. And what would be the purpose of that? 20 A. Insurance. In case the primary firearm is taken, 21 malfunctions or is shot dry, they have an 22 alternate. 23 Q. Do you believe that the backup gun is less 24 effective than having a magazine with more than 25 16 rounds?
Page 182 1 Q. Yes. 2 A. No, I did not that I can recall. 3 Q. Let's turn to opinion number seven which is: 4 "Citizens, by themselves or until such time as 5 on-duty law enforcement officers arrive to help, 6 are often better served by carrying firearms with 7 a capacity greater than 15 rounds," correct? 8 A. Correct. 9 Q. Why do you say they'd be "better served"? Better 10 served to what end? 11 A. They're better served because after you shoot the 12 pistol dry, you either reload if a reload is 13 available or you have a very ineffective club. 14 Q. Well, you mentioned club, so could the goal of 15 defending one's self in that situation be 16 achieved in other ways other than continuing to 17 fire rounds? 18 A. Well, if all your rounds have been expended that 19 may be the only alternative but when you're 20 facing a deadly threat, certainly there are more 21 efficient means to stop deadly threats and that 22 would be by way of gunfire. 23 Q. But are there other ways in which you could 24 defend yourself apart from using a firearm when 25 faced with a deadly threat?	Page 182 1 A. It depends on the size -- 2 MR. COLIN: Foundation. Go ahead. 3 A. It depends on the size of the backup gun. The 4 backup gun holds 15 rounds or more, then it is as 5 effective. Traditionally backup guns have been 6 small frame revolvers or semi-auto pistols and 7 those are harder to shoot and not as effective as 8 a full size pistol. 9 MR. LEE: Let's go off the record 10 and take a break. 11 - - - - 12 (Thereupon, a recess was had.) 13 - - - - 14 Q. Mr. Davis, are you aware of any citizen that was 15 successfully able to repel an attack by using a 16 high-capacity magazine until such time as local 17 law enforcement was able to respond? 18 A. Yes. 19 Q. How many? 20 A. I couldn't say. I am aware of incidents but I 21 couldn't say how many. 22 Q. Are you aware of any instances where a citizen 23 was unable to protect themselves until law 24 enforcement arrived because they did not have a 25 magazine with a capacity of 16 or more?

1 A. Yes. 2 Q. Okay. What was that instance or instances? 3 A. Once again I am aware of murders and other 4 victimization that have taken place when citizens 5 ran out of ammunition or were unable to stop the 6 threat with the rounds that their handgun 7 provided and were murdered or were victimized 8 because of that. 9 Q. Because they ran out of rounds? 10 A. Because they ran out of rounds, correct. 11 Q. Any because, are you aware of any instances where 12 someone was murdered or victimized because they 13 were changing their magazine? 14 A. Yes. 15 Q. Or they were hit when they were changing their 16 magazine? 17 A. Yes. 18 Q. How many times? 19 A. I'm not aware -- 20 Q. Many? 21 A. -- of specifics, but I am aware of shootings that 22 that has happened. 23 Q. Are you aware of any instance where a civilian 24 has stopped an attacker with less than 15 rounds? 25 A. Am I aware? Yes.	Page 185 1 A. I think that pretty much, specifically Massad 2 Ayoob. That is in that off-duty encounter area, 3 correct, and those in the Street Survival texts. 4 Q. Okay. So no other sources? 5 A. No. 6 Q. And any other related conclusions we did not 7 discuss in regards to the conclusion you reached? 8 A. Number seven? 9 Q. In number seven? 10 A. No, not that I can recall. 11 Q. Well, let's turn to 11. 12 In 11, you state that: "The response time of 13 officers may be long, and citizens armed with 14 firearms which contain more than 15 rounds may 15 continue to defend themselves from deadly attack 16 until police help arrives on scene," correct? 17 A. Correct. 18 Q. How long is that response time? 19 A. Depending on the jurisdiction, it can be very 20 long. 21 Q. How long in Colorado? 22 MR. COLIN: Foundation. 23 A. I don't know. I would suspect in their rural 24 jurisdictions in Colorado, it could be quite a 25 while.
Page 186 1 Q. So in those instances they did not need a 2 magazine with a capacity of 16 or more? 3 A. Correct. 4 Q. And in your opinion seven, what specifically -- 5 did you cite any references? What references do 6 you cite? 7 A. I cite references from training courses that I've 8 attended over the years as well as books such as 9 Street Survival, the Calibre Press books, they're 10 cited as references. Massad Ayoob, his books. I 11 think John Farnam is in there as well as a 12 reference. So Chuck Remsberg, his books. I did 13 not include Farnam I don't think. Yeah, maybe I 14 did -- no, I don't believe I did. Ayoob and 15 several different of his books. 16 Q. So the book you did not cite, what book is that? 17 A. The book that I didn't list, I thought it was 18 included in my references. There's a tremendous 19 amount of books that cover this area but I 20 thought I included a book by John Farnam. 21 Q. Did you rely on that source in arriving at your 22 conclusions? 23 A. No. No. 24 Q. So other than what you have expressly referenced 25 in references at the back --	Page 188 1 Q. What's the basis for that opinion? 2 A. My experience working suburban rural patrol. 3 Q. In Colorado? 4 A. In Ohio. 5 Q. Does response time depend on the time of day -- 6 A. Yes. 7 Q. -- that the call is made? 8 A. Yes. 9 Q. How so? 10 A. Traffic, number of cars on the road, the ability 11 to respond at a greater or a lesser speed or the 12 inability to respond at a greater speed based on 13 traffic and other factors. 14 Q. And how does having more than, how does having a 15 magazine with 16 rounds or more better help a 16 citizen defend themselves given the long 17 potential response time? 18 A. Well, it would allow the citizen defender or the 19 police officer to continue to shoot or be able to 20 continue to shoot over a longer period of time. 21 Q. Could the citizen use other weapons other than a 22 weapon with a magazine of 16 or more? 23 A. They could. 24 Q. And would that also help with the delay? 25 A. Well, we've already talked about the dangerous

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<p>1 aspect of reloading. Obviously the more rounds 2 on board the firearm, the less reloads are 3 necessary or the more, the longer the citizen 4 defender can stay in the fight before they have 5 to reload or before they run out of ammunition.</p> <p>6 Q. But they could use other weapons?</p> <p>7 A. They could.</p> <p>8 Q. And other weapons could -- could other weapons be 9 more effective?</p> <p>10 MR. COLIN: Foundation.</p> <p>11 Speculation.</p> <p>12 A. Effectiveness in terms of how?</p> <p>13 Q. In keeping themselves safe until police arrived?</p> <p>14 A. Well, it depends. If they run out of ammunition 15 with, based on limited magazine capacity, then 16 no, that's not going to be or they're not going 17 to be more effective. They're going to be less 18 effective. So it depends on, A, the number of 19 rounds that the firearm holds and, B, the number 20 of reloads that they have available.</p> <p>21 Q. Well, could other weapons be more effective in 22 stalling for time?</p> <p>23 MR. COLIN: Same objection.</p> <p>24 A. More effective, no.</p> <p>25 Q. Not a grenade?</p>	<p>1 Q. And just to clarify by more rounds, you mean more 2 rounds in a single magazine?</p> <p>3 A. I believe that holds true for more rounds in one 4 incident prior to being able to reload but I also 5 believe that more rounds generally irregardless 6 are more effective in incapacitating a threat.</p> <p>7 Q. So more rounds in general?</p> <p>8 A. Yes.</p> <p>9 Q. Okay. But the comparison you're drawing is that 10 more rounds in a single magazine can be more 11 effective than less rounds in a single magazine?</p> <p>12 A. I think the citizen or police officer using a 13 firearm which has more rounds is going to be more 14 effective than a citizen or police officer that 15 has less than 15 rounds.</p> <p>16 Q. And what do you include under the term 17 "incapacitating"? What does that mean?</p> <p>18 A. Well, as listed there are several different stops 19 or mechanisms that can result in incapacitation. 20 The first one is a psychological stop where the 21 person for whatever reason, they may not even be 22 shot or if they were shot, not mortally, but they 23 surrender. That's a psychological stop.</p> <p>24 A central nervous system shot or stop is one 25 that hits the brain or the upper spinal column</p>
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<p>1 A. Well, not, that's not a firearm.</p> <p>2 Q. I said other weapons?</p> <p>3 A. No. Well, I suppose if you have a tank or a 50 4 caliber mod Uzi, yes.</p> <p>5 Q. But you would say it is fair to say that there 6 are other weapons one could use which could help 7 a citizen delay until police came other than a 8 weapon with a magazine of more than 16?</p> <p>9 A. There are other weapons available, yes.</p> <p>10 Q. Any sources other than those you expressly 11 reference in your report that you relied on in 12 reaching opinion 11?</p> <p>13 A. No, not that I can recall.</p> <p>14 Q. Any other related conclusions?</p> <p>15 A. No.</p> <p>16 Q. Okay. Let's go to number two.</p> <p>17 A. Number two?</p> <p>18 Q. Yes.</p> <p>19 A. Okay.</p> <p>20 Q. All right. And that opinion is: "Medical and 21 ballistic research shows why pistols and carbines 22 which carry more than 15 rounds are more 23 effective incapacitating a deadly threat," 24 correct?</p> <p>25 A. Correct.</p>	<p>1 and they stop based on that, the impact to their 2 central nervous system and the most common type 3 of stopping mechanism is blood loss or the 4 results from blood loss or exsanguination.</p> <p>5 Q. Are the standards for a law enforcement officer 6 using deadly force the same as the standards for 7 a civilian?</p> <p>8 A. Well, in the civilian sector it's reasonable man. 9 In the public sector with law enforcement it's 10 reasonable officer, so those are different but 11 both can use deadly force when they believe their 12 life or the life of another is being threatened 13 with death or serious bodily injury.</p> <p>14 Q. Are there other standards for officers when using 15 deadly force?</p> <p>16 A. There's --</p> <p style="text-align: right;">MR. COLIN: Vague.</p> <p>18 A. There's legal standards in terms of, supplied by 19 the Supreme Court and Tennessee versus Garner and 20 Graham versus Connor. Those don't apply to the 21 civilian population.</p> <p>22 Q. And what are those standards?</p> <p>23 A. Objective reasonableness based on the totality of 24 the circumstances.</p> <p>25 Q. At what time?</p>

1 A. I'm sorry? 2 Q. At what time? 3 A. The force is to be judged at the moment that it's 4 used. 5 Q. Is that the same for civilians? 6 A. There's no -- 7 MR. COLIN: Just so I'm clear, the 8 moment of use or the objective 9 reasonableness? 10 Q. Yes, the objective reasonableness. 11 A. Could we ask that question again now? 12 Q. Sure. 13 MR. COLIN: I got a little 14 confused. I apologize. 15 Q. For civilians it's the objective reasonableness 16 standard at the time of use? 17 A. No. 18 Q. But you do believe that the goals of both law 19 enforcement and civilians in using deadly force 20 is the same? 21 A. Of a law abiding citizen and a police officer, 22 yes, to save their own life or the life of 23 another. 24 Q. Are there other goals in achieving self-defense? 25 A. I'm sorry?	Page 193 1 been shot. It could be fear or their own 2 sympathetic nervous system reaction. It could be 3 just they've lost the will to continue to fight. 4 Q. Can the presence of a magazine with 16 or more 5 rounds impact a psychological stop? 6 A. I would certainly say that having a large, a 7 larger firearm pointed at you makes more of a 8 psychological impact than a smaller handgun or 9 firearm. 10 Q. Are you aware of any authorities documenting? 11 A. No. 12 Q. But a psychological stop can occur if the person 13 is hit with one shot? 14 A. One shot or no shots. 15 Q. You next mention a central nervous system stop. 16 Where can you hit the body to cause such a stop? 17 A. Well, the brain is the end of the central nervous 18 system, so a shot to the brain, a shot to the 19 base of the brain and the upper spinal column. 20 Those are areas that normally result in central 21 nervous system shots. 22 Q. And those are the only spots? 23 A. For central nervous system shot? That I'm aware 24 of, the brain and upper spinal column. 25 Q. Are those difficult to hit?
Page 194 1 Q. Do they share other goals beyond just preserving 2 either their integrity or someone else's in 3 achieving self-defense? 4 A. No, that's the primary area because law 5 enforcement officers can also shoot in the 6 apprehension of a violent fleeing felon and that 7 normally is not authorized for citizens. 8 Q. So you mentioned that small arms, handguns can 9 also be used as a means to stop a deadly 10 assailant, correct? 11 A. I'm sorry. Can you ask the question again? 12 Q. Yeah. You mention in your report that small 13 arms, handguns, and maybe some others can be used 14 as means to stop a deadly assailant? 15 A. That's correct. 16 Q. And would that include small arms that have 17 magazines that hold 15 or less rounds? 18 A. Correct. 19 Q. In what ways can a gun cause a psychological 20 stop? 21 A. Well, psychological stop is the person submitting 22 or the suspect giving up so that would be based 23 on their motivation or intent to continue to 24 fight, so those are factors other than, you know, 25 we could speculate, it could be pain if they have	Page 194 1 A. Yes. 2 Q. Have you ever trained anyone to try and hit those 3 spots? 4 A. Yes. 5 Q. Can you hit those spots in training or in 6 practice? 7 A. Simulated. 8 MR. COLIN: Foundation. Go ahead. 9 A. Simulated. 10 Q. At what frequency? 11 A. Depending on the -- 12 MR. COLIN: Foundation. Go ahead. 13 A. It depends on the weapon system. 14 Q. Do you know if anyone has made that shot in real 15 life? 16 A. Yes. 17 Q. Okay. You next state that exsanguination or 18 blood loss is a common way to stop a criminal? 19 A. Correct. 20 Q. How common is that? 21 A. Majority of shootings that take place on the 22 street involving law enforcement officers actual 23 shootings, not just threats to use deadly force, 24 but actual shootings, the biggest stop is 25 probably exsanguination of blood loss.

1 Q. How does that stop exactly happen? 2 A. What happens is sufficient blood is lost to drop 3 the blood pressure and to make the person faint 4 or have the person pass out or inability to 5 continue. 6 Q. How long would it take? 7 A. It -- 8 MR. COLIN: Foundation. 9 A. It depends on where the target area is hit. 10 Some areas, you know, are more, for instance 11 arteries are more susceptible to blood loss, 12 larger blood vessels than smaller ones, so it all 13 depends. 14 Q. So would the location of the shot impact how long 15 it would take for someone to exsanguinate? 16 A. Yes. 17 Q. So if you hit someone, for example, in the heart, 18 would that take a long time for them to 19 exsanguinate? 20 A. There's a phenomenon known as ambulation after 21 death where the person has enough oxygenated 22 blood in their body to stay upright and end the 23 fight despite being hit in the heart, but it's 24 certainly, the heart or major blood vessel would 25 cause bleedout quicker.	Page 197 1 cause a psychological stop with a firearm with a 2 magazine of 15 or less rounds? 3 A. Correct. 4 Q. It is possible to cause a central nervous stop 5 with a firearm with a magazine of 15 or less 6 rounds? 7 A. That's correct. 8 Q. And it is possible to cause exsanguination with a 9 firearm with a magazine of less than 15 rounds? 10 A. That is also correct. 11 Q. Any other sources you cited to reach this opinion 12 that aren't referenced in your report? 13 A. I believe there might be previous training 14 courses that I've attended that were not listed. 15 Dr. Fabrice Czarnecki and tactical EMS program 16 given by both my own agency as well as the 17 National Tactical Officers Association. 18 Q. And what conclusions did those resources relate 19 to that you reached? 20 A. They supported this phenomenon. 21 Q. Could you provide those, too? 22 A. I'm sorry? 23 Q. Could you provide those documents to counsel? 24 A. Yes. Well, I don't know, I mean the training it 25 may be PowerPoint or manual but I will what I can
Page 198 1 Q. So depending on where you hit, it's possible that 2 exsanguination could be quick? 3 A. Yes, yes, could be quick. 4 Q. Almost instant? 5 A. With exsanguination, if it were fairly quick, 6 that would be more of a psychological thing if it 7 were instant because it relies on the lowering of 8 the blood pressure in order to stop. 9 Q. At the end of that conclusion you mention that 10 it's interesting to note that even in war, 11 survival rate of a wounded soldier is over 90 12 percent, correct? 13 A. Correct. 14 Q. Could you explain what exactly that study 15 covered? 16 A. Well, it's common knowledge in emergency medicine 17 and in tactical emergency medicine for squad 18 teams that a majority of deaths on the 19 battlefield are caused from blood loss. Medical 20 treatment has improved on the battlefield, has 21 improved in law enforcement with tactical EMS and 22 with things like tourniquets and hemostatic 23 agents. We're now preventing a lot of deaths 24 from exsanguination. 25 Q. So just going through these, so it is possible to	Page 200 1 find. 2 Also, no, it is included in here, it's just 3 not -- Dr. James Williams Tactical Anatomy 4 Instructor Manual. That is also included in my 5 references. 6 Q. Okay. Any other conclusions related to issue two 7 that aren't in your report or that we have not 8 discussed? 9 A. No, not that I can recall. 10 Q. Well, let's turn to opinion eight. In opinion 11 eight you state: "Older, female, infirm, injured 12 or disabled shooters can more effectively defend 13 themselves and stop deadly threats against them 14 with the use of firearms which carry more than 15 15 rounds." Correct? 16 A. Correct. 17 Q. Why is it your opinion that older shooters can 18 more effectively defend themselves and stop 19 deadly threats against them with the use of 20 firearms which carry more than 15 rounds? 21 A. Because they can fire more rounds before they 22 have to reload the pistol. 23 Q. How do you know that? 24 A. Because the pistol holds more rounds than a 25 magazine of less than 15 rounds so they can

1 continue to shoot longer before they have to 2 reload. 3 Q. So is that the only benefit? 4 A. No. The firearms, specifically the same guns 5 that are used by law enforcement in terms of the 6 Glock model 17 and the Smith & Wesson M&P also 7 have easier triggers to shoot, the striker fire 8 pistol, than many other firearms so the semi-auto 9 pistol in general is easier for a female 10 especially to shoot. Easier for an older 11 shooter, easier for someone that has some type of 12 disability or injury. 13 Q. Any other benefits? 14 A. No. I think that's about it. 15 Q. So the number of shots and ease of trigger pull, 16 correct? 17 A. Well, the pistols are also smaller in 18 circumference or in diameter, the modern pistols, 19 or have the ability to have, adapt to smaller 20 hands, so the ability to shoot has a lot to do 21 with hand size and strength in the fingers. So 22 the combination of ease of trigger pulls, 23 potential to have a smaller grip diameter also 24 helps these types of shooters. 25 Q. So do the elderly tend to have smaller hand	Page 201 1 Reloading is a complex motor skill and older 2 shooters, not all but some have problems in terms 3 of conducting reloads. 4 Q. How much more effective is meaningful to you? 5 A. How much more effective? In a gunfight I'd take 6 a small percentage of one percent. You know, 7 some of the small fraction. I'll take anything I 8 could get in a gunfight. 9 Q. Do you have an idea of what percentage a 16 round 10 magazine increases the probability of an elderly 11 person winning when they have a magazine of 16 or 12 more versus less than 15? 13 A. Well, we know that with trained police officers 14 we only have a hit rate of somewhere around 25 15 percent or less. Certainly an elderly shooter is 16 not going to have the abilities of a younger, 17 more fit police officer so we can anticipate that 18 in shooting, an elderly shooter is not going to 19 be as effective with their gunfire as a younger 20 more fit person so that having more rounds on 21 board will allow them to shoot in defense of 22 their life longer than a magazine that has less 23 than 15 rounds. 24 Q. Can you identify an older person who's lost a 25 gunfight because of their age?
Page 202 1 sizes? 2 A. No. Certainly they have a propensity to have 3 less strength in their hands and potential to 4 have arthritis or other types of disabling 5 maladies in their hands. 6 Q. How do you know they have less strength in their 7 hands? 8 A. I believe that aging people in general have less 9 strength overall than younger people. 10 Q. Do you have any authority supporting that? 11 A. I think it's common knowledge. 12 Q. Do you have an opinion on what percentage having 13 a magazine with 16 or more -- let me repeat that. 14 What advantages if any does having 16 or more 15 shots give an elderly shooter? 16 A. It gives them the ability to shoot more rounds 17 before they have to reload. 18 Q. Do you have any idea of what percentage, how does 19 that improve their ability to defend themselves 20 as opposed to shooting a firearm with a magazine 21 of less than 15? 22 A. Well, shooting, the ability to shoot more rounds, 23 17 or more rounds before they have to reload it 24 gives the probability of getting more rounds on 25 target before they have to manipulate the pistol.	Page 202 1 A. I could. I don't know them by name or I mean 2 I've certainly seen cases of, unfortunate cases 3 of elderly people that have been killed because 4 they did not have 15 rounds or greater magazines 5 in their pistols or were unable to successfully 6 shoot to defend their life. 7 Q. How many cases like that have you seen? 8 A. I really couldn't say. 9 Q. Ten or more? 10 A. I think there's at least ten cases over the years 11 that I've read about or heard about. 12 Q. How many shots did they fire? 13 A. Well, an insufficient number, we know that 14 because they were murdered in the process or in 15 the encounter or were seriously wounded. 16 Q. Well, less than 15? 17 A. It's entirely possible they shot more than 15 18 rounds. 19 Q. At some point do you think it's possible someone 20 would be so advanced in age that more rounds in a 21 single magazine would not help their ability to 22 defend themselves? 23 A. I think that citizens, regardless of their age 24 are entitled to defend their own life regardless 25 of their infirmities or regardless of their

1 physical limitations. 2 Contrary to opinion, I think that pistols 3 that have 15 rounds or more allow those people to 4 do the best that they can in defense of their own 5 life. 6 Q. Do you think they're, at some age point having 7 more rounds in a single magazine would not 8 improve their chances at defending themselves? 9 A. I don't think you can go by age, no. I would say 10 no. 11 Q. So it would never, age would never make a 12 difference? 13 A. There's some spry 90-year-olds. I would say no. 14 Q. Okay. So why is it your opinion that female 15 shooters can more effectively defend themselves 16 in deadly threats when using firearms which carry 17 more than 15 rounds? 18 A. Well, first of all, the, as we've already stated, 19 with every sex or age group or what have you, 20 everyone's more effective with a firearm that 21 contains more than 15 rounds and the reason is 22 those females can continue to shoot more with a 23 larger capacity magazine than a smaller capacity 24 magazine. 25 Q. So beyond more, what other benefits are there?	Page 205 1 it's because the trigger's easier to pull, 2 correct? 3 A. And also because, once again, it allows them to 4 stay in the fight longer before they have to 5 reload. 6 Q. Any other benefits? 7 A. The reloads are, the reduction in the number of 8 reloads because of the round count benefit female 9 shooters as well. 10 Q. Can you identify a female shooter who lost a 11 gunfight because of their gender? 12 A. Because of their gender? 13 Q. Yeah. 14 A. No. 15 Q. Let's go back, when you say infirmed shooters, 16 who are you including? 17 A. I'm including those people that are under some 18 type of disease or some type of condition that 19 they are not a fully capable. 20 Q. How does infirmed differ from injured or 21 disabled? 22 A. Well, say somebody's experiencing cancer. I 23 would say that that person would have, not be as 24 strong or as able as a person, a normal person. 25 They've not suffered an injury. They're
Page 206 1 A. Well, once again, the firearms that these are 2 designed for, the Glock 17, the Smith & Wesson 3 M&P and others, the Springfield XD, and other 4 firearms out there, the grip diameter is smaller 5 for those females that have smaller hands. The 6 trigger press is lighter than, for instance, a 7 double action revolver so it's the ease of 8 trigger press as well as the ability to get a 9 good grip on the gun. 10 Q. Are those guns that you mentioned available or 11 compatible with magazines holding less than 16 12 rounds? 13 A. Can you ask the question again? I'm sorry. 14 Q. For example, the Glock 17, is that compatible 15 with a magazine that holds 15 or less rounds? 16 A. To my knowledge there are maybe magazines out 17 there that have been, blocks have been placed in 18 them to make them hold less than 15 rounds but as 19 coming from the manufacturer, it comes with a 17 20 round magazine. 21 Q. But it could be below 15 rounds or less? 22 A. A, some type of block could be put in it to limit 23 it to one round in the spare magazine or in the 24 magazine. 25 Q. So when we say that there's a physical benefit,	Page 206 1 diseased. An injured person could be somebody 2 that's broken a bone or suffered some type of 3 accident and of course a disabled person may be 4 some of those people that have suffered an 5 accident, never recovered from it. 6 Q. How does having a firearm with a capacity of more 7 than 15 rounds help an infirmed shooter 8 protecting themselves? 9 A. Because they can continue to shoot longer before 10 they have to reload, they can stay in the fight 11 longer. 12 Q. Do you know any infirmed shooter who lost a 13 gunfight because they had a magazine of less than 14 15? 15 A. Offhand, no. 16 Q. Do you know of any woman who has lost a gunfight 17 because they had a magazine of less than 15? 18 A. Yes. 19 Q. How many? 20 A. I couldn't say. 21 Q. Any of those law enforcement officers? 22 A. Yes. 23 Q. Do you know any civilians? 24 A. I'm sure there are some that I -- I can't 25 specifically recall.

1 Q. Why is it your opinion that disabled shooters can 2 more effectively defend themselves with more than 3 15? 4 A. Well, disability may include the loss of a limb, 5 whether a leg or an arm, certainly if the person 6 has lost a hand or an arm, having a handgun which 7 can fire more rounds before they have to reload is definitely beneficial to them. 8 Q. Could they also have a backup gun? 9 A. They could but, you know, disability being what 10 it is may not be able to draw it as effectively 11 as the primary. 12 Q. Why would it be less effective? 13 A. Less effective in a draw? Take a person in a 14 wheelchair, if they have a primary handgun in 15 some type of holster that they can readily get 16 to, where is the backup going to be carried, in a 17 pocket or somewhere else, they cannot physically 18 move as easy as a non disabled person to access a 19 backup gun. 20 Q. With respect to an older shooter in the context 21 of self-defense, do you think it's more important 22 that they have a gun with a magazine of 16 or 23 more or that they have proper training? 24 A. I can't separate the two because efficiency is	Page 209 1 Q. Are you aware of any studies supporting that an 2 elderly shooter needs more than 17 rounds to 3 successfully defend themselves? 4 A. No. 5 Q. Are you aware of any such studies for females? 6 A. In terms of law enforcement studies in terms of 7 success in females using those pistols, not 8 specific studies but sufficient number that most 9 large agencies allow or their females carry those 10 types of firearms. 11 Q. Are you aware of any study supporting that an 12 infirmed shooter needs more than 16 rounds to 13 successfully defend themselves? 14 A. Not studies, no. 15 Q. And are you aware of any studies that support 16 that a disabled shooter needs more than 16 rounds 17 to successfully defend themselves? 18 A. No studies, no. 19 Q. So other than the citations in your written 20 reports and your references or those that we've 21 discussed, any other sources you relied on in 22 reaching your opinion? 23 A. No. 24 Q. Any other related conclusions related to 25 conclusion ten that we did not go over or, sorry,
Page 210 1 based on some level of competency, so we 2 couldn't -- well, theoretically, if we were to 3 give a complete novice a pistol like a Glock 17 4 and they were shooting in defense of their life, 5 18 rounds would allow them to get more rounds on 6 target or the potential to get a round on target 7 before they ran dry or they ran empty, so if we 8 have a completely novice shooter that received no 9 training at all, a larger capacity magazine would 10 allow them to shoot more rounds and potentially 11 stop the threat. 12 Q. But can an older person with a firearm with a 13 magazine of less than 15 successfully defend 14 themselves? 15 A. Certainly. 16 Q. Can a female? 17 A. Certainly. 18 Q. Can an infirmed? 19 A. Certainly. 20 Q. Can a disabled? 21 A. Yes. 22 Q. But you would agree that training would help an elderly person in a gunfight? 23 A. Certainly training would help all categories of shooters.	Page 212 1 conclusion nine? 2 A. We were on eight. 3 Q. Oh, eight. Thank you. 4 A. On eight, no. 5 Q. Thank you. 6 A. You're welcome. 7 Q. Well, let's go to ten. 8 A. Okay. 9 Q. On ten you state that: "The AR15, M4 or similar 10 carbines designed to carry service magazines of 11 more than 15 rounds allow the private citizen to 12 more effectively defend themselves and others 13 based on increased accuracy, capacity, 14 intimidation, ballistic performance and ability 15 to deliver accurate fire at extended ranges," 16 correct? 17 A. That is correct. 18 Q. In that opinion you list five distinct advantages 19 of the AR15 and the M4? 20 A. Correct. 21 Q. And on Page 12 of your report, you list five 22 other attributes, correct? 23 A. I'm sorry. Those, I thought those were the five 24 you were referring to. 25 Okay. Those are the five you're talking

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<p>1 about?</p> <p>2 Q. Yes.</p> <p>3 A. Okay. Yes.</p> <p>4 Q. And those are all the attributes that inform your</p> <p>5 opinion about these carbines?</p> <p>6 A. Not all, but most, correct.</p> <p>7 Q. What are the ones that aren't included?</p> <p>8 A. I would say increased effectiveness in actual</p> <p>9 gunfights, whether that's law enforcement,</p> <p>10 military or civilian sector.</p> <p>11 Q. Any others?</p> <p>12 A. Not that I can recall.</p> <p>13 Q. Okay. You wrote that "a 16 inch barreled carbine</p> <p>14 is exceedingly more accurate than a four or five</p> <p>15 inch pistol," correct?</p> <p>16 A. That is correct.</p> <p>17 Q. How much more accurate is "exceedingly more</p> <p>18 accurate"?</p> <p>19 A. Well, the standard for, of accuracy for most</p> <p>20 rifles is to be able to shoot a one inch at 100</p> <p>21 yards or one minute of angle referred to earlier</p> <p>22 in the day. A, that is capable of being done</p> <p>23 with a carbine; however, that is not that capable</p> <p>24 of being a pistol. It would have to be a special</p> <p>25 pistol to be able to shoot that tight at 100</p>	<p>1 A. There are a multitude.</p> <p>2 Q. Do you know approximately how many?</p> <p>3 A. I really couldn't say. There's so many brands</p> <p>4 and manufacturers nowadays.</p> <p>5 Q. Are all 16 inch carbines equally accurate?</p> <p>6 A. No.</p> <p>7 Q. Do you know the range of accuracy?</p> <p>8 A. In acceptable carbines, acceptable accuracy</p> <p>9 versus carbines that are made more for precision</p> <p>10 rifle work tend to have better barrels, et</p> <p>11 cetera, and have more custom work on them than a</p> <p>12 off the shelf standard grain carbine. I couldn't</p> <p>13 state the difference.</p> <p>14 Q. Do you know a high or a low?</p> <p>15 A. Of what?</p> <p>16 MR. COLIN: Of what?</p> <p>17 Q. In terms of accuracy?</p> <p>18 A. Well, once again, a rifle that can shoot sub MOA,</p> <p>19 or less than one inch at 100 yards, it would be</p> <p>20 at the top and a rifle that can't do that, it's</p> <p>21 only about a four or five inch group at a hundred</p> <p>22 yards would be at the lower end, so sub one inch</p> <p>23 at 100 yards versus four or five inches.</p> <p>24 Q. Are all four or five inch pistols equally</p> <p>25 accurate?</p>
Page 214	Page 216
<p>1 yards.</p> <p>2 Q. Okay. And what do you mean by exceedingly?</p> <p>3 A. "Exceedingly more accurate"?</p> <p>4 Q. Yes.</p> <p>5 A. Precision accuracy. It's, you're capable of</p> <p>6 delivering more pinpoint accuracy over a wider</p> <p>7 target area.</p> <p>8 Q. Are there any studies documenting the accuracy in</p> <p>9 that categorization?</p> <p>10 A. I don't think there's ever been studies. It's</p> <p>11 basically common knowledge that rifles are more</p> <p>12 accurate than pistols.</p> <p>13 Q. But you can cite to no specific source for that</p> <p>14 proposition?</p> <p>15 A. I did cite in the national, in my references the</p> <p>16 National Tactical Officers Association in terms</p> <p>17 of their law enforcement patrol rifle carbine and</p> <p>18 I'm sure that it's in there in some form,</p> <p>19 probably the Calibre Press publications as well.</p> <p>20 Q. Are there different models of 16 inch carbines?</p> <p>21 A. Oh, certainly.</p> <p>22 Q. Do you know how many?</p> <p>23 A. A multitude. More than I could state.</p> <p>24 Q. And are there many different models of four and</p> <p>25 five inch pistols?</p>	<p>1 A. No, they are not.</p> <p>2 Q. How much variation is there among model,</p> <p>3 different models of four and five inch pistols?</p> <p>4 A. A variety. It's based on the quality and the</p> <p>5 manufacture of the firearm so there's fairly</p> <p>6 decent difference.</p> <p>7 Q. And how do you know that there's a variation?</p> <p>8 A. In shooting them over the years. Some guns are</p> <p>9 more accurate than other guns.</p> <p>10 Q. Anything beyond experience?</p> <p>11 A. I'm sorry?</p> <p>12 Q. Any other basis for that beyond your own</p> <p>13 experience?</p> <p>14 A. And reading over the years.</p> <p>15 Q. What have you read that supports that?</p> <p>16 A. Oh, a multitude number of articles on, and gun</p> <p>17 evaluations over the years.</p> <p>18 Q. Did you cite those in your report?</p> <p>19 A. I couldn't possibly, counselor. There's been so</p> <p>20 many that, you know, I read a lot of periodicals</p> <p>21 and on-line articles. I really couldn't list</p> <p>22 them all.</p> <p>23 Q. So I assume you're unable to provide those to me</p> <p>24 today?</p> <p>25 A. Correct.</p>

1 - - - 2 (Thereupon, a recess was had.) 3 - - - 4 Q. Back on the record. 5 So you previously stated that 16 inch 6 carbines are exceedingly more accurate, correct? 7 A. Than four or five inch pistols, correct. 8 Q. Would every shooter be able to achieve that 9 exceeding accuracy? 10 A. I think every shooter has the potential to, yes. 11 Q. But not every shooter would in fact have that 12 same accuracy? 13 MR. COLIN: Speculative. 14 Foundation. 15 A. Just by virtue of the carbine. They are more 16 accurate. It depends on the fundamentals of 17 marksmanship as applied to the shooting. 18 Q. Any other reasons other than training? 19 MR. COLIN: Same objection. 20 A. I really couldn't answer that. I mean the gun 21 has the capability of shooting to a certain 22 level. It depends on, even a decent shot can 23 miss with a carbine but they are more accurate. 24 Q. So just to summarize, the accuracy of any given 25 weapon is just a starting point. Would you	Page 217 1 A. Number of shots available, correct. 2 Q. But they could still fire more shots if they had 3 more magazines? 4 A. That's correct. If they reloaded. 5 Q. Does House Bill 1224 affect the advantages of the 6 16 inch carbine in regards to better ballistics? 7 A. In terms of ballistic performance, yes, because 8 of the number of rounds. 9 Q. In any other ways? 10 A. No. 11 Q. Does House Bill 1224 affect the intimidation 12 value of a 16 inch carbine? 13 A. I would say yes. To what extent I can't say. 14 Q. And how would it affect in your view? 15 A. The ability to shoot 30 rounds at someone is a 16 little bit more intimidating than the ability to 17 shoot 15 rounds or less. 18 Q. In a gunfight do people, in a gunfight is it 19 possible to notice what type of magazine 20 someone's using? 21 MR. COLIN: Foundation. 22 A. What guns are pointed at people, those things are 23 factored in. 24 Q. Any other sources you use to reach your opinion 25 in ten that you don't reference in your report or
Page 218 1 agree? 2 A. Yeah. I think that's true. We want a, guns used 3 for self-defense should be accurate. 4 Q. And there's a maximum accuracy for every weapon? 5 A. Maximum? Guns shoot better than people do. 6 Q. But higher accuracy can only, accuracy depends on 7 the shooter, correct? 8 A. Correct. I mean if you had, at some point if you 9 had a poor shot with a very accurate carbine 10 versus a good shot with a very bad carbine, then 11 that would make the difference. 12 Q. Does House Bill 1224 limit the accuracy of 13 firearms? 14 A. No. It limits the magazines. 15 Q. Does it ban 16 inch carbines? 16 A. No. 17 Q. So the accuracy advantage cited, is that affected 18 by Colorado's new gun law? 19 A. The accuracy alone, no. 20 Q. Is the increased ability to hit at distance 21 impacted by the new gun law? 22 A. Potentially because you're reducing the number of 23 rounds available on board the carbine. 24 Q. And by that, you mean the number of shots 25 available?	Page 218 1 that we have not discussed? 2 A. I don't believe so. 3 Q. Any other related conclusions in number ten that 4 we did not go over? 5 A. No, not that I'm aware of. 6 Q. Let's go to number nine. And that opinion is: 7 "Retired law enforcement officers can better 8 protect themselves and others with the firearms 9 which contain more than 15 rounds that they have 10 trained with and carried during their careers," 11 correct? 12 A. Correct. 13 Q. Why do you think that? 14 A. Well, it only makes sense that a law enforcement 15 officer would have better abilities and more 16 accuracy and perform better under stress with the 17 gun that he has carried and trained with 18 throughout his career. 19 Q. Do you have any sources for that conclusion? 20 A. I think it's self-evident. 21 Q. So no studies? 22 A. Not that I'm aware of. 23 Q. How often do retired officers use high-capacity 24 magazines in self-defense? 25 A. I don't know that there's been a study or number.

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<p>1 Q. Does House Bill 1224 ban the kind of guns that 2 officers can use?</p> <p>3 A. Guns, no. The magazines within those guns, yes.</p> <p>4 Q. To your knowledge under House Bill 1224 can the 5 officers still use the guns that they previously 6 used when they were in service?</p> <p>7 A. They just can't use the ammunition capacity that 8 that gun was designed for.</p> <p>9 Q. Do you know any retired law enforcement officer, 10 do you know of any retired law enforcement 11 officer that was unable to protect themselves 12 because they did not have a magazine of more than 13 15 rounds?</p> <p>14 A. Yes.</p> <p>15 Q. How many?</p> <p>16 A. I don't -- I couldn't say.</p> <p>17 Q. More than ten?</p> <p>18 A. I couldn't say. It would just be speculation. I 19 am aware of instances.</p> <p>20 Q. And how do you know that the lack of a high -- a 21 magazine with more than 16 was the reason?</p> <p>22 A. Well, because they expended the number of rounds 23 in their magazine and they were killed 24 afterwards.</p> <p>25 Q. Any other sources you used to reach your opinion</p>	<p>1 A. Because backup guns traditionally are smaller 2 frame, either a smaller frame semi-auto pistols 3 or revolvers, they are harder to shoot, the less 4 accuracy potential because of the sight radius, 5 harder triggers to manipulate and less rounds on 6 board.</p> <p>7 - - - - -</p> <p>8 (Thereupon, a discussion was had off the 9 record.)</p> <p>10 - - - - -</p> <p>11 Q. Okay, sir, let's turn for a moment to your 12 opinion one, to your first opinion in your 13 written report.</p> <p>14 You previously stated that in reaching that 15 conclusion you relied on the e-mail from 16 Mr. Hood?</p> <p>17 A. I'm sorry. In that one specific, let me go to 18 that.</p> <p>19 The end of the last paragraph of one, I 20 arrived at what conclusion, that sentence?</p> <p>21 Q. Oh, that the Glock 17 and the Smith & Wesson MP 22 9 millimeter pistol are common in Colorado law 23 enforcement?</p> <p>24 A. That's correct.</p> <p>25 Q. Do you have a copy of that e-mail?</p>
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<p>1 in opinion nine that's not cited in your report 2 or that we did not discuss?</p> <p>3 A. Not that I can recall.</p> <p>4 Q. Any other related conclusions to number nine 5 that's on the report that we did not discuss?</p> <p>6 A. No.</p> <p>7 Q. I'm just going to go over some general things. 8 Does House Bill 1224 ban backup guns?</p> <p>9 A. It only bans backup guns that contain 15 or more 10 rounds in the magazine.</p> <p>11 Q. Does that impact a civilian's ability to defend 12 themselves in your opinion?</p> <p>13 A. In terms of backup guns?</p> <p>14 Q. Yes.</p> <p>15 A. I would say no.</p> <p>16 Q. What's the purpose of a backup gun?</p> <p>17 A. To provide a plan B when plan A fails: When the 18 primary handgun has been shot dry, rendered 19 inoperable or taken away.</p> <p>20 Q. Can't a backup gun be a substitute for a 21 high-capacity magazine in the context of 22 defending one's self?</p> <p>23 MR. COLIN: Foundation.</p> <p>24 A. Not as effectively.</p> <p>25 Q. Why?</p>	<p>1 A. With me today? No.</p> <p>2 Q. Let's mark this as Exhibit 2.</p> <p>3 - - - - -</p> <p>4 (Thereupon, Defendant's Exhibit 2, Hood/Davis 5 e-mail string, was marked for purposes of 6 identification.)</p> <p>7 - - - - -</p> <p>8 Q. Do you recognize that document?</p> <p>9 A. This document, no. But the correspondence 10 e-mail, yes.</p> <p>11 Q. Does the correspondence look accurate to the 12 e-mail of which you reference in your opinion 13 one?</p> <p>14 A. Yeah. It's actually the, well, I think correctly 15 duplicated on that, correctly cited.</p> <p>16 Q. I appreciate that and as to the form of the 17 e-mail, I did print out an exact copy?</p> <p>18 A. That's fine, and I reference that, in that 19 sentence, that most larger agencies, most 20 prevalent is the Smith & Wesson M&P, then 21 probably the Glock.</p> <p>22 Q. Okay. At the top of that e-mail, does he 23 reference that his later, that his opinion's just 24 observation, not exact counts?</p> <p>25 MR. COLIN: Document speaks for</p>

<p>1 itself. Go ahead.</p> <p>2 A. Yes. I would say he wrote what he wrote. There 3 is no other correspondence.</p> <p>4 Q. Does that undermine its reliability to you?</p> <p>5 A. No. He's listed by the Colorado POST as a 6 subject matter expert. That's how I got his 7 name, from the Colorado POST website so I would 8 trust that they think his opinion is sufficient 9 to render that statement.</p> <p>10 Q. Did he tell you how he reached his opinions?</p> <p>11 A. I didn't ask. My feeling was is because of 12 overall sales of Glock pistols and M&Ps 13 throughout the country that was true. I was 14 trying to confirm what I believed already.</p> <p>15 Q. So you don't know what he cited to arrive at that 16 statement?</p> <p>17 A. He's listed as a subject matter expert. He's a 18 firearms instructor, I know that, so where he 19 gets his information, I'm not sure.</p> <p>20 Q. Does it also list what agency he's assigned to in 21 the e-mail? This came up earlier.</p> <p>22 A. I think he's with Wildlife and he lists that, our 23 jobs are a little different than most Wildlife 24 agencies.</p> <p>25 Q. And when he lists that the most prevalent is the</p>	<p>Page 225</p> <p>1 the two?</p> <p>2 A. The most popular caliper for law enforcement in 3 the United States is 9 millimeter. After that 4 it's the .40 Smith & Wesson and then a .45.</p> <p>5 Q. We've discussed a lot today the importance when 6 defending one's self in having both practice 7 marksmanship and magazines with a capacity of 8 more than 16, correct?</p> <p>9 A. In addition to a lot more we've discussed but, 10 yes, we've discussed marksmanship as well as 11 reloading.</p> <p>12 Q. Well, out of the factors that go into defending 13 one's self, which to you is the most important?</p> <p>14 A. I'm a trainer. My job is training and I believe 15 that training makes the difference. Other 16 factors up there, probably the most important is 17 mindset, the ability to prevail.</p> <p>18 Q. So training counts the most when you're talking 19 about success in a gunfight?</p> <p>20 A. Yes, I would say so.</p> <p>21 Q. What matters second most?</p> <p>22 A. I would -- actually, of those things you, 23 training, I would say mindset, once again the 24 ability to prevail would be number one and then, 25 and that is often developed through training, so</p>
<p>Page 226</p> <p>1 Smith & Wesson M&P, does he signify which model?</p> <p>2 A. No, he doesn't, nor the Glock.</p> <p>3 Q. So when you arrive in your conclusion in opinion 4 one, are you making any assumptions from his 5 e-mail?</p> <p>6 A. No. I state that the Smith & Wesson M&P and the 7 Glock according to Mr. Hood are the, as he said, 8 the most prevalent and then Glock has provided 9 information about sales in terms of 65 percent of 10 the U.S. law enforcement are on with the Glock 11 pistol.</p> <p>12 Q. But is it possible that the Smith & Wesson M&P 13 he's referring to is not the Smith & Wesson M&P 9 14 millimeter?</p> <p>15 A. It is possible.</p> <p>16 Q. Is it possible that the Glock he refers to is not 17 the Glock 1017 that you refer to?</p> <p>18 A. That is correct.</p> <p>19 Q. So you do make those two assumptions?</p> <p>20 A. Oh, I don't make assumptions. I state what he 21 said and then I refer to what Glock has said.</p> <p>22 Q. But you're unaware if there's a correlation 23 between the two?</p> <p>24 A. I'm sorry?</p> <p>25 Q. You're unaware if there's a correlation between</p>	<p>Page 228</p> <p>1 they run hand in hand. 2 But other factors? Is what you're asking?</p> <p>3 Q. Yes.</p> <p>4 A. Other factors, of course equipment factors in 5 there and that would include magazines of 6 sufficient capacity to be able to prevail in a 7 gunfight.</p> <p>8 Q. Well, what would be the second most important 9 factor in a gunfight if we're looping --</p> <p>10 A. I would say --</p> <p>11 Q. -- the will to win?</p> <p>12 A. -- number one is mindset. Number two is 13 training.</p> <p>14 Q. What would number three be?</p> <p>15 A. Probably equipment, probably equipment.</p> <p>16 Q. And if you had to break equipment down, how would 17 you rank --</p> <p>18 A. Well, if we're talking about gunfights we're 19 talking about firearms that are capable of 20 stopping deadly threats.</p> <p>21 Q. Would the firearm matter more than the capacity 22 of a magazine?</p> <p>23 A. I think they go --</p> <p>24 MR. COLIN: Foundation. Go ahead.</p> <p>25 A. I think they go hand in hand. Large capacity</p>

1 magazines that have ineffective rounds are not 2 going to be effective. Small capacity firearms 3 are going to be less effective, so I think you 4 can't separate the two. 5 MR. LEE: Let's take a break. 6 - - - - 7 (Thereupon, a recess was had.) 8 - - - - 9 Q. Back on the record. 10 - - - - 11 (Thereupon, Defendant's Exhibit 3, 12 Tactical-Life.com "Lifesaving Backup Guns" 13 article, was marked for purposes of 14 identification.) 15 - - - - 16 Q. Are you familiar with the document that I handed 17 you? 18 A. Not this specific document, but the article that 19 it's based on, yes. 20 Q. Are you familiar with the author? 21 A. Well, that's my picture there, so let's see. I'm 22 looking for my name here. I'm assuming that I 23 wrote this, counselor, but I don't see my name. 24 Q. It's by Massad Ayoob. 25 A. Okay. That's my picture, though, that's why I	Page 231 1 A. That's me doing it. I've done it before. 2 Q. How long does it take you to grab a backup gun? 3 A. Depending on where it's positioned, it could be 4 six to ten seconds. 5 Q. And would that be true for all shooters? 6 A. I imagine some people are faster than I am and 7 it's also depends on where the gun is located. 8 It also depends on how practiced they are. They 9 may take longer than that. 10 Q. Do you know of any shooters that are faster at 11 pulling out a backup gun than changing a 12 magazine? 13 A. Faster than me? 14 Q. Yes. 15 A. There are probably people that are faster than 16 me, counselor, but I would say for most shooters, 17 drawing a backup gun is longer than reloading. 18 Q. But in the context of self-defense, having a 19 backup gun could make a difference? 20 A. Certainly. 21 MR. COLIN: Speculative, 22 foundation. 23 A. Certainly. 24 - - - - 25 (Thereupon, Defendant's Exhibit 4, The New
Page 230 1 thought I wrote it. 2 Q. And do you find him to be a reliable source -- 3 A. Massad, yes. 4 Q. -- when it comes to firearms? 5 A. Yes. 6 Q. And magazine changes? 7 A. Correct. 8 Q. Okay. Do you see where he writes: It's actually 9 a matter of drawing a second gun is often the 10 fastest reload in a gunfight? 11 A. I do. 12 Q. Do you agree with that statement? 13 A. I don't. 14 Q. Why? 15 A. As you can see, the picture used in Massad's 16 article was of me drawing my backup gun which is 17 located under my shirt and is carried in a 18 holster that attaches to the vest panels of my 19 concealable body armor. 20 In order for me to do that, that takes 21 several seconds longer than a traditional reload. 22 Q. You said that you think it takes several seconds 23 longer? 24 A. I know it takes several seconds longer. 25 Q. And how do you know that?	Page 232 1 York Times, "11 Years of Police Gunfire, in 2 Painstaking Detail" article, was marked for 3 purposes of identification.) 4 - - - - 5 Q. Mr. Davis, do you recognize that document? 6 A. I actually think I read this on-line, correct. 7 Q. Are you familiar with what the article states 8 regarding hit rate? 9 A. I'd have to go through and take a look at it. 10 But I have read it. Offhand I'd have to read and 11 find it. If you want to direct me to an area 12 where that is. 13 Q. It begins on the second page in the middle. Then 14 it goes on to the next page. So if you'd take a 15 moment to read that, I'd appreciate it. 16 A. Okay. Okay. 17 Q. Do you agree or disagree with the hit rates cited 18 in the report? 19 A. Well, I agree with the author where he says the 20 figure is skewed and what tends to happen is that 21 New York City Police Department calls those types 22 of incidents with more rounds outliers and so 23 they tend not to include them in their hit rates. 24 Q. So do you think the 25 percent we discussed 25 earlier is a better representation of hit rate?

1 A. I think the RAND study as performed for the New 2 York City Police Department and the Aveni study 3 are a little bit more accurate of actual, plus 4 we're talking about gunfights versus shooting in 5 situations where people are not shooting back. 6 Q. And if people are shooting back, hit rate goes 7 down? 8 A. Correct. And more rounds are fired by the 9 officer. 10 Q. So in a gunfight what do you think is the most 11 accurate hit rate number? 12 MR. COLIN: Asked and answered. 13 Go ahead. 14 A. I've seen gunfights in which there has been 100 15 percent hit rate. 16 MR. COLIN: I misunderstood the 17 question, then. I apologize. 18 Q. No, I think you understood it. 19 MR. COLIN: Then he misunderstood 20 the question. Okay. 21 Q. We've been talking a lot today about hit rate and 22 I think we've actually had a couple of different 23 answers so just in the context of law enforcement 24 hit rate in a gunfight, what percentage do you 25 think is the most accurate?	Page 233 1 Platt had, let me go to that. 2 Okay. On Page 7, Matix was shot six times 3 and Platt 12 times. 4 Q. And you also use Platt as an example of 5 exsanguination on Page 6, correct? An example of 6 someone who succumbed to exsanguination? 7 A. Actually, Platt survived what, or succumbed to a 8 wound what they said was non survivable. I 9 believe he was shot through the lungs, you know, 10 but he stayed up and in the fight despite having 11 been shot with a nonsurvivable wound for several 12 minutes. He actually killed two agents and 13 wounded a majority of the others after he was 14 shot. 15 Q. Is there a commonly accepted number of how many 16 shots it normally takes to stop a deadly threat? 17 A. No. 18 Q. In the context of high-capacity magazines, you 19 cited that one of the benefits is it allows you 20 to shoot more. 21 A. Correct. 22 Q. And presumably hit more? 23 A. Hopefully. 24 Q. Is there a baseline for how many shots typically 25 you think a civilian acting in self-defense needs
Page 234 1 A. Oh, I'm sorry. I did not understand the 2 question. 3 Q. No problem. 4 A. I had seen actually in a gunfight, I would submit 5 what NYPD and what the RAND Corporation has done 6 for the NYPD as being somewhere around 18 percent 7 in gunfights for the NYPD. 8 Q. And would that be for law enforcement in general? 9 A. I, once again, as I stated, there is no 10 definitive study. We've looked at Oregon. We've 11 looked at New York City. We've looked at 12 Metro-Dade. We've looked at those, but there's 13 no definitive study nationwide. 14 Q. So, but 18 or 25 you believe are fair 15 estimations? 16 A. Somewhere in there there's a fair. Certainly 17 less than 30 percent. 18 Q. Throughout your report you reference the Newhall 19 Incident, correct? 20 A. I do. 21 Q. And do you cite that it took 12 shots to kill 22 Platt? 23 A. No. You're not on Newhall. Miami shootout. 24 Q. Miami, sorry. 25 A. When you say 12 shots, they found postmortem that	Page 234 Page 236 1 to hit an assailant in order to stop a threat? 2 A. It's unknown. There are so many variables, I 3 couldn't speculate. 4 Q. Is there a commonly accepted number of how many 5 shots a law enforcement officer has to take to 6 stop a deadly threat? 7 A. No. 8 Q. Well, using hit rates that were provided do you 9 think 20 percent I think is fair to say is a fair 10 number, correct? 11 A. 20, 25 percent is a fair number. 12 Q. So if it took five shots to stop a deadly threat, 13 how many shots would have been expended to 14 achieve those five hits? 15 MR. COLIN: Can you restate? I 16 think what you meant is if there are five 17 hits? 18 Q. Five hits, correct. 19 MR. COLIN: Okay. 20 A. I think I actually break that down in terms of 21 percentages. 18 shot pistol, at Page 7, the last 22 paragraph. Even at the often quoted 25 percent 23 hit rate in law enforcement training circles, we 24 only see four or five hits out of 18 shots. 25 Q. So to achieve five hits, it would take 18 shots?

1 A. No. 2 Q. On a 25 percent hit rate? 3 A. If the officer was only impacting on target 25 4 percent of the time and fired 18 shots, the math 5 there I believe would be four or five rounds on 6 target. 7 Q. And the number of hit rate would go down when one 8 is faced with multiple assailants? 9 A. On each assailant, I think there's the potential. 10 I mean we're saying that with trained law 11 enforcement officers, the hit rate is somewhere 12 around 25 percent. With a citizen it would 13 certainly seem to be less and with multiple 14 attackers, it would seem to be less. 15 Q. How far would it reduce it? 16 A. We couldn't say. 17 Q. In your opinion is it important for law 18 enforcement to have, to be more armed than non 19 law enforcement? 20 A. More armed? Define that. 21 Q. To have advantage. Whether that be in better 22 arms, more arms? 23 A. Well, I think that law enforcement by nature of 24 their business are, they have the opportunity to 25 call backup, concealable body armor, access to	Page 237 1 identification.) 2 - - - - 3 Q. Do you recognize that document? 4 A. I do. I believe it's John Cerar's opinion. 5 Q. If you could turn to Page 4, please. 6 In that John Cerar concludes that, "The 7 availability of an endless supply of bullets 8 fosters a 'spray and pray mentality' which could 9 have severe negative impact on innocent 10 bystanders." Do you agree with that? 11 A. I do not agree with that. 12 Q. Why? 13 A. Well, even in New York City where he's from, 14 majority of the shootings that the NYPD are 15 involved in, there's more than one officer 16 present. They are firing in gunfights somewhere 17 over 11 rounds. They are trying to successfully 18 stop a deadly threat. I don't think that's a 19 spray and pray mentality. I think that's a 20 committed law enforcement officer or citizen that 21 is trying to stop a deadly threat. 22 Q. So you don't believe that the availability of 23 additional rounds fosters a spray and pray 24 mentality in a civilian? 25 A. Well, first of all the endless supply, I don't
Page 238 1 long guns and all of that that the citizen may 2 not have. So I don't know whether it's, I'm 3 certainly rooting for law enforcement to have all 4 those things going for them. We would hope that 5 it would assist them in winning a violent 6 encounter. 7 Q. Well, and having better arms, does that assist 8 them in success in gunfights? 9 A. I think yes, yes. 10 Q. Have you read the other defense expert reports 11 filed in this case? 12 A. I've read the report of Massad Ayoob. I read the 13 report from Kleck, I believe, and I think there's 14 one more that I can't recall the name. I think I 15 read a couple different reports. 16 Q. Do you agree with Ayoob's report? 17 A. That I read, yes. 18 Q. Have you read the defendant's expert reports 19 filed in this case? 20 A. I've read Mr. Cerar's report. There's another 21 one I can't recall. Two other reports that I 22 can't recall but I've read those as well. 23 - - - - 24 (Thereupon, Defendant's Exhibit 5, Cerar 25 report, was marked for purposes of	Page 239 Page 240 1 know what that maintains. We don't have an ammo 2 bearer that keeps bringing up rounds. There are 3 a limited amount of rounds that are available for 4 law enforcement officers and citizens, it's 5 essentially what they're carrying on their 6 person. I don't believe that magazines that have 7 15 or more rounds foster a spray and pray 8 mentality, no. 9 Q. Would you turn next to Page 5. Mr. Cerar writes, 10 "It has been my experience with training female 11 shooters that the problems they encountered 12 aren't ammunition related, but instead related to 13 their choice of handgun." 14 Do you agree with that statement? 15 A. I think there's more detail there. I essentially 16 agree but with that sentence, not entirely. 17 Q. What do you disagree or how do you disagree with 18 that statement? 19 A. Well, for instance, choice of handgun has to do 20 with circumference of the hand or circumference 21 of the grip based on the hand size. I agree with 22 that. I also agree with trigger, you know, press 23 as related to training female shooters. However, 24 I don't intimate and say that those are related 25 to shooting guns of nine millimeter or above.

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<p>1 That's not the problem. The problem is the grip 2 size.</p> <p>3 Q. How does the size of the magazine affect the grip 4 size?</p> <p>5 A. Well, it doesn't. In the Glock 17, there is no 6 difference in the size, the circumference of the 7 grip between the Glock 17, Glock 19, Glock 26. 8 There's no difference.</p> <p>9 Q. Could you turn to Page 6 please.</p> <p>10 Do you disagree with Mr. Cerar's statement 11 that, "I also believe the impact of this bill 12 will have minimal if any negative effect on the 13 elderly and the physically challenged"?</p> <p>14 A. I don't agree with that statement.</p> <p>15 Q. Why do you disagree?</p> <p>16 A. Because I believe that the elderly and physically 17 challenged are better served by having handguns 18 that carry more ammunition before they have to 19 reload that they can stay in the fight longer 20 before they have to reload.</p> <p>21 Q. Do you agree with his assessment that the 22 effectiveness is "heavily dependent on the proper 23 choice of weapon"?</p> <p>24 A. Where are we at here?</p> <p>25 Q. It's --</p>	<p>1 magazine. How effective would that be in a 2 self-defense situation? I disagree with that.</p> <p>3 Q. So you believe that the number of rounds matters 4 more than the weapon?</p> <p>5 A. No, I didn't say that. I said they go hand in 6 hand. I would put the, those weapon systems such 7 as the Glock 17 and Smith & Wesson M&P that have 8 17 round magazines, the pistol is designed around 9 that magazine capacity and to limit officers or 10 limit citizens artificially to less than 15 11 rounds decreases their survival.</p> <p>12 Q. The change from having a magazine of 15 as 13 opposed to 16 decreases their survival?</p> <p>14 A. By one round, certainly.</p> <p>15 Q. To what extent does it decrease their potential 16 for survival?</p> <p>17 A. Percentage-wise?</p> <p>18 MR. COLIN: Foundation. Go ahead.</p> <p>19 A. Percentage-wise? What's one percent of 16? You 20 know. I don't know the math offhand, but 21 certainly a percentage.</p> <p>22 Q. If you can, I want to return briefly to your 23 opinion two, and specifically to your conclusions 24 on exsanguination.</p> <p>25 Is it your opinion that the more shots a</p>

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<p>1 MR. COLIN: Right here.</p> <p>2 A. Okay. I would disagree with that because the 3 effectiveness of a firearm for self-defense is 4 the ability to successfully give rounds on 5 target. That's the ultimate thing, to be able to 6 get accurate fire on target.</p> <p>7 Q. But you have previously stated that there is no 8 number, there is no set number of rounds 9 necessary to stop a deadly threat?</p> <p>10 A. No, but I have stated that an officer and a 11 citizen are better served by having a handgun 12 that contains more than 15 rounds, so they can 13 stay in the fight longer and also having a 14 handgun that they can more accurately fire.</p> <p>15 Q. Do you agree with his assessment that the proper 16 choice of weapon has a greater bearing to the 17 outcome of defensive confrontation than the 18 magazine size?</p> <p>19 A. All right. Where are we at on that one?</p> <p>20 Q. Just the next sentence.</p> <p>21 A. No. I disagree with that because they go hand in 22 hand.</p> <p>23 We could limit, put blocks in magazines to 24 limit them to one round. That would give one 25 round in the chamber and one round in the</p>	<p>1 person sustains, the more injuries they'll 2 suffer?</p> <p>3 A. Certainly.</p> <p>4 - - - - -</p> <p>5 (Thereupon, Defendant's Exhibit 6, Fuchs 6 report, was marked for purposes of 7 identification.)</p> <p>8 - - - - -</p> <p>9 Q. Do you recognize this report?</p> <p>10 A. Yes.</p> <p>11 Q. What is it?</p> <p>12 A. It is the report of Doug Fuchs for the 13 defendants.</p> <p>14 Q. Could you turn to Page 9, please. Under 15 subheading four, Fuchs provides that "experience 16 indicates that an average police response time is 17 five to seven minutes."</p> <p>18 A. Yes.</p> <p>19 Q. Do you think that's an accurate number?</p> <p>20 A. I think we have to be careful about averages. 21 It's like football games when we talk about 22 carries by running backs. Sometimes they're 23 caught behind the line of scrimmage and sometimes 24 they break away. I would say average that may be 25 true, but it could be longer, it could be</p>

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<p>1 shorter.</p> <p>2 Q. And do you agree with his opinion that through</p> <p>3 training, a person can control their sympathetic,</p> <p>4 the affect of the sympathetic system on shooting</p> <p>5 performance?</p> <p>6 A. We're on his five in terms of stress? I'm trying</p> <p>7 to -- Page 9 still?</p> <p>8 Q. Yes.</p> <p>9 A. Okay. Can control, they can mitigate, they can</p> <p>10 operate, but they -- I don't think they can</p> <p>11 completely stop a response.</p> <p>12 Q. In your experience, when we previously discussed</p> <p>13 how guns have evolved over time, correct?</p> <p>14 A. Technology has improved, yes.</p> <p>15 Q. Why, what's the basis for the improvement?</p> <p>16 A. I would say demand than the need for it.</p> <p>17 Q. So when there's a demand, the market meets the</p> <p>18 demand?</p> <p>19 A. Correct.</p> <p>20 Q. So in the context of let's say a limiter to a</p> <p>21 magazine?</p> <p>22 A. I'm sorry?</p> <p>23 Q. A limiter to a magazine?</p> <p>24 A. Define a limiter.</p> <p>25 Q. Are you aware what a limiting, what a limiter is</p>	<p>1 Q. And by "always" available, do you mean they're</p> <p>2 available for civilians at the same time as they</p> <p>3 were for the military?</p> <p>4 A. I would say that's pretty true, that, you know,</p> <p>5 that throughout the development of small arms,</p> <p>6 those non restricted, non fully automatic</p> <p>7 firearms developed for the military have been</p> <p>8 made available to the private sector.</p> <p>9 Q. Who were assault rifles invented for if anyone?</p> <p>10 A. Assault rifles?</p> <p>11 Q. Yes.</p> <p>12 A. Once again, I don't like the term but, you know,</p> <p>13 rifles have been since muskets, you know, were</p> <p>14 invented. That was, in their day that was their</p> <p>15 assault rifle.</p> <p>16 Q. Who if anyone were carbines invented for?</p> <p>17 MR. COLIN: Speculative.</p> <p>18 A. Carbine is just a, normally refers to a shorter</p> <p>19 barrel rifle. Once again, these things have been</p> <p>20 used in both the hunting private sector as well</p> <p>21 as law enforcement and the military.</p> <p>22 MR. LEE: I think that concludes</p> <p>23 the questioning. Thank you, Mr. Davis. I</p> <p>24 appreciate your time.</p> <p>25 MR. COLIN: I have no questions.</p>

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1 to a magazine?

2 A. A block or a post or something that prohibits the

3 full capacity of the magazine? Is that what

4 you're making reference to?

5 Q. Yes.

6 A. Okay. Yes, I am aware of that.

7 Q. And what would you call that?

8 A. They're commonly called magazine blocks.

9 Q. Okay. So if the market required a magazine block

10 for a particular magazine, there's demand for

11 that, you believe that the gun should meet it?

12 A. I suppose that if that were a requirement and

13 that there was no other alternatives, that the

14 manufacturers -- that the public would seek it

15 out and the manufacturers would produce it.

16 Q. When were assault rifles and carbines first

17 introduced into the market?

18 A. Into the market?

19 Q. The commercial market?

20 A. Well, rifles, what you call assault rifles, I

21 don't like the term, but let's say that military

22 rifles that were used and developed for the

23 military, since they've been developed have

24 always been available to the private sector, to

25 the citizens.

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2 (Deposition concluded at 3:10 p.m.)

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5 KEVIN DAVIS

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C E R T I F I C A T E

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The State of Ohio,) SS:
County of Cuyahoga.)

I, Pamela S. Greenfield, a Notary Public
within and for the State of Ohio, authorized to
administer oaths and to take and certify
depositions, do hereby certify that the
above-named witness was by me, before the giving
of their deposition, first duly sworn to testify
the truth, the whole truth, and nothing but the
truth; that the deposition as above-set forth was
reduced to writing by me by means of stenotypy,
and was later transcribed into typewriting under
my direction; that this is a true record of the
testimony given by the witness; that the deponent
or a party requested that the deposition be
reviewed by the deponent; that said deposition
was taken at the aforementioned time, date and
place, pursuant to notice or stipulations of
counsel; that I am not a relative or employee or
attorney of any of the parties, or a relative or
employee of such attorney or financially
interested in this action.

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IN WITNESS WHEREOF, I have hereunto set my
hand and seal of office, at Cleveland, Ohio, this
____ day of _____, A.D. 20____.

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Pamela S. Greenfield, CRR, RDR
Notary Public, State of Ohio
1750 Midland Building, Cleveland, Ohio 44115
My commission expires July 2, 2018

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