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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 13-cv-1300-MSK-MJW

DEPOSITION OF: MICHAEL SHAIN - October 31, 2013

JOHN B. COOKE, et al.,

Plaintiffs,

v.

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

PURSUANT TO NOTICE, the deposition of MICHAEL SHAIN was taken on behalf of the Defendant at 727 East 15th Avenue, Denver, Colorado 80203, on October 31, 2013 at 9:04 a.m., before Tracy R. Doland, Certified Realtime Reporter, Registered Professional Reporter and Notary Public within Colorado.

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A P P E A R A N C E S

For the Plaintiffs, Sheriffs and David Strumillo:

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For the Plaintiffs Disabled Citizens, Colorado Outfitters Association, Colorado Farm Bureau, Colorado Youth Outdoors, Outdoor Buddies, Inc., Women for Concealed Carry, David Bayne, and Dylan Harrell and for Licensed Firearms Dealers:

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Also Present:

Jessica Burt

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WHEREUPON, the following proceedings were taken pursuant to the Federal Rules of Civil Procedure.

* * * * *

MICHAEL SHAIN,
having been first duly sworn to state the whole truth, testified as follows:

EXAMINATION

BY MR. FERRO:

Q. Good morning, Mr. Shain.
A. Good morning.

Q. My name is Jonathan Fero. I'm with the Attorney General's Office, and I represent the defendant, the Governor of Colorado, John Hickenlooper, in this particular case. And we're here today to take your expert deposition, so I want to thank you for coming down today and sitting here and answering my questions. Appreciate that. I take it that you've been deposed before, have you not?
A. Yes.

Q. Okay. And I think you've testified as an expert before?
A. Yes.

Q. Okay. So this is probably going to be -- you probably know everything I'm about to say,

5

1 but I'm going to go over some basic ground rules. No
 2 matter how many times I've done it or you have, I find
 3 it's helpful to go over that and make sure we have at
 4 least a common understanding and agreement as we move
 5 forward today. It tends to help things go more
 6 smoothly.
 7 I certainly believe that you are
 8 entitled to a fair question. And I'm hoping that you
 9 can give me a fair answer when I ask you a fair
 10 question. What do you think of that?
 11 A. I agree.
 12 Q. Okay. Good. And the main reason I say
 13 that is because this is my one opportunity to talk to
 14 you in advance of any potential trial in this case,
 15 so, fortunately, you've written out a report here of
 16 your opinions. I've had a chance to review that and
 17 spent quite a bit of time with it. Not as much time
 18 as you probably spent preparing it. So I'm familiar
 19 with that. Again, this is my one chance to ask you
 20 questions about it, so what's really important if you
 21 don't ever understand a question, will you let me
 22 know?
 23 A. Absolutely.
 24 Q. Okay. Good. I'll try to rephrase it to
 25 the best I can and make sure we're on the same page.

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1 And if at any time as we go through this, it's very
 2 possible that you might think of something to add to a
 3 question or to an answer, that is, or something you
 4 want to clarify. Has that ever happened to you before
 5 during depositions?
 6 A. Yes.
 7 Q. Okay. Good. So you know exactly what
 8 I'm talking about, then. Please, whenever that
 9 happens, just let me know. It really doesn't matter
 10 where I may be on the list of things I want to ask you
 11 today. If you need to take me back somewhere else,
 12 please do that because it's important for me to get
 13 that on the record when it's fresh on your mind. Does
 14 that make sense?
 15 A. Of course.
 16 Q. Okay. Great. Now, the other issue
 17 that's tied into this, it's absolutely critical when
 18 you understand my question that you can give me a
 19 full, complete answer. Again, because this is the
 20 only chance I have to talk to you. Does that make
 21 sense?
 22 A. Yes, of course.
 23 Q. Does that sound fair to you?
 24 A. Yes.
 25 Q. Okay. Can you do that today?

7

1 A. I can.
 2 Q. Okay. Great. Is there anything that
 3 you can think of that would preclude your ability to
 4 understand my questions?
 5 A. No.
 6 Q. You aren't under the influence of any
 7 kind of medication that would make you foggy or
 8 anything like that?
 9 A. No, I'm not.
 10 Q. How about your ability to answer
 11 truthfully, anything that I should know of about your
 12 ability to do that?
 13 A. No.
 14 Q. You know what that means, right? Again,
 15 you've testified under oath before?
 16 A. Yes.
 17 Q. And you just took an oath when we first
 18 sat down here, correct?
 19 A. Yes.
 20 Q. Okay. Great. So even though there
 21 isn't a judge or jury, you understand that you are
 22 under an obligation to tell the truth, the whole truth
 23 and nothing but the truth, I think is the way it goes?
 24 A. Yes.
 25 Q. Okay. Thank you, Mr. Shain. We'll

8

1 take as many breaks as you need to take. You know, I
 2 find that everybody can get fatigued if we go for a
 3 long enough stretch at a time. Of course, the breaks
 4 end up keeping us here longer at the same time because
 5 we're not on the record. So will you let me know if
 6 you need to take a break?
 7 A. Yes, I will.
 8 Q. Okay. You are here as a retained
 9 expert, correct?
 10 A. Correct.
 11 Q. You have a contractual agreement with
 12 the plaintiffs in this case?
 13 A. I do.
 14 Q. Okay. Did you actually sign out an
 15 agreement?
 16 A. No.
 17 Q. Or was it handshake?
 18 A. It was a verbal agreement.
 19 Q. Okay. Now, consequently, the attorneys
 20 that are here today are technically not your
 21 attorneys, would you agree with that?
 22 A. Yes.
 23 Q. Okay. Do you understand the difference
 24 between when someone actually represents you -- does
 25 that make sense?

9

1 A. Yes.

2 **Q. Okay. Do you understand what the term**

3 **"privilege" means? Have you heard that before?**

4 A. I've heard the term. I'm not sure I

5 have a full legal understanding of what it means, but

6 I've heard the term used.

7 **Q. I'll go through what I understand it to**

8 **be and maybe some of the other attorneys might want to**

9 **supplement that, but my understanding is that, for**

10 **example, say -- my client is the Governor of the State**

11 **and anytime that he and I would ever have any**

12 **conversation about this case, which I have been**

13 **retained or it's my job to represent him in, then that**

14 **conversation would be confidential, and no one would**

15 **even -- another attorney wouldn't even have a right to**

16 **ask me or ask him what may or may not have been**

17 **discussed in that conversation. Does that make sense?**

18 A. Yes.

19 **Q. That's what we call a privilege. At**

20 **least that's what I'm referring to. Now, you,**

21 **however, in my view, do not have that same**

22 **relationship with the attorneys that you've been**

23 **talking with in this case. Does that make sense?**

24 A. Yes.

25 **Q. Do you have any reason to disagree with**

10

1 **that?**

2 A. Not at this time.

3 **Q. Okay. So there may be times today when**

4 **I'm going to ask you about what you talked about with**

5 **the folks here that represent the plaintiffs and I**

6 **just want you to know that in no way, shape or form am**

7 **I trying to delve into a privileged relationship that**

8 **you may have with these attorneys. Does that make**

9 **sense?**

10 A. Yes.

11 **Q. Is there any sort of relationship there**

12 **that I don't know about that I should know about?**

13 A. No.

14 **Q. Okay. Thank you very much. Again,**

15 **these are just the preliminaries, got to get through**

16 **these questions.**

17 **All right. Well, I believe that we're**

18 **ready to get started now that we've gone over the**

19 **ground rules. Do you have any questions before we do?**

20 A. No, sir.

21 **Q. Okay. Great. How did you become**

22 **involved in this case, Mr. Shain?**

23 A. I was contacted by Mr. Kopel

24 telephonically, and was told that he was interested in

25 possibly having me participate as an expert.

11

1 **Q. Did you know Mr. Kopel before?**

2 A. I did not.

3 **Q. What exactly have you been asked to do**

4 **in this case?**

5 A. I was asked to develop opinions

6 regarding House Bill 1224, specifically regarding the

7 "designed to be readily converted" language and some

8 of the associated issues that have to do with magazine

9 capacity, manufacturer, their design characteristics.

10 The things that are enumerated in my report

11 specifically.

12 **Q. Okay. So you were asked to develop**

13 **opinions about House Bill 1224 with -- you said**

14 **specifically regarding that designed to be readily**

15 **converted language, correct?**

16 A. Designed to be readily converted, yes,

17 language.

18 **Q. You also identified some of the**

19 **associated issues that have to do with magazine**

20 **capacity, manufacturer design characteristics?**

21 A. Enforceability, the grandfather issue,

22 continuous possession, essentially the issues that are

23 raised by 1224 as they relate to the magazines that

24 are covered by that statute.

25 **Q. Okay. Now, when you list enforcement,**

12

1 **were you specifically asked to develop opinions about**

2 **enforcement?**

3 A. No, I wasn't specifically asked to

4 develop any individual opinions. I was asked to

5 evaluate the statute, you know, in general, and a lot

6 of those opinions that are enumerated in my report are

7 derived from my review and analysis of 1224.

8 **Q. Okay. Did Mr. Kopel or any of the**

9 **other lawyers for the plaintiffs give you any specific**

10 **direction about developing opinions regarding 1224?**

11 A. No, I wouldn't say they gave me specific

12 instructions or directions. I think we had discussed

13 in general some of their -- excuse me -- concerns

14 about the -- again, the -- you know, the language and

15 the technical aspects about designed to be readily

16 converted. I don't think that we ever really

17 discussed some of these subissues, what I'll call some

18 of the, you know, the enforcement, grandfather, you

19 know, the very technical stuff that I go into in the

20 report. I think we had a very general discussion

21 about, you know, the overall issue about 1224. And to

22 the best of my recollection was that -- that was kind

23 of it.

24 **Q. Had you read the text of House Bill 1224**

25 **before Mr. Kopel called you?**

13

1 A. I had.

2 **Q. You had. Had you formed opinions about**

3 **House Bill 1224 before Mr. Kopel called you?**

4 A. I think I probably had some general

5 opinions when I first read House Bill 1224. I think

6 even before it was passed into law, I had some real

7 concerns and reservations about the technical aspects

8 of the bill.

9 **Q. Can you be more specific, what those**

10 **concerns or opinions were before Mr. Kopel called you?**

11 A. I think many of them are enumerated in

12 my report.

13 **Q. Well, maybe, then, in the interest of**

14 **time, and I want to get into the report more**

15 **carefully, but before we open it up and look at it,**

16 **can you just give me an overview of specific opinions**

17 **that you reached after Mr. Kopel called you, that is,**

18 **after you started work for them in this case that you**

19 **hadn't developed before?**

20 A. I think the specific opinions that I

21 developed after I began working on the case were the

22 much more detailed analysis of the impact of 1224,

23 some of the ramifications and difficulty with the

24 language, so I think that it was really the details

25 that I hadn't gotten down to the weeds, so to speak,

14

1 in terms of really what designed to be means in --

2 that it needed to be separated from readily converted.

3 Some of the grandfather issues. Some continuous

4 possession issues. So many of those -- I think we'll

5 have to go through them in order for me to identify --

6 **Q. Sure.**

7 A. -- you know, where I really elaborated

8 on those opinions. I think, in general, before I was

9 ever contacted or retained in the case, having read

10 1224, I recognized immediately that there's -- there's

11 an obvious and very significant problem with the lack

12 of description and the lack of, you know, of clear

13 technical information in the bill that would help

14 somebody make a determination whether or not a

15 magazine is designed to be or is readily convertible,

16 and I think those are generally when I first read the

17 big bill.

18 That was my biggest concern, is, you

19 know, this is very vague. This is very difficult to

20 understand. I'm not sure that -- that being in the

21 industry, having an FFL, dealing with these products

22 on my own, how was I going to personally be able to

23 interpret this and understand it and comply with it.

24 And then after being retained, I really sat down and

25 went through very carefully the details in terms of

15

1 how they related to those overall kind of general

2 first impressions.

3 **Q. Okay. It sounds like you -- your view**

4 **of the -- you had a view of the law before they called**

5 **you, is that fair to say?**

6 A. Pretty obvious when you read the law not

7 to, you know, come to that conclusion.

8 **Q. Fair enough. And it also sounds like**

9 **your general view, if we can call it that, of this law**

10 **didn't change during the course of your work for them**

11 **in this case?**

12 A. I think it -- I think it became much

13 more focused and much more well defined, and much more

14 serious, actually, than originally when I read the --

15 had a general sense of what the problems were before I

16 was retained.

17 **Q. But that general sense of what the**

18 **problems were, as you say, that did not change, would**

19 **you agree with that?**

20 A. No. It has not.

21 **Q. All right. Mr. Shain, I think you said**

22 **that you're being compensated at a rate of \$200 per**

23 **hour; is that correct? I mean, it's in your report is**

24 **what I'm trying to say.**

25 A. That is correct.

16

1 **Q. How many hours have you actually billed**

2 **the plaintiffs so far?**

3 A. I haven't billed the plaintiff. If I

4 were going to estimate the number of hours I have into

5 the case, I would say between 40 and 50.

6 **Q. Is that -- are you going to submit a**

7 **bill for that?**

8 A. I plan to. Just haven't completed one

9 yet.

10 **Q. And I'm sure that today will be part of**

11 **that bill?**

12 MR. COLIN: To you.

13 A. My understanding is it's customary for

14 you guys to pay for this part of the bill.

15 **Q. (BY MR. FERRO) I'm just trying to**

16 **understand that you're going to be keeping track of**

17 **it.**

18 A. I'm sure you will too.

19 **Q. Fair enough. Mr. Shain, what do you**

20 **understand an expert to be?**

21 A. My understanding is that the general

22 standard for an expert is someone who has a greater

23 technical knowledge than an average person. A greater

24 understanding, perhaps, more detail or specific

25 experience than an average, ordinary person.

17

1 **Q. Anything else?**
 2 A. Not that I can think of at the moment.
 3 **Q. And then how about when -- if I use the**
 4 **term expert witness, what does that mean to you?**
 5 A. Well, obviously I've worked as an expert
 6 witness and my experience is that as an expert
 7 witness, I'm asked to apply my expertise to the facts
 8 of the case and opine about those facts and give
 9 testimony either in deposition or in open court or, of
 10 course, you know, in report form.
 11 **Q. Anything else, Mr. Shain?**
 12 A. Not that I can think of.
 13 **Q. Okay. Thanks. In the beginning here,**
 14 **I was asking you about testifying before. You**
 15 **have -- have you served as an expert before,**
 16 **Mr. Shain?**
 17 A. I have.
 18 **Q. Okay.**
 19 A. I beg your pardon. You asked me earlier
 20 if I felt the need to wrap back around and elaborate.
 21 Let me just say that much of my work as an expert has
 22 also included testing, evaluation, firearms
 23 inspections, but all of that has to do with developing
 24 opinions that I later enumerate in written form or
 25 testify about in deposition or trial. There's a great

18

1 deal of technical work that goes into developing
 2 opinions.
 3 **Q. Okay. I want to follow up on that**
 4 **because it sounds -- well, rather than me characterize**
 5 **it, why don't you, if you could, describe for me the**
 6 **instances that you've served as an expert before.**
 7 A. That's a tough one without actually
 8 going case by case, but I'll give you a general --
 9 **Q. Before you answer, let me tell you what**
 10 **I'm interested in. Rather than say in 1984 I did**
 11 **this, in 1995, I did this and this case was about this**
 12 **and this was the plaintiff and this was the defendant.**
 13 **I don't care about any of that. What I'm interested**
 14 **in is if -- it sounded like from your report that**
 15 **the -- a large class or category of the types of cases**
 16 **you did expert work in was what you were just**
 17 **describing, that is, testing firearms and being in**
 18 **that regard; is that correct?**
 19 A. That is correct. A great deal of the
 20 work that I have done involves that type of work.
 21 **Q. So then, if you would, let's start with**
 22 **that one and describe that category of cases that**
 23 **you've served as an expert in first.**
 24 A. Okay. Those are primarily, I guess,
 25 what lawyers refer to as product liability cases.

19

1 **Q. Okay.**
 2 A. The majority of those cases have to do
 3 or had to do with shootings where the allegations
 4 involve a product that's ordinarily a firearm, many of
 5 those cases were firearms and firearms accessories.
 6 Many of them were semi-automatic firearms. The
 7 testing, evaluation of those guns and firearms systems
 8 usually began with -- there's usually a formal
 9 inspection. Prior to the inspection, I usually
 10 evaluate exemplars.
 11 Many times I'm provided with technical
 12 drawings and specifications prior to the examination
 13 and inspection of the firearm or accessories or
 14 whatever evidence there may be available in that
 15 particular case. And that has ranged in the past from
 16 clothing, expended cartridge cases, projectiles,
 17 medical records, photographs, physical examinations of
 18 locations and, of course, the firearms and firearm
 19 subassemblies and accessories themselves.
 20 It involves disassembly, measurements,
 21 drawings, photographs that I make and do.
 22 Comparisons. A lot of those examinations have taken
 23 place in laboratory settings where we might use stereo
 24 microscopes, optical comparators. Of course calipers,
 25 micrometer, we use hardness test equipment, sometimes

20

1 the guns are sectioned, which is a process where a
 2 particular component may be cut so it reveals either
 3 the materials or something inside that component that
 4 we're looking for.
 5 I've worked in laboratories where
 6 they've gone as far as to use scanning electron
 7 microscopes to look at the surfaces of metallic
 8 components to determine whether or not the marks are
 9 tool marked or the metal has been torn, whether it's
 10 fractured, whether there may be some heat qualities
 11 that have effected a failure.
 12 It's very routine to use radiography to
 13 x-ray components or complete firearms prior to
 14 disassembly so we can document the condition as a
 15 bench mark before going forward. That's kind of an
 16 industry standard now. So that's kind of the
 17 inspection process.
 18 Subsequently I'm often asked to do some
 19 type of testing in connection with the allegations
 20 related to that particular case. So I may obtain a
 21 number of exemplar firearms, components, accessories,
 22 subassemblies and a lot of the testing that I've done
 23 has to do with drop testing. One of the cases I
 24 worked on some years ago involved drop testing of a
 25 fully loaded firearm.

21

1 I was the first person in the industry
 2 to construct an apparatus that would allow me to drop
 3 a fully loaded firearm, videotape it and test it. I
 4 believe that that was actually a federal court case in
 5 which I -- I was invited or I guess invited is the
 6 wrong term. I was compelled to appear in federal
 7 court in a Daubert hearing where the court affirmed
 8 that my testing was -- met the standard and I was
 9 allowed to present that evidence. That was quite some
 10 years ago.
 11 Most of the testing is not done with
 12 fully loaded firearms. We do drop testing in
 13 conformance with industry and national standards.
 14 There are a number of different standards that apply
 15 to what's commonly known as abusive testing. In
 16 California they refer to it as drop testing. SAMI,
 17 the Sporting and Arms Manufacturing Institute, which
 18 is the industry standard for firearms specifications
 19 that have to do with chamber and ammunition
 20 specifications, it also issues what they call abusive
 21 testing standards. That's one of the national
 22 standards that I observe in a lot of the cases that I
 23 work on.
 24 There are some other national standards
 25 for testing. The National Institute of Justice has

22

1 put out some testing standards over the years.
 2 There's a variety of other ones that I've referred to
 3 depending on the nature of the case and the kind of
 4 testing protocol that we're looking for.
 5 In other words, what's the -- what's the
 6 experiment that we're trying to construct in either to
 7 prove or disprove the theory that we're working on. A
 8 great deal of my work has involved that sort of
 9 testing.
 10 **Q. What do you do then in those cases after**
 11 **you've sort of collected your data or your -- made**
 12 **your observations?**
 13 MR. COLIN: Vague. Go ahead.
 14 A. During the process there's a lot of
 15 documentation and photographing, it can involve
 16 videotaping. The evidence is preserved. Any testing
 17 evidence that I produce, whether it be the firearms
 18 itself that have been tested, dropped, damaged,
 19 whatever it might be. Expended cartridge cases,
 20 projectiles, accessories, subcomponents,
 21 subassemblies, all those things are preserved and
 22 documented.
 23 All that documentation, of course, is
 24 provided during discovery, you know, to the opposing
 25 side. I usually create a report and it reflects what

23

1 that work was, what the results of that work were,
 2 what the evidence is, you know, what the disposition
 3 of the evidence is. And, then, if necessary, testify
 4 about that work, those results and my opinions in
 5 deposition or infrequently, a trial.
 6 **Q. (BY MR. FERRO) Okay. Couple things I**
 7 **want to follow up there, Mr. Shain. Why is it that**
 8 **you provide everything, all that -- the physical items**
 9 **that you talked about, the firearm, perhaps, or shell**
 10 **casings, all the stuff that you looked at, why do you**
 11 **provide that to the other side in discovery?**
 12 A. Because there's nothing I do that's a
 13 secret. It's all as transparent as I can possibly
 14 make it. Whatever it is, it is, I guess is the
 15 phrase. Whatever result I arrive at is what I present
 16 and I'm there simply to do the work and show the
 17 results.
 18 **Q. And in any of the cases that you've been**
 19 **involved in as an expert, has -- are you aware of**
 20 **whether the opposing side has then retained their own**
 21 **experts who then re-examines all the stuff that you**
 22 **examined?**
 23 A. They frequently retain their own
 24 experts. They don't necessarily examine all the stuff
 25 that I have -- my specific physical stuff. Sometimes

24

1 they do. They usually do their own work and, of
 2 course, then they make that available for us to
 3 review. But, yeah, I suppose there's been some cases
 4 where they've had their experts actually look at the
 5 physical stuff that I've done. I can think of a
 6 couple cases where that's true.
 7 **Q. And they did that to sort of**
 8 **double-check your work, right?**
 9 MR. COLIN: Speculation.
 10 **Q. (BY MR. FERRO) To test what you did?**
 11 MR. COLIN: Go ahead.
 12 A. I don't know what their motivation is.
 13 I can only tell you that they have looked at it.
 14 **Q. (BY MR. FERRO) Have you ever been asked**
 15 **to do what I'm describing, that is, take a look at**
 16 **what the expert on the other side has done and**
 17 **everything they've done?**
 18 A. Yes.
 19 **Q. So what -- in that instance can you give**
 20 **me a little more specifics what you were asked to do?**
 21 A. I'm going to try to think of a specific
 22 case. It ordinarily has to do -- I can think of a
 23 couple recent cases where I was asked to document the
 24 dimensions of certain parts that were evidence in a
 25 particular case that had been incorrectly measured and

25

1 documented by another expert on the other side, and it
 2 was quite obvious and easy to show that they had --
 3 they had made some serious mistakes in terms of
 4 identifying certain parts and the dimensions of
 5 certain parts. That's one particular -- that's one
 6 specific case that I can think of.

7 **Q. I appreciate that example.**

8 A. Ordinarily that's what I would be asked
 9 to do is look at what they've done and confirmed if
 10 the information they're presenting is accurate. Are
 11 the dimensions accurate or duplicate a test that
 12 they've done and see whether or not it's repeatable
 13 and it's reliable and whether or not the result I get
 14 is the same result they get using the same methods
 15 that they've used.

16 **Q. Mr. Shain, you mentioned Daubert. I**
 17 **want to follow up on that and the particular case that**
 18 **that was an issue in for you. Do you -- do you have**
 19 **any understanding as to what the substance of that**
 20 **challenge was about?**

21 A. Yes, I did.

22 **Q. Who was that?**

23 A. I remember reading an expert or synopsis
 24 of the Daubert, I don't know if it was a ruling, but
 25 kind of the principles. And it had to do with the --

26

1 whether or not my testing was in conformance with
 2 industry standards. Whether it was repeatable, could
 3 somebody else take the same materials and the same
 4 techniques and duplicate the results. And as I
 5 recall, that was -- that was the meat of it. I may
 6 have left something out. It was quite a long time
 7 ago. I think that's what I was asked about by the
 8 judge in that particular case.

9 **Q. You mentioned also that something that**
 10 **comes up in this case is reliability of the testing**
 11 **procedure; is that right?**

12 A. Yes.

13 **Q. Why is that important?**

14 A. The reliability?

15 **Q. Uh-huh.**

16 A. Again, it has to do with -- with -- I
 17 think more with repeatability. In other words, if I
 18 do it in a reliable way, can you do exactly the same
 19 thing and get the same result.

20 **Q. Right.**

21 A. And be able to do the same experiment or
 22 procedure or measure the same part and get the same
 23 measurement.

24 **Q. Uh-huh. In that particular case where**
 25 **Daubert was actually an issue that you recall, that**

27

1 **was the case you were describing where you had -- you**
 2 **were the first to come up with that drop firing**
 3 **testing procedure; is that correct?**

4 A. Right. As I recall, it was a case where
 5 the allegation was that the semi-automatic pistol was
 6 dropped and discharged and the victim was actually
 7 shot in the right eye, bullet exited the right-hand
 8 side of his head and he survived.

9 **Q. Wow.**

10 A. But the product issue was that the gun
 11 could, in fact, discharge if it were dropped. In
 12 general, that's what I remember. Unfortunately, the
 13 facts of the case are what I'm asked to look at, and
 14 in evaluating the facts of the case, it was my opinion
 15 that the gun could not have discharged in the way that
 16 it was described by the plaintiff. The experiment was
 17 to test whether or not my theory, which was that the
 18 gun could not have discharged in the way that it was
 19 described by the plaintiff, was either true or false.
 20 The experiment was designed to -- the only way to get
 21 that result was to drop a loaded firearm.

22 A, see whether or not it would
 23 discharge, and, furthermore, B, because of the
 24 evidence that was found at the scene, the gun had
 25 cycled. This gets a little technical, but the gun

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1 cycled and extracted and ejected the expended
 2 cartridge and fed and chambered a new live cartridge
 3 and left the hammer cocked on the pistol.

4 My experience with firearms indicated to
 5 me that that wasn't possible in a dropped discharge
 6 for a number of reasons. But in order to prove that,
 7 the experiment had to include dropping and inducing
 8 the gun to fire on impact to prove that the gun could
 9 not cycle, could not extract and eject an expended
 10 cartridge, could not feed and chamber a new live
 11 cartridge and leave the hammer cocked after such an
 12 event.

13 And I couldn't find any of the evidence
 14 of anybody in the industry ever having done that
 15 experiment, so it took a special device, special
 16 apparatus in order to do it. It was videotaped. And
 17 like I say, ultimately withstood this Daubert
 18 challenge.

19 **Q. So was it your understanding that was**
 20 **the actual process, that testing procedure you had**
 21 **developed, that that was what was being challenged in**
 22 **the Daubert challenge since it had never been done**
 23 **before?**

24 A. Yes.

25 **Q. Okay. Thanks. And just out of**

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1 **curiosity, how many -- how many times did you actually**
 2 **run that test where you had the firearm drop to see if**
 3 **it would fire?**
 4 A. It's been a long time.
 5 **Q. Was it more than one?**
 6 A. Oh, yeah. I dropped the gun -- I
 7 dropped the gun in that apparatus a number of times --
 8 **Q. Okay.**
 9 A. -- to see if it would discharge. But in
 10 order -- the induced discharge, to see if it would
 11 cycle, I only had to do once. Got it on videotape.
 12 There was no doubt about it. And, again, it was a
 13 repeatable test. I mean, the other side was more than
 14 welcome to create their own apparatus, do the same
 15 test and I'm positive that they would have arrived at
 16 the same results.
 17 **Q. Sounds like for the -- just to see if it**
 18 **would discharge, when you dropped it, you did that**
 19 **multiple times?**
 20 A. Right. There was some technical things
 21 that had to be done with the gun. There were some
 22 certain parts that we had to substitute every time we
 23 dropped the gun, because you have pristine parts.
 24 Certain parts had to be pristine and undamaged every
 25 time we dropped the gun because they had to match the

30

1 condition of the gun that was the evidence gun, the
 2 incident gun. So every time you drop it, you know,
 3 you're doing kind of a destructive test, so there were
 4 more than one drop.
 5 **Q. So in other words, if you didn't do**
 6 **that, the fact that these parts were degrading, that**
 7 **would possibly affect the reliability of your results?**
 8 A. Well, you know for me --
 9 MR. COLIN: Vague.
 10 A. -- it would be an issue.
 11 MR. COLIN: I'm sorry. Go ahead.
 12 A. Well, that's the standard again. That's
 13 kind of the industry standard in terms of testing is
 14 that, you know, that the -- you use pristine,
 15 undamaged parts and every time that you do some type
 16 of destructive testing to a firearm, some parts may be
 17 degraded, so you're not going to get the same result,
 18 or, at least, you can't rely on that result because
 19 you can't predict what kind of -- how that damage is
 20 going to affect the outcome. So it's important to
 21 have, you know, a benchmark and you start with your
 22 exact same condition every time you do that test so
 23 that you can -- you can testify or I can testify that
 24 the gun was in a certain condition before it was
 25 dropped.

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1 **Q. (BY MR. FERRO) Okay. That makes a lot**
 2 **of sense even to somebody that doesn't know much about**
 3 **guns. Why did you have to drop that gun more than one**
 4 **time?**
 5 A. I don't recall. I believe it had to do
 6 with what -- my desire to show that the result was the
 7 same in a certain number of tests. It's not unusual
 8 to do a test multiple times, even though you get the
 9 same result, in order to show that there's some
 10 consistency. For example, I do it with trigger pull
 11 measurements. If I take a trigger pull measurement
 12 and it's kind of the industry standard to take at
 13 least five or six trigger pull measurements in
 14 succession to show there's repeatability and that
 15 you're not holding the tool incorrectly or you've
 16 moved the gun or changed something that is going to
 17 result in something, you know, a different result.
 18 So it's not unusual -- and I'm thinking
 19 back to that particular case, and I think that may
 20 have been the reason why I dropped it multiple times,
 21 to show that there was, you know, repeatability,
 22 consistency that we could drop it over and over again
 23 and get the same result.
 24 **Q. Uh-huh. Were you in any way trying to**
 25 **calculate some sort of percentage or likelihood that**

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1 **the gun might fire so many instances out of so many if**
 2 **it was dropped?**
 3 A. No, I don't think it was. I think it
 4 was a pass/fail deal.
 5 **Q. Okay. Great. Thanks. Mr. Shain, let**
 6 **me then ask you -- I appreciate all that detail. I**
 7 **know I'm probably pushing the limits of memory in some**
 8 **instances there. I want to follow up with you because**
 9 **earlier when I was asking you about being an expert,**
 10 **you talked about having greater technical knowledge**
 11 **than the average person. Do you remember that?**
 12 A. Yes.
 13 **Q. And you talked about part of it as an**
 14 **expert witness was to apply your expertise to the**
 15 **facts of the case and give testimony; is that correct?**
 16 A. Yes.
 17 **Q. Thinking, then, about the products**
 18 **liability cases in general, can you tell me, then -- I**
 19 **mean, what -- what technical knowledge do you have**
 20 **that you used in those cases that's greater than the**
 21 **average person?**
 22 A. Well, if you will bear with me, I'll
 23 have to start at the beginning.
 24 **Q. Do a summary. How about that? We don't**
 25 **need a terrible amount of detail.**

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1 A. All right. I grew up around guns. My
 2 father was a master sergeant in the Army. Raised me
 3 around guns. Recreational shooting, hunting. I was
 4 on a pistol team in college. When I got into law
 5 enforcement, of course I went through basic academy,
 6 actually two of them, that involved basic firearms
 7 training.
 8 As a police officer, I was very
 9 comfortable around firearms. I continued to be in
 10 recreational shooting independent of my law
 11 enforcement activities. I volunteered for and was
 12 selected to become a firearms trainer. I was trained
 13 by the FBI as a firearms instructor and range master.
 14 I attended a number of armorer schools.
 15 I was responsible for developing an interdepartmental
 16 firearms training program and a transition from the
 17 .22 revolver to semi-automatic pistols, which I
 18 designed a policy implementation, did the training,
 19 was the primary firearms instructor in my agency,
 20 trained and qualified all the personnel in my agency
 21 four times a year for eight years, I think it was, in
 22 addition to bi-annual firearms training.
 23 And after leaving law enforcement, I
 24 started AIMPRO primarily as a firearms training
 25 business, although, I -- I'll use the term fell into

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1 doing product liability work. It's not something you
 2 can really choose to do. It kind of finds you. Yeah,
 3 it's not really a career you can plan for, but I was
 4 lucky. It was an opportunity for me to use a lot of
 5 my law enforcement experience that had to do with
 6 firearms and investigation.
 7 I worked as an investigator including
 8 crimes against persons investigator, sex crimes
 9 investigator, narcotics investigator and homicide
 10 investigator. And that experience, coupled with my
 11 firearms background, is kind of an unusual combination
 12 that apparently made me attractive to law firms that
 13 were looking for an expert that could contribute to
 14 some of these product liabilities cases. That was
 15 about 1995. I think I did my first product case about
 16 1995. And then since that time, in the intervening 18
 17 years, 18 years, I've done quite a few product cases.
 18 During those cases, I've had the
 19 opportunity to work with engineers, firearms design
 20 and testing engineers. I've worked in -- specifically
 21 in firearms testing laboratories, and as I mentioned
 22 earlier, other laboratory situations. I have been
 23 privy to manufacturing. In other words, I've been
 24 invited, you know, kind of behind the scenes in the
 25 actual manufacturing environment by a number of

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1 manufacturers.
 2 I've been privy to design drawings, to
 3 information that, again, as part of discovery, much of
 4 which is probably protected by confidentiality issues
 5 in those cases, but nonetheless, highly technical
 6 things. And have learned a great deal about
 7 inspection of firearms, specifications, dimensional
 8 issues, manufacturing techniques and processes.
 9 Marketing, sales, new product designs, how research
 10 and development -- research and development is done by
 11 the industry and manufacturers of the firearms and
 12 accessories and subcomponents. And then, of course,
 13 as an FFL holder, and I think I've had an FFL
 14 since -- I could be wrong. I think it's 2004. I had
 15 a dealer's FFL and I maintained a manufacturer FFL in
 16 2010, I want to say. I could be off a year or two one
 17 way or the other. I'm intimately involved in that
 18 aspect of the industry.
 19 As a firearms trainer, which goes back
 20 to my law enforcement career, I first became
 21 officially a firearms trainer in about 1987 or '88.
 22 Again, I'm taxing my memory. I could be off a year or
 23 two. In the intervening years, I've trained thousands
 24 of law enforcement personnel. I still teach. I'm a
 25 national law enforcement instructor for a

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1 manufacturer. I also teach a series of my own law
 2 enforcement and civilian firearms classes, so I'm
 3 deeply immersed in the firearms industry and deeply
 4 immersed in the technical aspects of firearms.
 5 I may not have mentioned, but I also run
 6 a warranty service center for a manufacturer. So part
 7 of my business now is involved in the repair,
 8 servicing, modification and manufacturing of firearms.
 9 **Q. I saw that on your website for AIMPRO.**
 10 **Thank you for that. Generally in those product**
 11 **liability cases, how did you apply your expertise to**
 12 **the facts in those cases and give testimony?**
 13 A. Well, based on all the background that I
 14 gave you a synopsis of.
 15 **Q. That process we already talked about?**
 16 A. Right.
 17 **Q. Okay.**
 18 A. I gather as much data as I possibly can
 19 relating to whatever that product is, the
 20 subcomponents, the -- how it's manufactured, what the
 21 design characteristics are, what the handling
 22 characteristics are. And then I look at the facts of
 23 the case and apply my expertise and all that data that
 24 I've gathered to develop opinions about whatever those
 25 issues might be.

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1 If it's a product case, and I've been
 2 asked to evaluate the design characteristics and how
 3 they related to the incident in question, then that's
 4 what I do.
 5 **Q. Mr. Shain, can you recall an instance**
 6 **where a Court has declined to accept you as an expert?**
 7 A. No.
 8 **Q. Have you ever had an instance where a**
 9 **Court rejected your opinion in a final rule?**
 10 A. Not that I know of.
 11 **Q. Have you ever been deposed in a case and**
 12 **not testified in a trial?**
 13 A. Many times.
 14 **Q. And were those cases where there just**
 15 **wasn't a trial?**
 16 A. Yes.
 17 **Q. What about cases -- did you sometimes be**
 18 **deposed, write a report, then there's a trial, but you**
 19 **don't testify at the trial?**
 20 A. I'm not aware of any.
 21 **Q. Okay. All right. Let's -- I appreciate**
 22 **all that background. It's definitely interesting, you**
 23 **know -- an interesting career that you've had in**
 24 **testifying. What makes you, then, an expert -- let's**
 25 **talk about this case. What makes you an expert in**

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1 **this case?**
 2 A. Well, in this particular case, the area
 3 that I was asked to opine about has to do with
 4 magazines, semi-automatic magazines, detachable
 5 magazines and magazine systems, magazine components,
 6 magazine design and manufacturing.
 7 And, again, let me go back and touch on
 8 some of that background. Early in my law enforcement
 9 career, we carried revolvers. At a certain point in
 10 American law enforcement, the trend was decided to
 11 lean towards a transition to semi-automatic firearms.
 12 I participated in that, in the development of those
 13 programs with my agency and was lucky enough to be
 14 able to participate, and it was some of the larger
 15 areas in the Los Angeles departments, police
 16 departments, Los Angeles, Culver City, Beverly Hills
 17 Police Department and a number of other police
 18 departments and kind of pooled our resources in order
 19 to study -- one of my responsibilities at that time
 20 was to help develop departmental policy in terms of
 21 how to select -- and trained and implemented a
 22 semi-automatic pistol for our law enforcement officers
 23 to use.
 24 And I was lucky enough to participate
 25 with some of those larger agencies in their overall

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1 testing and evaluation. I got to see them test the
 2 guns, you know, give some input, use the information
 3 that we got from that testing.
 4 And one of the things that was a very
 5 relevant and critical issue in terms of selecting
 6 semi-automatic pistols for law enforcement use was
 7 reliability. Early on in semi-automatic pistol use,
 8 that was a huge concern when selecting a pistol for a
 9 police officer to use in defense of their life or the
 10 life of a citizen that they may be responding to
 11 protect. It was -- it was an enormous responsibility
 12 to make those selections in terms of which pistols
 13 were appropriate, and because reliability was an
 14 issue, I spent a lot of time researching and educating
 15 myself and speaking with manufacturers' reps and
 16 distributors' reps, other police departments, other
 17 armorers, other firearms instructors about how those
 18 systems worked and what were the nature of the issues
 19 that related to reliability.
 20 One of the big issues in terms of
 21 reliability of semi-automatic pistol systems are
 22 magazines. They are extraordinarily important in
 23 terms of the component being an essential and critical
 24 aspect in terms of the overall reliability of the
 25 pistol's performance. So early on, I was looking at

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1 magazines, how they were constructed, what kind of
 2 specifications were used to design them, what kind of
 3 materials were used. How were they maintained,
 4 repaired, how were they damaged, how durable were
 5 they, how, again, reliable were they. What was
 6 available after market. What was available for
 7 manufacturers.
 8 All of those things went into the --
 9 overall evaluation of the reliability of the pistol
 10 system, because it is a system. So early on, I was
 11 looking at magazines. That evaluation, examination,
 12 awareness, study, has continued since the late
 13 eighties right up and through this case.
 14 So magazines are not just -- I mean,
 15 it's not a paper sack that you put your groceries in.
 16 It's a very important -- I used the word critical or
 17 essential earlier. I'm trying to think of a stronger
 18 word, because the magazine, the detachable magazine is
 19 the heart and soul of the reliability of that
 20 semi-automatic pistol.
 21 If the pistol goes down, in other words,
 22 it stops running because of a problem with the
 23 magazine, the result can be death.
 24 **Q. Okay. Well, so that is one particular**
 25 **experience you highlighted, then, from your career**

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1 **with being involved in that initial shift from**
 2 **revolvers to semi-autos, correct?**
 3 A. That was probably the beginning.
 4 Beginning of my -- of really in-depth experience with
 5 semi-automatic firearms.
 6 **Q. You gave that answer in the context of**
 7 **me asking you what makes you an expert in this case.**
 8 **So let me continue, then, about what else you would**
 9 **add to that?**
 10 A. Sure. Absolutely. Many of the product
 11 liability cases that I worked on since leaving law
 12 enforcement have involved semi-automatic firearms.
 13 Obviously magazines, because of their integral nature
 14 and relationship to the semi-automatic firearm, have
 15 been a part of my examination in those cases.
 16 Seems to me I worked on a case not too
 17 long ago that was specifically I was tasked with
 18 specifically looking at magazine specifications and
 19 performance. It was a case for Beretta. I can't
 20 think of the name of the case. I did not give any
 21 deposition testimony in that case. I was only a
 22 consultant.
 23 **Q. Okay.**
 24 A. But it specifically had to do with the
 25 examination of several magazines -- not several. I

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1 think it was 10 or 12 exemplar magazines that I had in
 2 that particular case. So I've had -- I've had the
 3 occasion to work with magazines and semi-automatic
 4 pistols, rifles, submachine guns, shotguns in a number
 5 of cases. And as part of the overall makeup of the
 6 system, in at least one case that I can think of that
 7 the magazine was the essential focus of my testimony.
 8 During product liability, magazines have
 9 been -- obviously I worked on cases not involving
 10 semi-automatic detachable magazine systems, but many
 11 of the cases have. In addition to that, as I said
 12 earlier, as a dealer and manufacturer, I'm repairing
 13 firearms that have detachable magazines. I am
 14 ordering detachable magazines for customers or for my
 15 own use as part of our training that we do. I'm
 16 disassembling magazines to clean them. I'm inspecting
 17 them. I'm trying to determine if they're functioning
 18 correctly.
 19 And, in particular, if firearms that
 20 have malfunctions -- because malfunctions, as I stated
 21 earlier, can obviously be attributable to magazine
 22 issues, so it's -- this is a pretty much an everyday
 23 occurrence for me that I'm handling a magazine.
 24 **Q. Okay.**
 25 A. In addition to that, I'm -- I'm using

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1 semi-automatic firearms on the range as an instructor.
 2 I've shot competitively over the years when I've had
 3 the opportunity to do so. I like to think that I
 4 would be able to do so again in the future. Not sure
 5 my eyesight or my schedule would allow me to do much
 6 of that in the future, but I've shot IPSC, IDPA, Steel
 7 Challenge. I've shot in a number of police matches,
 8 many, many times over the years. I've shot a three
 9 gun.
 10 I teach for the International
 11 Association of Law Enforcement Firearms Instructors.
 12 All over the country. Recently I taught a couple of
 13 master law enforcement firearms instructor classes
 14 that are shotgun, rifle, pistol courses. The last one
 15 I did, I think, was in Fort Collins a year ago. We
 16 had firearms instructors for several different states
 17 attend.
 18 I'm constantly using magazines. Using
 19 magazine systems. I think I mentioned submachine
 20 guns. Back in law enforcement, I was part of a
 21 counter terrorism task force during the 1984 Olympics.
 22 I was issued an M-16 rifle and received a great deal
 23 of advanced training in that system. We selected,
 24 after going through HK MP5 and beta submachine guns,
 25 ultimately selected a Colt 9 millimeter machine gun

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1 for our agency. I received advanced training from
 2 Colt. Armorer training, and, of course, functional
 3 and use training and attachable submachine firearm
 4 system.
 5 I'm carrying as my own personal carry
 6 gun a number of semi-automatic firearms that use
 7 detachable magazines. I own and use detachable
 8 magazine rifles in my training courses. They come
 9 into the shop for custom work or repair, maintenance.
 10 There's a lot of different reasons why I have a great
 11 deal of experience using, assembling, cleaning,
 12 repairing, ordering, evaluating detachable magazines.
 13 **Q. All right. Anything else that you'd add**
 14 **to that list, just kind of in an overview of what**
 15 **makes you an expert in this case?**
 16 A. I'm sure I've missed something. If I
 17 think of it, I'll be sure to come back to it.
 18 **Q. Please do. Okay. Mr. Shain, let me**
 19 **then ask you about the opinions that you've reached in**
 20 **this case. You have reached some opinions, I take it?**
 21 A. Yes, sir.
 22 **Q. And these are opinions that -- would you**
 23 **characterize them as expert opinions?**
 24 A. Yes.
 25 **Q. That would be under the definition that**

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1 we were talking about earlier?

2 A. Yes.

3 **Q. Okay. Is there -- again, I've read your**

4 **report several times and we'll go through that because**

5 **I want to follow up with specifics there. But is**

6 **there -- again, I'm going to give you an opportunity**

7 **to sort of show me in the report where you make**

8 **opinions and how you phrase them and whatnot, but I**

9 **wanted to ask first if -- are you able to kind of give**

10 **a summary opinion in this case of what you've reached?**

11 MR. COLIN: Overbroad.

12 A. I prefer to stick to the specific

13 opinions that are in the report if you want me to --

14 **Q. (BY MR. FERRO) Okay.**

15 A. -- to list them, if you have a copy of

16 the report, I don't. I'll be happy to go through

17 them. There's a number of opinions and subopinions

18 that, you know, I wouldn't want to miss anything by

19 giving you some type of a summary.

20 **Q. Okay. Can you give me the main opinions**

21 **just off the top of your head?**

22 MR. COLIN: Overbroad.

23 A. You know, I think -- earlier you had

24 asked me something in general whether I had some

25 opinions prior to being retained in the case. I think

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1 that that the designed to be and readily converted are

2 probably the first couple of opinions. I think I

3 touched on some opinions that I have about

4 enforceability.

5 I have some opinions that are listed in

6 the report that have to do with continuous possession

7 and so I'd really feel more comfortable if we went

8 through them individually.

9 **Q. (BY MR. FERRO) Fair enough. How did**

10 **you prepare for your deposition today?**

11 A. I reviewed the materials in my file. I

12 read the report. I was given, subsequent to the

13 report, some responses to interrogatories from some of

14 the plaintiffs in the case that I read. I was given a

15 copy of a draft, a copy of a deposition given my Kevin

16 Davis, another expert, and a report. And I met with

17 counsel about a week ago.

18 **Q. Who specifically did you meet with?**

19 A. Mr. Colin.

20 **Q. What materials are in your file?**

21 A. I think most of them are listed in the

22 report. I'd be hard pressed to remember every single

23 document that's in the file.

24 **Q. I hope everything is listed in the**

25 **report that's in your file.**

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1 A. Everything is with exception to the

2 documents that I was given subsequent to writing the

3 report which were the answers to interrogatories. I

4 think I've since printed out -- there's since been

5 something like a motion -- a motion or -- I'm trying

6 to think what it was. A motion to dismiss by you

7 folks and a response. I think I printed those out and

8 put them in the file. I'm not positive that they

9 really have an effect on my opinions or they really

10 don't that I can recall. And the responses to the

11 interrogatories, which are not listed in the report

12 because I received them subsequent to the report being

13 written, and the transcript of the rough draft of the

14 deposition that I just received recently --

15 **Q. Okay.**

16 A. -- is not listed in the report. I think

17 that's it.

18 **Q. Okay. Tell me about the interrogatory**

19 **responses. Can you identify specifically which ones**

20 **you looked at? I mean, in other words, if it's all of**

21 **them, that's fine, but if it wasn't all of them, I**

22 **need to know which ones.**

23 A. It wasn't all of them. There were only

24 several. I can't really remember. I think one of

25 them was Jensen Arms. One of them -- I apologize.

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1 The names of the plaintiffs escape me right now. I

2 can certainly produce them for you.

3 **Q. Okay. I don't need the actual**

4 **documents, but since we're going to get those or we**

5 **have them, but if you would give Mr. Colin or**

6 **Mr. Kopel a listing of the ones that you reviewed.**

7 **Can you do that for me?**

8 A. Absolutely.

9 **Q. How soon could I expect that?**

10 A. When we're done here today, I can dig

11 them up.

12 **Q. Great. I appreciate that.**

13 A. Not a problem.

14 **Q. I want to make sure I have a complete**

15 **list here. You said you reviewed for today -- to**

16 **prepare, you reviewed the materials in your file,**

17 **which we went over, some of the interrogatory**

18 **responses that were provided to you, correct?**

19 A. Yes.

20 **Q. You reviewed a rough draft transcript**

21 **from Mr. Davis's deposition?**

22 A. Kevin Davis, yes.

23 **Q. You reviewed perhaps some of the**

24 **pleadings, additional documents that have been filed**

25 **by the lawyer, the motion to dismiss and maybe even**

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1 **the response?**
 2 A. Right. They're online. There's a
 3 website that has a link where you can download a pdf
 4 of those things. I think I downloaded a couple.
 5 **Q. Any other documents that you reviewed in**
 6 **preparation for today?**
 7 A. Not that I can recall. If -- again, if
 8 something pops back into my head, I'll let you know.
 9 Obviously I reviewed my own report.
 10 **Q. Sure. Are there any other documents**
 11 **that you have reviewed since you wrote the report**
 12 **related to the work -- your work on this case?**
 13 A. You know, it occurs to me that, you
 14 know, in the course of my business operations I
 15 receive a number of publications. And I can't recall.
 16 I think it's called Shooting Industry. I remember
 17 reading recently an edition of one of those magazines.
 18 I think it was Shooting Industry.
 19 It had a listing of the top 25
 20 manufacturers in the United States. I think they were
 21 all U.S. manufacturers, and a breakdown of what their
 22 firearms sold. I think it was in the third quarter of
 23 this year. And I think it was broken down into long
 24 guns, semi-automatic pistols, revolvers.
 25 **Q. Why did you look at that?**

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1 A. I was just reading the magazine. I was
 2 just flipping through it and I remember seeing that
 3 article and there was an article -- kind of a report
 4 for sales of the third quarter. That's not uncommon
 5 for the industry to report that kind of thing. And I
 6 remember kind of remarking to myself that the -- it
 7 supported my opinions about the number of
 8 semi-automatic firearms, specifically handguns, as
 9 opposed to the number of revolvers.
 10 As I recall those were the numbers
 11 that -- and the manufacturers also, the top 25
 12 manufacturers, I think it was remarkable to me that
 13 many of them -- none -- not many. Most of them did
 14 not even make a revolver. Most of them made just
 15 semi-automatic firearms with detachable magazines.
 16 **Q. Can you provide that article to**
 17 **Mr. Colin or Mr. Kopel as well?**
 18 A. Yes, I still have a copy of it.
 19 **Q. I appreciate that. Mr. Davis --**
 20 **Mr. Shain, excuse me.**
 21 A. That's quite all right.
 22 **Q. You talk in your -- you state in your**
 23 **report, that you reserve the right to supplement; is**
 24 **that right?**
 25 A. Yes.

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1 **Q. Okay. Do you have any plans to do that?**
 2 A. Only as I am exposed to additional
 3 information, perhaps, from your experts or other
 4 witnesses or other documents that may come to light
 5 that I'm not currently aware of, but I'm prepared
 6 right now to answer, you know, to give you my current
 7 and fully informed opinions with everything that I
 8 know today.
 9 **Q. Okay.**
 10 A. If counsel hands me something tomorrow
 11 and I feel I need to supplement, it has an impact on
 12 my opinions, you know, I will ask to supplement my
 13 report, but as of right now, I have no plans to.
 14 **Q. Okay. So as of right now, you haven't**
 15 **felt the need to supplement your report?**
 16 A. No.
 17 **Q. Okay. And you -- have you been asked to**
 18 **supplement your report?**
 19 A. No.
 20 **Q. Okay. If you do supplement your report**
 21 **in writing, is that the form that it would take?**
 22 A. Yes.
 23 **Q. Okay. And if that's something that**
 24 **happens, are you willing to sit for another deposition**
 25 **on that supplemental written report?**

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1 A. Of course.
 2 **Q. Okay. Thank you.**
 3 **(Off-the-record discussion.)**
 4 **(Deposition Exhibit 1 was marked.)**
 5 **Q. (BY MR. FERRO) Mr. Shain, you've now**
 6 **been handed what's been marked as your Deposition**
 7 **Exhibit 1. Do you recognize this document?**
 8 A. I do.
 9 **Q. Okay. I'm glad to hear that. What is**
 10 **this document?**
 11 A. This is my written report in this
 12 matter.
 13 **Q. Okay. I know it's a little tedious, but**
 14 **if you would, Mr. Shain, just take a moment to confirm**
 15 **that this is a true and accurate copy of your report**
 16 **that you submitted.**
 17 A. Yes, it appears to be and it has my CV
 18 attached behind it.
 19 **Q. Great. Thank you for that, Mr. Shain.**
 20 **All right. So, again, you know, in the interest of**
 21 **time, my goal is -- my goal right now just -- this is**
 22 **not a game or anything. I'm trying to get a list of**
 23 **all of the opinions that you've reached in this case.**
 24 **And I think -- I'm going to editorialize for a moment**
 25 **with your indulgence. I think on the one hand you can**

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1 say that you could mark many, many sentences as
 2 technically an opinion, would you agree with that or
 3 disagree with that?
 4 MR. COLIN: Vague, overbroad.
 5 A. I'm not sure I understand the question.
 6 **Q. (BY MR. FERRO) Fair enough. It wasn't a**
 7 **very good one. Why don't we then -- I was trying to**
 8 **save time. We'll go through your report and if you**
 9 **would, please, identify, because I want to make a list**
 10 **of all the opinions you've reached in this case. So**
 11 **let's identify those, please.**
 12 A. Okay.
 13 MR. COLIN: I'll object that the
 14 document speaks for itself. Go ahead.
 15 A. I'm going to start on -- under the
 16 section Opinions on page 5 of my report.
 17 **Q. (BY MR. FERRO) Excellent.**
 18 A. "Virtually all modern detachable
 19 magazines share design characteristics that will allow
 20 them to be altered, but may not have been originally
 21 designed to be readily converted to accept more than
 22 15 rounds of ammunition."
 23 **Q. Okay. That is your opinion?**
 24 A. It is. And if I can elaborate just for
 25 a moment. I think that if I were going to expound a

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1 little bit, this term "designed to be readily
 2 converted to accept more than 15 rounds of
 3 ammunition," my intention and I address this in the
 4 discussion of that opinion, but "designed to be" is
 5 really, for me, kind of a separate part from "to be
 6 readily converted."
 7 And although I quote the whole phrase
 8 there, I think within the text of the opinion, I just
 9 want to make it clear, if I haven't in the written
 10 opinion, that's something I would like to elaborate
 11 on, you know, when you feel it's appropriate. Because
 12 it -- they're really different -- my opinion is really
 13 that there are two separate issues, and, of course,
 14 when they're combined, as 1224 does, it's -- it's
 15 really bad. But individually, "designed to be," and
 16 then "readily converted" are really two different
 17 parts of that same opinion.
 18 **Q. Well, let's go ahead, then, and have you**
 19 **explain, then, what you're getting at. If you would**
 20 **elaborate on that, please.**
 21 A. Well, let's -- if I might for a moment,
 22 "designed to be," the phrase "designed to be" is one
 23 of the most particular parts of this very vague and
 24 very confusing language of 1224. And the issue of
 25 "designed to be," in my opinion, has to do with trying

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1 to somehow define what the original intent of the
 2 designer is.
 3 In other words, the first detachable box
 4 magazine with a base plate that was removable, did
 5 that designer intend for that magazine to be
 6 constructed in such a way that it could then later on
 7 accept some type of a device that would increase its
 8 capacity? Or simply by virtue of the nature of the
 9 design, is it capable of accepting a device that that
 10 would allow it to increase its capacity.
 11 And there are a number of ways in the
 12 industry, and of course in the work that I've done,
 13 that I can recognize things that are designed to be.
 14 That phrase is something that we can apply to a number
 15 of different things in the firearms industry and in a
 16 variety of products for that matter.
 17 And then the "readily converted part" of
 18 it, I think, is a separate issue. Can it be readily
 19 converted, what does that mean? What kind of
 20 capabilities are necessary to make something readily
 21 converted? How does that -- what kind of a meaning
 22 does that have to me when I have access to the kind of
 23 tools that I might have access to where I can build
 24 something that, you know, I can -- I can essentially
 25 convert any magazine that you can hand me into a

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1 magazine that will accept some type of a device that
 2 will expand its capacity?
 3 So those are two -- I want to kind of
 4 break those up for you.
 5 **Q. Okay. As to "designed to be," that**
 6 **portion of the language first, you talked about**
 7 **discerning the intent of the designer. Do you have**
 8 **any opinion as to what the intent of the firearms**
 9 **industry has been as to the standard, common**
 10 **detachable box magazines that you write about?**
 11 A. No, and herein lies the problem. I
 12 think you hit it on the head. There really is no way
 13 to determine from examining a magazine. If we took 10
 14 magazines from 10 different exemplar detachable
 15 magazine firearm systems, and we looked at what those
 16 components are in those magazines and they all share
 17 common components, they've got the box or the body of
 18 the magazine, there's a follower, there's a spring.
 19 There's a base plate. They're using a detent. That's
 20 usually some type of latch or device that keeps the
 21 base plate from coming off until you manipulate it so
 22 you can intentionally remove the base plate.
 23 So if we were to take 10 different
 24 manufacturers, you know, Walther and Smith & Wesson,
 25 Glock, Springfield, Colt, FN, CZ, Bersa, the list goes

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1 on, and take a detachable magazine from their pistols
 2 and lay them side by side and disassemble them, and
 3 look at the design of the magazines and the
 4 components, how they interact with one another, how
 5 they work, there's -- there's no way -- there's no
 6 objective, discernable feature, characteristic that we
 7 could sit here and I could point out to you and say,
 8 this one is obviously designed by the manufacturer
 9 with the intent that it -- that it can be extended or
 10 it will accept some type of an after market device
 11 that will allow it to have additional capability.
 12 And if I may give you some examples of
 13 things that -- that allow me to say that, first of
 14 all, the example of looking at those components,
 15 laying them side by side, and I think that we could
 16 ask any -- I feel very comfortable that if we were to
 17 invite an engineer or a mechanic or someone with some
 18 technical skills from another discipline, aerospace,
 19 automotive, you know, you name it, to come in and
 20 independently evaluate those 10 magazines, those
 21 components of all those magazines, I defy any of those
 22 technical people to look at those same characteristics
 23 and be able to say I can discern from looking at these
 24 things the intent of the designer.
 25 Now, there are firearms characteristics

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1 where I think it is possible to discern the intent of
 2 the designer on, and I'll give you a few very brief
 3 examples that popped into my head when I was thinking
 4 about this. I look at a standard 1911 pistol designed
 5 by John Browning in 1908. Commonly known as a 1911.
 6 That's when the military adopted it. One of the
 7 original, you know, kind of iconic semi-automatic
 8 pistol designs. And I can look at it and I can
 9 discern from the design of the pistol that it was
 10 designed for a right-handed shooter. And I can do
 11 that because all the control surfaces are on the
 12 left-hand side of the pistol. The safety lever, the
 13 magazine release, the slide release. Even the
 14 take-down lever is on the left-hand side of the frame.
 15 All of those things, ejection port is on the
 16 right-hand side. Obviously designed for a
 17 right-handed shooter. There's no question about that.
 18 You can look at the objectively -- at
 19 those design characteristics and point to things on
 20 that particular item and say -- on that firearm and
 21 say, look, here you go, this was designed for a
 22 right-handed shooter. There's no doubt about it. We
 23 can look at it and there's no dispute.
 24 **Q. Let me stop you. So you wouldn't need**
 25 **to talk to John Browning?**

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1 A. Exactly.
 2 **Q. You wouldn't need to say, Mr. Browning,**
 3 **did you design this for a left-handed shooter, is that**
 4 **your intent?**
 5 A. Exactly. I wish he was around to talk
 6 to. It would be a high point in my career. On the
 7 other hand, I can take a gun like a Sig Sauer P2XX,
 8 P220, P226, whatever model you select in that series
 9 of gun, and I can look at the way it's designed and
 10 constructed and I can clearly see by its design
 11 characteristics that it's designed to be ambidextrous,
 12 because I can look at the right-hand side of the gun
 13 and see that the safety is designed to be moved from
 14 right to left. And so I can tell by that design
 15 characteristic it's obvious that the intent was that
 16 that safety could be moved to the opposite side of the
 17 gun. There's no doubt about it. It's objective.
 18 Everybody who looks at that same gun or
 19 those two guns can determine the same thing. And I
 20 could lay them out for everybody in the room with very
 21 little coaching and say look at this and look at this,
 22 and you decide. And I think everybody will come to
 23 the same conclusion.
 24 **Q. Okay.**
 25 A. So there are design characteristics

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1 within the industry that I'm used to observing and
 2 evaluating that clearly kind of telegraph what the
 3 intent of the design was. Even an AR-15 rifle was
 4 made for a right-handed shooter. You can look at the
 5 way the original controls were set up. Some of the
 6 other things you can look at and evaluate are
 7 magazines are shaped in such a way as that they can
 8 only go into the magazine while in one direction.
 9 It's pretty clear what the intent of the
 10 design was. Wasn't meant to go in backwards. The
 11 designer wanted to make it such a way that you could
 12 only put it in in the correct orientation. So those
 13 are design characteristics that are -- everybody in
 14 the industry can look at, and, in fact, people outside
 15 the industry can look at and apply the same techniques
 16 and methods, which are just an objective evaluation of
 17 the characteristics and features, and arrive at the
 18 same conclusion. That "designed to be" thing, that's
 19 why I wanted to break it out in kind of a separate
 20 category of that opinion.
 21 **Q. Okay. I appreciate that. So you've**
 22 **just -- just to go back, you identified the heading on**
 23 **page 5 that is marked as number A --**
 24 A. Yes.
 25 **Q. -- as your first opinion you've**

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1 **identified in your report. What's the next opinion in**
 2 **your report?**
 3 A. Again, there are subsets of that opinion
 4 that are enumerated in the text.
 5 **Q. Are those separate opinions or do they**
 6 **support?**
 7 A. They're supporting. They're all
 8 supporting.
 9 **Q. Which is what I was getting to when I**
 10 **was trying to ask you about main ones, just so you**
 11 **know.**
 12 A. I apologize. I think this is a little
 13 more clear for me to do it this way.
 14 **Q. No problem.**
 15 A. And as a subopinion, on page number 8 of
 16 my report, number one, and I think I just touched on
 17 this, but I did it in the context of me evaluating or
 18 other technical people evaluating. There is no
 19 objective criteria in HB 13-1224 that ordinary
 20 citizens can understand and rely on to determine
 21 compliance.
 22 **Q. Okay.**
 23 A. So if I can't recognize it as an expert,
 24 how can I expect the folks in my classes, ordinary
 25 citizens or my customers, with the customers of all

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1 the plaintiffs, to be able to determine the intent of
 2 the designer and then again, if we -- if we use -- if
 3 we discount that definition that we're trying to
 4 determine the intent of the designer, how can they
 5 determine whether or not simply the magazine is or is
 6 not designed in such a way?
 7 **Q. Okay.**
 8 A. If you use that criteria -- in other
 9 words, you say, let's -- let's not interpret this to
 10 mean that. We have to know what the intent of the
 11 designer is. We just have to look at the design and
 12 determine if it, in fact, the design will allow it.
 13 Then every magazine with a detachable base plate is in
 14 violation of 1224. So how does the ordinary citizen
 15 interpret 1224 and what objective criteria is there?
 16 In fact, I guess what I'm saying is there is none
 17 written in 1224 that would allow them to go through
 18 the exercise we just went through, and say, I'm in
 19 compliance; no, I'm not in compliance. They either
 20 are going to believe every magazine with a detachable
 21 base plate is in violation, which I think is really
 22 the most common -- I think is going to be, for me, at
 23 least, that seems to be the most likely conclusion for
 24 an ordinary citizen to come to is to think, wow, they
 25 make magazine extensions that fit onto all of these

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1 magazines that have a similar design. That must mean
 2 that every magazine that has this design is
 3 prohibited.
 4 **Q. Okay. Mr. Shain, thank you. What is**
 5 **the next opinion that you -- that you've rendered in**
 6 **this case?**
 7 A. On page 9 of my report, another
 8 subopinion. "Enforcement of HB 13-124." I'm missing
 9 a number there. That's a typo. It says 124. It
 10 should say 1224. I apologize.
 11 **Q. That's okay. I kinda figured that.**
 12 A. "Designed to be readily converted
 13 language will be difficult and confusing for Colorado
 14 law enforcement."
 15 **Q. Great. Again, we're just making the**
 16 **list right now. What would the next opinion be?**
 17 A. On page 11, B, "Capable of accepting is
 18 a problematic and impractical concept because it
 19 subjects firearms owners to criminal liability that
 20 may have been caused by the manufacturer if the
 21 magazine unintentionally holds more ammunition than
 22 the manufacturer specifies or that the user is able to
 23 recognize."
 24 **Q. Thank you. Next.**
 25 A. Number 12 -- excuse me, page 12. C.

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1 "The requirement that the owner of the magazine or
 2 magazines maintains continuous possession of the large
 3 capacity magazine" -- and that's in quotes -- "is
 4 unrealistic in ordinary practice and for compliance
 5 and enforcement."
 6 **Q. All right. What is the next opinion**
 7 **that you've reached in this case?**
 8 A. On page 14 of my report, D, as in David.
 9 "The sale and transfer of legally owned firearms that
 10 were originally designed and sold with magazines with
 11 the capacity of more than 15 rounds of ammunition, for
 12 which there are no currently" -- excuse me -- "for
 13 which there are currently no smaller capacity
 14 magazines are subject of a de facto ban."
 15 **Q. Thank you. Any other opinions in**
 16 **this -- that you've reached in this case, Mr. Shain?**
 17 A. Page No. 15, E, as in Edward. "The
 18 provision that a person may possess a large capacity
 19 magazine if he or she owns the large capacity magazine
 20 on the effective date of this section will have
 21 serious unintended consequences."
 22 **Q. All right. Thank you. Do you have any**
 23 **other opinions that you've reached in this case,**
 24 **Mr. Shain?**
 25 A. I believe those are all the opinions

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1 that are listed in my report, and I can't at this time
 2 think of any additional opinions.

3 **Q. Okay. If you had reached additional**
 4 **opinions, would they have been put in your report?**

5 A. At the time that I wrote the report,
 6 yes.

7 **Q. Okay. And I think we already -- didn't**
 8 **we -- we talked about what you've done since you wrote**
 9 **the report, correct?**

10 A. Yes.

11 **Q. Have you formed any additional opinions**
 12 **since that time about this case?**

13 A. No additional opinions. You know, there
 14 may be some nuances and, of course, depending on the
 15 questions you ask, I may elaborate in ways that are
 16 not elaborated in the report.

17 **Q. And, again, this isn't any kind of a**
 18 **trick or anything, it's just my effort to make sure**
 19 **that we don't go to trial and -- you know, whatever**
 20 **number of months from now and then you have another**
 21 **opinion that wasn't listed in the report. Does that**
 22 **make sense?**

23 A. I understand.

24 **Q. Okay. Great. That's all I'm trying to**
 25 **accomplish. Also, for the record, what you did, and**

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1 **correct me if I'm incorrect, is you looked in your**
 2 **report at the bolded headings?**

3 A. Yes.

4 **Q. And those are what you read as reciting**
 5 **the opinions you've formulated in this case; is that**
 6 **correct?**

7 A. Yes.

8 **Q. Now, to be fair, you did say, I believe,**
 9 **that at least under the first heading, where it's**
 10 **"Virtually all modern detachable magazines," you said**
 11 **there were opinions in the text that would be in**
 12 **support of that heading opinion; is that a correct**
 13 **statement?**

14 A. I'm not sure that characterization is
 15 exactly correct. I would say there are opinions in
 16 the body of the report, but they're supporting, you
 17 know, information.

18 **Q. Okay. Assertions?**

19 A. Assertions or explanations that support
 20 those main opinions.

21 **Q. Okay.**

22 A. And, again, I -- I -- the elaboration on
 23 the "designed to be" and the separation from "readily
 24 convertible" is something I would have elaborated on a
 25 little bit more. As I read this over, I immediately

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1 realized I needed to clarify that for you as we go
 2 through them.

3 **Q. I just want to make sure that I was**
 4 **recognizing what you had said about the -- that there**
 5 **is text that follows those headings that go into**
 6 **detail about them; is that correct?**

7 A. That's a good way to explain it.

8 **Q. Good. Thank you, Mr. Shain. Why don't**
 9 **we take a break now and go off the record before we**
 10 **get into more substantive matters.**

11 (Recess taken, 10:34 a.m. to 10:49 a.m.)

12 **Q. (BY MR. FERRO) Mr. Shain, anything**
 13 **happen during the break that would -- that affects**
 14 **your ability to understand my questions or answer them**
 15 **truthfully?**

16 A. No, sir.

17 **Q. Thank you. Let's go back to your**
 18 **report. You have it in front of you, Exhibit 1. We**
 19 **just left off where you recited the headings in your**
 20 **report in response to my question for the expert**
 21 **opinions that you've reached in this case; is that**
 22 **correct?**

23 A. Yes.

24 **Q. Great. So then what I would like to do**
 25 **is now hit them in more detail. Although, granted we**

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1 **did a little bit of that with the very first one.**
 2 **Let's turn to page 5. And your opinion there on**
 3 **heading A, which the first one is listed, correct?**

4 A. Yes.

5 **Q. Okay. What specialized training and**
 6 **experience has enabled you to reach this opinion?**

7 A. All the specialized training and
 8 experience that I detailed earlier.

9 **Q. Okay. Everything that you described**
 10 **before about -- I'll see if I can summarize it and**
 11 **we'll see how that goes. Your time as a police**
 12 **officer, particularly with an emphasis on the shift**
 13 **from revolvers to semi-automatic pistols at that time**
 14 **historically. You gave some other accounts of, say,**
 15 **the '84 Olympics and using an M-16, I believe, and**
 16 **there were some other specific examples. We don't**
 17 **need an exhaustive list right now, but is that**
 18 **correct?**

19 A. Yes.

20 **Q. You listed your work as a gunsmith. I**
 21 **do have a list here. You listed your time being a**
 22 **firearms manufacturer, the work you've done in**
 23 **firearms labs and all that testing you've done,**
 24 **correct?**

25 A. Yes.

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1 **Q. Okay. The time you've spent on the**
 2 **products liability cases?**
 3 A. Yes.
 4 **Q. Okay. Your actual use of**
 5 **semi-automatics during your career and your time being**
 6 **alive?**
 7 A. Yes.
 8 **Q. Firearms training that you've taught. I**
 9 **think you said you're constantly using magazines?**
 10 A. Yes.
 11 **Q. Okay. Anything -- I'm just -- broad**
 12 **categories I'm forgetting?**
 13 A. No. I could add to it, also -- you
 14 know, you touched on the manufacturing issue. The
 15 fact that I have actually designed some products over
 16 the last number of years. It has brought me even --
 17 into contact with manufacturing technical
 18 manufacturing knowledge that enhanced my understanding
 19 of manufacturing techniques, what's available, what
 20 kind of material issues there are. You know, I've
 21 learned how to run a milling machine and a lathe and
 22 I'm not as good as a real machinist, but order
 23 prototype parts, so I have a greater understanding of
 24 what goes into design and manufacturing than ever
 25 before.

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1 **Q. And was there any sort of process or**
 2 **methodology that you -- that enabled you to get from**
 3 **what you know of facts relating to magazines to this**
 4 **opinion here on page 5?**
 5 A. The methodology is the standard
 6 methodology that I learned early on in law enforcement
 7 when firearms and evidence is examined, working with
 8 crime lab personnel, examining evidence, evaluating
 9 evidence, and then later on, the products liability
 10 sector or area, doing the same thing, that kind of
 11 standard examination, measurement, technical drawings,
 12 comparisons of parts, evaluation of functionality, how
 13 things work, how they fit together, fit and finish,
 14 tool marks, finishes.
 15 **Q. Okay.**
 16 A. And all that sort of thing. So
 17 it's -- it's a very kind of standard set of functions
 18 in terms of methodology that's commonly used to
 19 examine, evaluate, measure, draw, document and, you
 20 know, then use that data to apply to the facts.
 21 **Q. You talked about actually doing those**
 22 **specific tasks for particular firearms in your work as**
 23 **an expert in the products liability cases; is that**
 24 **right?**
 25 A. Firearms, firearm subcomponents,

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1 ammunition, holsters, even the scenes of incidents.
 2 **Q. In those cases you actually took some**
 3 **physical objects that you were asked to examine and**
 4 **you examined them and then evaluated that -- what you**
 5 **had examined; is that correct?**
 6 A. Yes.
 7 **Q. Okay. Did you do that in this case,**
 8 **that is, did you -- before you sat down to form your**
 9 **opinions and then write your report, did you examine**
 10 **any magazines?**
 11 A. The short answer is, yes, I examine
 12 magazines all the time.
 13 **Q. Okay. And I appreciate that. Because I**
 14 **mean, basically you said you do that most every day,**
 15 **correct?**
 16 A. I'm handling some type of detachable
 17 magazine or magazines virtually every day.
 18 **Q. What I'm trying to understand is without**
 19 **making any characterization whatsoever, I want to**
 20 **understand if you, for the purposes of this case, and**
 21 **let's say particularly the opinion that's listed on**
 22 **page 5, did you rely on all the examining and**
 23 **evaluating of the actual items that you've done**
 24 **throughout your career that you do on a daily basis?**
 25 A. I took all that in consideration. I

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1 did -- I did additional research using some of the
 2 reference materials that I have access to, the
 3 internet, and I'm thinking back and I think originally
 4 and possibly during the writing of the report, I
 5 handled some and disassembled several magazines. I'm
 6 trying to think.
 7 **Q. Can you identify those?**
 8 A. Yeah. I'm sorry, I just -- for some
 9 reason I wasn't thinking about doing that. But I do
 10 recall now. One was a Lancer magazine. Manufactured
 11 by a company called Lancer.
 12 **Q. What was its capacity?**
 13 A. Its stated capacity was 30 rounds.
 14 Magpul, PMag, magazine.
 15 **Q. What capacity was that?**
 16 A. 30 round magazine. And I'm trying to
 17 think about what other magazines I had that I was
 18 looking at at that time. I have -- I had two Chip
 19 McCormick magazines and I had a -- a Steier pistol
 20 magazine.
 21 **Q. Okay. What was the capacity of the**
 22 **Chip McCormick?**
 23 A. The Chip McCormicks are eight.
 24 **Q. And the Sauer (sic)?**
 25 A. The Steier was from an M-9, I think. I

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1 think it's a 16 round magazine. I think it has a 16
 2 round capacity.
 3 **Q. Are these all detachable box magazines?**
 4 A. Yes, they are, and the reason that I had
 5 those is they were actually in my office for unrelated
 6 reasons. I didn't actually seek them out for this
 7 particular case. They just happened to be in my
 8 office for other reasons.
 9 **Q. Okay. But did you examine them for the**
 10 **purposes of forming your opinions in this case and**
 11 **preparing your report?**
 12 A. I know that I handled them and looked at
 13 them, but I can't say that I did it -- there's nothing
 14 about them that -- that added to the development of my
 15 opinions in this report. Everything that I -- that I
 16 know about them, I already knew about them.
 17 **Q. Okay. So you didn't --**
 18 A. I did handle them. I remember kind of
 19 looking at them and kind of the physical object to
 20 help me focus on, you know, what I was working on in
 21 terms of the report.
 22 **Q. Are you saying, then, that you didn't --**
 23 **whatever it is that you -- whatever it is that you did**
 24 **when you were handling these magazines, whatever it is**
 25 **you got out of that, that you did not rely on that in**

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1 **formulating your opinions in this report; is that**
 2 **correct?**
 3 A. That's correct.
 4 **Q. Okay. Then we don't need to go any**
 5 **further in that other than I want to ask, did you do**
 6 **anything other than handle them, that is, did you**
 7 **measure them?**
 8 A. No, I did not.
 9 **Q. Okay. Did you disassemble them?**
 10 A. I think I disassembled the Lancer.
 11 **Q. Maybe the others, you just don't**
 12 **remember?**
 13 A. No, it was the Lancer because I had
 14 never taken one apart before. Actually, it was the
 15 first time that I had ordered a bunch of Lancer
 16 magazines prior to July 1 and I had never used Lancer
 17 magazines before. I think I took one of them apart
 18 just out of curiosity.
 19 **Q. Okay.**
 20 A. They're not the translucent ones, which,
 21 you know, I probably wouldn't have taken apart. These
 22 were the standard.
 23 **Q. All right. Well, then -- why don't we**
 24 **move on to that second opinion about no objective**
 25 **criteria in the bill that ordinary citizens could**

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1 **understand or rely on to determine compliance. I'm**
 2 **not reading it verbatim, but you know what I'm**
 3 **referring to?**
 4 A. Yes, let me -- if I could just for a
 5 moment on A, on this previous opinion, earlier I
 6 emphasized I wanted to elaborate on the "designed to
 7 be" part of that. I just wanted to make sure that you
 8 didn't think that I was -- somehow I wanted to obscure
 9 or ignore the fact that "to be readily converted" is
 10 still an opinion and part of that opinion.
 11 **Q. Okay.**
 12 A. I'm sorry, you wanted to go on to --
 13 **Q. Okay. Real quick before you turn the**
 14 **page, let's follow up. The phrases "designed to be**
 15 **readily converted," that phrase, which you split, you**
 16 **were talking about splitting into two different**
 17 **concepts, correct?**
 18 A. Right.
 19 **Q. Okay. That phrase is in House Bill**
 20 **1224, correct?**
 21 A. Yes.
 22 **Q. That's -- when you refer to that phrase**
 23 **in this opinion, it's specifically referencing that**
 24 **phrase as it's used in the bill?**
 25 A. Yes, and I think my reason for

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1 elaborating earlier is because most of this written
 2 opinion really focuses on the "readily converted" part
 3 of that phrase. But as I read it over the other day,
 4 I realized, it is very important to emphasize the
 5 "designed to be" is kind of separate and needs to be
 6 addressed separately as part of that opinion.
 7 **Q. Okay.**
 8 A. I mean, I do say something about that in
 9 the supporting documentation.
 10 **Q. You've made that clear today.**
 11 A. Okay. I just wanted to make sure that
 12 we got -- both of those things were really -- I mean,
 13 they're almost separate opinions.
 14 **Q. I appreciate that. So before we move**
 15 **on, though, about that opinion there in A, on page 5,**
 16 **and I asked you about the methodology you used and you**
 17 **talked about what the standard methodology of**
 18 **examining evidence is, and evaluating evidence that is**
 19 **well accepted, I think, in law enforcement circles and**
 20 **that's what you've been applying in your product**
 21 **liability cases, correct?**
 22 A. Sure.
 23 **Q. Okay. Now -- but you also agreed with**
 24 **me, I believe, that unlike those cases where you**
 25 **actually had a specific firearm that you needed to**

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1 **examine or evaluate or test, in this case, you didn't**
 2 **have -- you didn't do that type of an examination,**
 3 **correct?**
 4 A. Correct.
 5 **Q. Okay. And instead, the -- you were**
 6 **relying on the -- you know, the vast experience,**
 7 **that's my characterization, of your experience with**
 8 **magazines and firearms?**
 9 A. Well, let me -- I'm not sure that
 10 characterization is -- I would agree with it exactly.
 11 In the cases that we discussed in products cases,
 12 there are frequently firearms that have -- that even
 13 though I may be familiar with, generally familiar
 14 with, there may be some specific issue with a
 15 particular component or part that's at issue and has
 16 to do with the facts of that case.
 17 In this particular instance, magazines
 18 are something that I'm intimately familiar with in
 19 general and specifically. Magazines from pistols and
 20 rifles that I deal with and have dealt with all the
 21 time.
 22 **Q. Okay.**
 23 A. And I simply did not feel the need or
 24 see the benefit in -- in examining or doing any of
 25 this -- the kind of measurement and, you know, that

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1 you're referring to that I would do on a products
 2 case, because I'm very confident that if anybody else
 3 were to do that, they'd arrive at the same -- using
 4 the same methodology would arrive at the same
 5 conclusions, because I think I said earlier, I hate to
 6 use this expression over and over again, but it is
 7 what it is. They are what they are.
 8 **Q. Okay.**
 9 A. It's very obvious and I've disassembled
 10 enough of them over many, many years of doing this,
 11 but I did, in fact, do some internet research to see
 12 if there was some new -- something that I could
 13 identify and point to as an objective criteria. So
 14 that part of the research that I did on products
 15 cases, I did do in this case.
 16 **Q. Right. And did you keep a report of**
 17 **any -- all the internet pages that you viewed and**
 18 **looked at?**
 19 A. No, I don't have an actual record. I
 20 have a pretty good recollection of what I -- what I
 21 found and didn't find.
 22 **Q. Were there pages -- I mean, I don't**
 23 **believe -- was any of that listed here in your report**
 24 **when you talk about the supporting documentation that**
 25 **you list?**

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1 A. I don't really recall if I listed --
 2 **Q. Can you take a look, please?**
 3 A. -- internet research. No, I didn't list
 4 it, actually. I did not list internet research on
 5 here.
 6 **Q. Why not?**
 7 A. It was an oversight. I don't know why I
 8 didn't.
 9 **Q. Can you understand why I would want to**
 10 **know what specific pages you looked at?**
 11 A. Sure. Absolutely. Like I said, I have
 12 a good recollection and we can go back and find that
 13 same information again today, I'm sure.
 14 **Q. Okay. Do you think that's something you**
 15 **can provide for Mr. Colin and Mr. Kopel?**
 16 A. Yes.
 17 **Q. That would be appreciated. Again -- to**
 18 **narrow what I'm interested in, if it's something**
 19 **similar that you did to magazines laying around in**
 20 **your office, I'm not so interested in that. But I**
 21 **must know anything you looked at for the purposes of**
 22 **forming your opinions or related to that. Anything**
 23 **that you looked at that you relied on in forming your**
 24 **opinions and drafting your report. Does that make**
 25 **sense?**

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1 A. Yes. Absolutely. And I would have to
 2 say that what I did find supported my opinions.
 3 **Q. Okay.**
 4 A. It didn't change my opinions, but I will
 5 provide all that information, you know, gladly for you
 6 to look at.
 7 **Q. Thank you. I appreciate that. Let's**
 8 **move on, Mr. Shain.**
 9 **Again, going back to what I was asking**
 10 **you about that first opinion, the "designed to be**
 11 **readily converted" phrase which comes from the law,**
 12 **did you -- this opinion seems to suggest -- it seems**
 13 **that you have a meaning of that phrase; is that**
 14 **correct? You have an understanding of that phrase,**
 15 **what it means to you?**
 16 A. Is your question how do I interpret that
 17 phrase?
 18 **Q. Not how, but just that you have an**
 19 **interpretation of it.**
 20 A. Well -- I'm reading it just as it reads.
 21 I mean, I think it speaks for itself.
 22 **Q. Okay. Sure. But you did read it and**
 23 **you did the -- the words had a connotation to you; is**
 24 **that correct?**
 25 A. I'm not sure what you mean by

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1 connotation.

2 **Q. A meaning. When you read that phrase,**

3 **it spoke for itself to you; is that correct?**

4 A. Yeah, it does. It's --

5 **Q. It had a meaning to you?**

6 A. Well, it's I think more to the point is

7 that it's the lack of meaning. It's the

8 unintelligibility of the -- easy for me to say -- of

9 that phrase. That's my problem. That's my concern.

10 **Q. Let me stop you there because you talked**

11 **about that. I'm just trying to keep us on pace here.**

12 **That is a -- would you agree with me that is, on your**

13 **behalf, a qualitative assessment of that language in**

14 **the bill?**

15 A. By qualitative I take your meaning to be

16 that my opinion is -- is that that -- the language is

17 of a poor quality -- of such poor quality that

18 it's -- that that's the issue, that's one of the

19 issues that I have?

20 **Q. Right.**

21 A. Not just the only issue, but that is one

22 of the issues.

23 **Q. Okay. And that's an opinion you have?**

24 A. Yes.

25 **Q. Of that phrase?**

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1 A. Yes.

2 **Q. And that's an opinion that you formed**

3 **after reading that phrase in the bill?**

4 A. Yes.

5 **Q. Okay. Thank you. What did you -- were**

6 **there any particular methodology that you use or**

7 **process of reasoning to read the language in the bill**

8 **and then reach that opinion?**

9 A. It goes back with -- to my experience in

10 law enforcement and in the firearms industry. And

11 with all the experience and expertise that I have of

12 trying to determine what the meaning of that phrase is

13 and how to interpret it in order to be in compliance.

14 **Q. Okay. That standard methodology that**

15 **you use of examining evidence and evaluating evidence**

16 **as well as your intimate knowledge of magazines?**

17 A. Well -- well, of course. And as a

18 former law enforcement officer and as a federal

19 licensee, federal firearms licensee, I'm -- under my

20 federal firearms license, I'm required to comply with

21 state and local law.

22 **Q. Okay.**

23 A. But as a former police officer, I looked

24 at that in the context of how -- how -- I go into this

25 in the report -- how can a person comply and how can

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1 this be enforced. I mean, it is a new law that

2 applies to the firearms industry and I think that's

3 the question. What -- how in the world can we figure

4 out from this language what's in compliance and what's

5 not. What's a crime and what is not?

6 **Q. Any other methodology or reasoning**

7 **process that you can identify that you applied in**

8 **reaching this opinion on page 5?**

9 A. Not that I can think of.

10 **Q. Let's move on to the next one, and I**

11 **mean, I know -- Mr. Shain, you know, bear with me,**

12 **because I have to go through these methodically. I**

13 **can appreciate there's some overlap and that you may**

14 **have given responses already that would be responsive**

15 **to some of these questions, so if you -- if you can**

16 **refer back to things you've already said rather than**

17 **restate them in full, that would be appreciated, to**

18 **get you out of here today.**

19 A. You bet.

20 **Q. Looking, then, on this next opinion,**

21 **there is no objective criteria -- I'm not going to**

22 **read the whole thing. Your opinion there. What**

23 **-- what specifically is this opinion based on?**

24 A. This is one of those items that you just

25 touched on that I have previously elaborated on.

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1 **Q. I suspected that. All right. Is there**

2 **anything, then, that you can supplement your previous**

3 **answer or is it fully applicable, that is, the**

4 **methodology, that you applied in forming this opinion,**

5 **is there anything beyond what you've already**

6 **discussed?**

7 A. I don't believe so.

8 **Q. Okay. Well, then let's look down to the**

9 **next one which is on page 9. "Enforcement of House**

10 **Bill 13-1224's designed to be readily converted**

11 **language can be difficult and confusing for law**

12 **enforcement in Colorado." What do you base that**

13 **opinion upon?**

14 A. Much of what I've already indicated. Of

15 course, my experience as a police officer in the field

16 and as a police supervisor and as a police manager.

17 The issue for me in evaluating that 1224 and how it

18 would be interpreted and enforced indicates that

19 if -- if I can't, and ordinary citizens can't

20 determine from any objective criteria whether or not a

21 magazine is in compliance or not in compliance, how is

22 law enforcement going to enforce it? What criteria

23 are they going to use to -- again, this is a crime.

24 We're talking about taking away people's liberty, so

25 it goes back to much of what I've already said.

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1 **Q. Okay. Anything else?**
 2 A. Such as?
 3 **Q. Anything else, though, that you haven't**
 4 **already covered that would be the bases of this**
 5 **opinion?**
 6 A. Well, it -- the -- detailing supporting
 7 explanation, I think goes into the fact that -- that
 8 law enforcement personnel don't have the technical
 9 expertise, may not have the technical expertise, that
 10 the variety of different appliances that can be
 11 attached to magazines complicate the problem. And,
 12 boy, I think we'd have to get into the real specifics
 13 of that. I don't know if you want to do that right
 14 now.
 15 **Q. That's okay. Hold on. Let me see if I**
 16 **can summarize what I understand and tell me if I'm**
 17 **correct or incorrect. It sounds like what you're**
 18 **saying is that kind of the reasoning steps here are**
 19 **that you are someone that has significant technical**
 20 **expertise regarding magazines. And if you cannot**
 21 **discern the meaning of "designed to be readily**
 22 **converted" based on objective features of magazines,**
 23 **then certainly ordinary citizens without that**
 24 **technical expertise can't do it?**
 25 MR. COLIN: Foundation.

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1 **Q. (BY MR. FERRO) Is that what you're**
 2 **trying to explain?**
 3 MR. COLIN: Foundation.
 4 A. I'm sorry, sir.
 5 MR. COLIN: Go ahead.
 6 A. You asked me about the law enforcement,
 7 the opinion having to do with law enforcement, and the
 8 problem with the issue for law enforcement
 9 specifically is that this opens up to law enforcement
 10 any interpretation that they care to make in the
 11 field. There's nothing in HB-1224 to guide them about
 12 specifically what's enforceable and what's not
 13 enforceable, so for every individual law enforcement
 14 officer in the State of Colorado, it's a law that's on
 15 the books that they can enforce basically in any
 16 individual interpretation that they care to enforce it
 17 in.
 18 That's the problem is that there's no
 19 consistency. It's too vague for a supervisor -- as a
 20 police officer supervisor to say this is what the law
 21 means. And this is when you will arrest, this is when
 22 you will not arrest. And those are my concerns about
 23 this specific to law enforcement.
 24 **Q. (BY MR. FERRO) Fair enough. Let me ask**
 25 **you because I thought I did hear you say that, you**

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1 **know, if you're somebody, as you are with all the**
 2 **technical expertise you have, and you essentially --**
 3 **I'm paraphrasing -- are not able to make sense of this**
 4 **phraseology in the bill, then surely an officer who**
 5 **doesn't have the level of technical expertise that you**
 6 **have can't be expected to. Is that what you were**
 7 **saying or did I not hear that correctly?**
 8 A. I'm not sure that's entirely accurate.
 9 I think what I'm saying is because it's so vague and
 10 difficult to understand, a law enforcement officer may
 11 feel that they need to enforce, and they are open --
 12 they're able to enforce and able to interpret it any
 13 way that they want to. It's not that they cannot.
 14 It's just that there won't -- there's no built-in
 15 consistency. There's nothing discernable -- it's not
 16 that -- it's the design -- it goes back to the
 17 "designed to be" and "readily convertible." What do
 18 those things mean? How do you figure out what they
 19 are? And now the law enforcement officer is going to
 20 be faced with that conundrum. How do they do that?
 21 If they use the same methodology that I applied
 22 earlier, then I think that they -- that they will
 23 arrive at that same conclusion. The problem, also,
 24 exists that they won't use that same -- they may not
 25 use that same methodology. And that -- that opens

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1 the door to some severe problems in enforcement.
 2 **Q. And that conclusion that you reached is**
 3 **that that -- the law bans all magazines with removable**
 4 **base plates?**
 5 A. They could very well -- an individual
 6 officer may interpret the law to mean that.
 7 **Q. Could they also interpret the law to**
 8 **mean that it does not ban any magazines where -- just**
 9 **because it has a removable base plate?**
 10 MR. COLIN: Speculative.
 11 A. I don't know. I don't know how you
 12 could arrive at that opinion. That's not what the law
 13 says. That's not what 1224 says.
 14 **Q. (BY MR. FERRO) Let me ask you,**
 15 **Mr. Shain, on page 17, you write that "designed to be**
 16 **readily converted," "when examined in light of the**
 17 **design characteristics shared by most modern**
 18 **detachable magazines, it either means all magazines**
 19 **with a removable base plate, or it means none of**
 20 **them." Is that what you write here?**
 21 A. All or none. Can you point out that
 22 paragraph?
 23 **Q. It's the first full paragraph under 5,**
 24 **Analysis and Summary, and it's the last sentence. Is**
 25 **that what you wrote here?**

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1 A. Yes.

2 **Q. Okay. So -- help me understand, do**

3 **you -- do you have an opinion as to whether that --**

4 **your understanding of the language in the bill that**

5 **we've been talking about, does it mean one or the**

6 **other -- either of those alternatives?**

7 A. My opinion is that language of the bill

8 when looked at again -- the backdrop of all that

9 experience, all that data and applying the methodology

10 that I described earlier, leads me to that, you know,

11 to apply to the facts of the language of the bill,

12 that's what it leads me to opine that the bill, as

13 it's written, yes, means these two things.

14 **Q. One or the other?**

15 A. One or the other. That's right.

16 **Q. Are you -- are you opining as to one or**

17 **the other or just that it's one or the other?**

18 A. Well, that it's so confusing that it

19 could be one or the other.

20 **Q. Okay.**

21 A. That -- it's so vague and confusing and

22 technically, you know, inadequate, that it could be

23 one or the other.

24 **Q. Okay. So when you were saying, then,**

25 **about officers, you're saying officers, if they**

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1 **applied the same process of reasoning that you did in**

2 **this case with the same experience and technical**

3 **knowledge, they would reach that same conclusion that**

4 **it's one or the other, would be one or the other?**

5 A. And if they did that and they're

6 standing in the field looking at a potential offender

7 and they were to do that, how could they possibly

8 enforce? They have to be standing there thinking the

9 same thing that we just discussed, which one is it?

10 Is it one or the other? How do I enforce this?

11 **Q. So it's not that they -- that somebody**

12 **could go either way individually, it's that -- a**

13 **person is going to be stuck between -- stuck with both**

14 **alternatives in their mind, is that what you're**

15 **saying?**

16 A. I think that they -- there's no way for

17 a law enforcement officer to look at a magazine and

18 objectively determine one or the other of those

19 things.

20 **Q. Okay. What about subjectively? You**

21 **don't make an opinion about that?**

22 MR. COLIN: Vague.

23 A. Subjectively, anything is possible.

24 **Q. (BY MR. FERO) Because you were an**

25 **officer, correct?**

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1 A. Yes, and objectivity is what the law is

2 supposed to provide. It's supposed to provide

3 objective guidance so that an officer in the field has

4 a clear understanding of what to enforce and what not

5 to enforce.

6 **Q. In your experience, do all officers**

7 **enforce a given law the same way?**

8 MR. COLIN: Overbroad.

9 A. There's always been something called

10 discretion for law enforcement officers in the field.

11 It applies to some things. It doesn't apply to other

12 things. It changes from jurisdiction to jurisdiction.

13 It changes from supervision to supervision, from

14 chiefs, to sheriffs, to city managers, to city

15 council, to governors. That's not really something

16 that I was asked to opine about.

17 **Q. (BY MR. FERO) Well, I just -- I'm**

18 **asking you, though, based on one jurisdiction, and**

19 **that would be your experience with the UCLA Police**

20 **Department because you do have experience in that**

21 **department as a law enforcement officer, correct?**

22 A. Correct.

23 **Q. And that experience encompassed several**

24 **different levels of work, correct?**

25 A. Correct.

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1 **Q. You were a patrolman at one time?**

2 A. Yes.

3 **Q. And then you were also kind of -- in a**

4 **management level at another time?**

5 A. Yes.

6 **Q. Where you actually supervised patrolmen?**

7 A. Yes.

8 **Q. That entire patrol division?**

9 A. I had -- I supervised patrol division

10 for a while, yes.

11 **Q. So in -- you have -- do you have**

12 **experience enforcing laws?**

13 A. Correct.

14 **Q. Both as an actual, on duty patrolman,**

15 **yes?**

16 A. Yes.

17 **Q. And as a manager of supervising other**

18 **patrolmen that are enforcing?**

19 A. Yes.

20 **Q. Okay. Can you recall any instance, just**

21 **from that experience -- again, I'm not asking about**

22 **what you haven't experienced. Can you recall any**

23 **instance where a particular law was interpreted**

24 **differently by different law enforcement officers?**

25 A. I can't recall a situation like that off

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1 the top of my head. The discretion that I was
 2 referring to earlier ordinarily had to do with a clear
 3 understanding of what a violation of law is, and a
 4 decision not to enforce it because of some mitigating
 5 factors or --
 6 **Q. Leniency?**
 7 A. I'm sorry?
 8 **Q. Leniency, for example.**
 9 A. Leniency? You know, I guess that's what
 10 I would call, you know, recognizing some mitigation.
 11 But it also might have to do with, you know, turning
 12 an informant in, using a source. Looking for letting
 13 a lesser included charge go. Booking for a more
 14 serious charge and tossing something minor. But
 15 that's not what we have here, Counselor.
 16 We have here a situation where there's
 17 no way to determine what to enforce. That would be a
 18 different story if it was clear and then the officer
 19 in the field is -- you're implying they would have
 20 discretion to say, Counselor, don't worry, I can --
 21 your magazine is in violation, but I'm going to let
 22 you slide because we're old friends and I know you
 23 didn't mean to do it. That's a different story.
 24 What we have here is so confusing and so
 25 inadequate in terms of its description for law

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1 enforcement that officers in the field are open to
 2 be -- to make, you know, judgment calls based on
 3 insufficient amount of information and incorrect
 4 technical language.
 5 **Q. That's your opinion?**
 6 A. Yes, it is.
 7 **Q. All right. Let's move on, then, to the**
 8 **next one here, which is the "capable of accepting"**
 9 **phrase on page 11. You say it's "problematic and**
 10 **impractical because it subjects firearms owners to**
 11 **criminal liability that may have been caused by the**
 12 **manufacturer if the magazine unintentionally holds**
 13 **more ammunition than the manufacturer specifies or**
 14 **that the user is able to recognize," correct?**
 15 A. Correct.
 16 **Q. Okay. What is the basis for this**
 17 **opinion specifically?**
 18 A. Certain magazines come from the
 19 manufacturer labeled to accept, as an example, for
 20 this particular case, 15 rounds. But, in fact, the
 21 design and construction of the magazine may allow them
 22 to accept 16 rounds if you force the last one in.
 23 It's not uncommon.
 24 **Q. You've personally observed that?**
 25 A. Yes. So if I buy a magazine and I order

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1 a magazine, 15 round magazine now, after -- now that
 2 the law is in effect, and I casually load the
 3 magazine, not counting each round as I load it and it
 4 actually accepts 16 rounds, and you're working as a
 5 state trooper and you pull me over and during the
 6 course of that stop, you find a reason to seize my
 7 firearm, take the magazine out of it, and, of course,
 8 the only way you're going to be able to determine the
 9 capacity is to count out the rounds that are in that
 10 magazine, and 16 come out of that magazine, even
 11 though I had purchased a magazine that was labeled as
 12 a 15 round magazine from the manufacturer that
 13 packaged it as a 15 round magazine, I'm going to jail.
 14 **Q. Let me follow up before you go forward**
 15 **about that hypothetical. I understand that, but I'm**
 16 **curious, in your hypothetical, because this is what**
 17 **you've created, not me, okay, who added the 16th**
 18 **bullet?**
 19 A. The law is not about who adds the
 20 ammunition. It's about the capacity of the magazine.
 21 **Q. I need to know --**
 22 MR. COLIN: Please allow him to finish
 23 his answer.
 24 MR. FERRO: If it's responsive, I will.
 25 MR. COLIN: You will in any event.

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1 **Q. (BY MR. FERRO) It's your hypothetical,**
 2 **Mr. Shain, and if you don't have -- if you didn't**
 3 **think of this, that's fine, but who put the extra**
 4 **bullet in there, the 16th?**
 5 A. Counselor, I already described to you in
 6 the hypothetical, I've already explicitly told you
 7 that the user loaded the magazine.
 8 **Q. The user did?**
 9 A. The user did.
 10 **Q. The person who was possessing that?**
 11 A. The law doesn't say the person who loads
 12 the magazine with more than 16 rounds. The HB-1224
 13 says a magazine, an inanimate object that contains or
 14 will allow more than 15 rounds capacity. Doesn't say
 15 the person who loads the magazine and that's the issue
 16 that I have. I understand --
 17 **Q. Okay.**
 18 A. -- your point, but the HB-1224 is a law
 19 about magazines.
 20 **Q. In your opinion?**
 21 A. It's not my opinion. The law speaks for
 22 itself. I can read the language of the law.
 23 **Q. Right, but this is how you interpret the**
 24 **law?**
 25 A. The -- again, the law speaks for itself.

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1 The language of the law is about magazines.
 2 **Q. Mr. Shain, is there any other**
 3 **interpretation of the law that you're relying on**
 4 **today?**
 5 MR. COLIN: Vague and overbroad.
 6 A. I don't understand the question.
 7 **Q. (BY MR. FERRO) Is there someone else's**
 8 **interpretation of the law that you're relying on?**
 9 A. No.
 10 **Q. You're reciting your own interpretation**
 11 **of the law?**
 12 A. Yes.
 13 **Q. In other words, is there another**
 14 **interpretation that you've seen written that has**
 15 **informed your own interpretation?**
 16 A. No.
 17 **Q. Okay. Your interpretation is your own,**
 18 **correct?**
 19 A. Yes.
 20 **Q. You reached it independently?**
 21 A. Yes.
 22 **Q. And you reached it by reading this --**
 23 **the text of the law yourself?**
 24 A. Yes.
 25 **Q. Okay. Thanks. I just want to make sure**

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1 **I understand that. Going back then, to the opinion**
 2 **that's on page 11. I was asking you about the bases**
 3 **for that opinion and you explained that there are some**
 4 **magazines that may be able to accept additional --**
 5 **more rounds of ammunition than what the manufacturer**
 6 **has stated for that magazine; is that correct?**
 7 A. Yes.
 8 **Q. Okay. Any other bases? You know, I**
 9 **want to continue to make our list here.**
 10 A. Well, I -- I think I go into the problem
 11 of an ordinary user purchasing, in a private party
 12 purchase, from another private party where it's
 13 transferred, of course, by an FFL who may purchase a
 14 firearm that comes with a standard magazine that has
 15 the capacity of more than 15 rounds, but because of
 16 their lack of sophistication or familiarity with that
 17 firearm, they may not realize that they're purchasing
 18 a firearm that's -- with magazines that are in
 19 violation. Is the FFL transfer person supposed to --
 20 **Q. Okay --**
 21 A. -- there's nothing -- again, this is
 22 part of the problem with the vagueness of the law.
 23 There's no -- how does -- is that person subject to
 24 criminal liability through mistake? According to the
 25 law, they are. There's no exception for that within

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1 the law. And there's no mechanism for the
 2 prohibition -- or I should say there's no mechanism
 3 for the confirmation, you know, during that process or
 4 for them to surrender the magazines. Just by mere
 5 possession, they suddenly become in violation of the
 6 law. Even though they may realize that mistake at
 7 some future point, they're in violation.
 8 You know, because if a manufacturer
 9 sells an after market magazine and it isn't marked
 10 with a round count -- which is pretty common. Most of
 11 them have windows. Some of them may not be imprinted
 12 with a number of rounds. You -- you buy an after
 13 market, private party transfer firearm where the
 14 previous owner has substituted factory magazines with
 15 after market magazines that have a higher capacity and
 16 you don't realize that, and you think you're buying a
 17 firearm that has a capacity of 15 rounds or less and
 18 you're suddenly in violation.
 19 **Q. Can you identify a specific magazine --**
 20 **well, let me make it easier. I apologize. Can you**
 21 **identify at least a brand of magazine that you**
 22 **personally have observed that will accept more rounds**
 23 **of ammunition than was imprinted or stated on the**
 24 **magazine itself as being what it would accept?**
 25 A. I can't recall the manufacturer. I

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1 apologize. I don't want to mistakenly identify a
 2 manufacturer.
 3 **Q. When was the last time you --**
 4 **approximately, you think, you personally observed a**
 5 **magazine that -- that did that as you just described,**
 6 **that is it was -- you were able to put an additional**
 7 **round -- at least one more additional round than what**
 8 **was stated on the magazine as its capacity?**
 9 A. You know, it's pretty common with 30
 10 round rifle magazines. The last time I was able to do
 11 it or seen it done with a pistol magazine is
 12 probably -- probably last summer during a range
 13 class, as I recall.
 14 **Q. What was the circumstance of that as you**
 15 **recall?**
 16 A. Running a qualification of a fire at the
 17 end of the class, had a certain number of rounds. I
 18 usually use a 30 round qualification course at the end
 19 of class, and somebody had an extra round on paper
 20 that they shouldn't have had. And I think that's how
 21 we made the determination that one of their magazines
 22 actually accepted and we went back and re-loaded that
 23 magazine and found that it would accept an additional
 24 round with a 30 round. You know, when you go -- when
 25 I scored the target, there was 30 rounds. There's an

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1 old joke about having a .38 caliber pencil when you go
 2 to score your own target, but in this particular case,
 3 there was actually an additional round on paper.
 4 **Q. Was that a 30 round magazine?**
 5 A. No. No. It was not.
 6 **Q. It was a pistol magazine?**
 7 A. Yes.
 8 **Q. Do you remember what the capacity was,**
 9 **the stated capacity?**
 10 A. I think it was a 15 round magazine and I
 11 think that's what I limited them to was two 15 round
 12 magazines were required. I required one magazine
 13 change during the course of fire. Right. Because
 14 we -- we didn't chamber load the gun until after the
 15 first 15 round magazine was loaded into the pistol, so
 16 it gives us a total of 30 rounds, so that they don't
 17 have to count the rounds. They basically go lock to
 18 lock, so they run the first one dry and insert the
 19 second one, close the slide and run the pistol dry
 20 again until the slide locks open, and there was not --
 21 was an additional round on paper. And I think that's
 22 how it happened.
 23 **Q. Just talking about it just now, has that**
 24 **jogged your memory as to what brand of firearm or**
 25 **magazine that was?**

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1 A. I'm thinking that I really -- I can't be
 2 sure and I don't want to identify a manufacturer
 3 without knowing specifically. There were a number of
 4 different manufacturers out there that day.
 5 **Q. Now, you talk about -- let me rephrase**
 6 **that. What you -- this possibility that you've**
 7 **talked -- that you've written about, that this can**
 8 **happen, does that -- in your experience, in your**
 9 **knowledge, does that vary amongst manufacturers at**
 10 **all, that is, would you see some manufacturers'**
 11 **tolerances or such that you -- you would not expect to**
 12 **often see a magazine that would accept more, but**
 13 **another manufacturer's is of a different nature and**
 14 **you see more of those?**
 15 A. No. I can't say that. I haven't done a
 16 study of that to be able to give that kind of an
 17 opinion.
 18 **Q. Okay. And even just from your --**
 19 **without doing a study, but from your own experience**
 20 **and knowledge, you can't say one way or the other?**
 21 A. No. And I think you have to take into
 22 consideration that some manufacturers make their own
 23 magazines. Some manufacturers get components or
 24 entire magazines from outside vendors. And
 25 manufacturing tolerances change over time.

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1 Manufacturers producing a particular part of that
 2 tolerance on a part may change from number one to
 3 number 10000. So it may vary within that same
 4 manufacturer's run of magazines.
 5 **Q. Do you have any opinion yourself as to**
 6 **the quality of comparatively of different**
 7 **manufacturers of magazines?**
 8 A. Certain after market magazines are not
 9 of as high a quality in terms of their material and
 10 manufacturing techniques and overall performance as
 11 manufacturer magazines, original manufacturer
 12 magazines, but there's some after market magazines
 13 that are excellent.
 14 **Q. Can you give some examples for me?**
 15 **Doesn't have to be a magazine model, but a brand?**
 16 A. Well, I hate to disparage magazine
 17 companies, but I've had problems with lower quality
 18 after market magazines. I'm going to get myself into
 19 trouble, but Meggar is a magazine company that makes
 20 after market magazines, ProMag, although it varies
 21 because they make a number of different models. Some
 22 of them are good, and are lower end magazines and
 23 expensive and not working very well. Some of the
 24 higher quality magazines are the manufacturer produced
 25 magazines. Glock, Springfield XD magazines, Colt

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1 magazines, HK magazines, FN magazines, all very good
 2 quality magazines.
 3 **Q. Okay. When you opine that phrase**
 4 **"capable of accepting is a problematic and impractical**
 5 **concept," specifically what process or methodology did**
 6 **you apply to reach that opinion?**
 7 A. Much of the same methodology that I
 8 described earlier.
 9 **Q. Anything else than what you've already**
 10 **described?**
 11 A. Well, much of it has to do with my
 12 manufacturing experience and my exposure to
 13 manufacturing techniques and practices. And most
 14 recently, my exposure to the use of rapid prototyping
 15 or what's known as 3-D printer which I've used
 16 recently to develop some products and seen what the
 17 capabilities are. But my work with milling machines
 18 and raw materials also leads me to support that
 19 conclusion.
 20 **Q. Anything else?**
 21 A. Not that I can think of.
 22 **Q. All right. Thank you, Mr. Shain. Why**
 23 **don't we look at, then, the next opinion you**
 24 **identified on page 12. Continuous possession**
 25 **requirement is unrealistic in practice and for**

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1 **compliance and enforcement. I just paraphrased it.**
 2 **Is that your opinion there?**
 3 A. Yes.
 4 **Q. What is the basis of this opinion?**
 5 A. Again, it has to do with the evaluation
 6 of the language of the law, and physical requirements.
 7 And looking at it, as we talked earlier about -- from
 8 the enforcement perspective and the compliance
 9 perspective. How does the ordinary person comply with
 10 the requirement to be in continuous possession? How
 11 does law enforcement evaluate if a person is in
 12 violation of that? I can't recall what happened after
 13 that. That's good. We'll stick with that.
 14 **Q. Okay. Mr. Shain, when you talk about**
 15 **this opinion related to the owner of a magazine**
 16 **maintaining continuous possession, what process or**
 17 **methodology did you use in reaching that opinion?**
 18 A. I believe I answered that in my earlier
 19 response.
 20 **Q. Okay.**
 21 A. But it's a straightforward reading of
 22 the statute, and I think it speaks for itself, the
 23 term "continuous possession."
 24 **Q. Anything else?**
 25 A. No.

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1 **Q. Let's look at the next one. I believe**
 2 **this one is on page 14. Sale and transfer of legally**
 3 **owned firearms that were originally designed and sold**
 4 **with magazines with a capacity of more than 15 rounds**
 5 **for which there's currently no smaller capacity**
 6 **magazines are the subject of the de facto ban; is that**
 7 **correct?**
 8 A. Yes.
 9 **Q. I know you talked about this earlier**
 10 **when you were talking about a different opinion. Can**
 11 **you summarize what the basis of this opinion is?**
 12 A. Well, during my research for the report,
 13 one of the things I did was to have plaintiff's
 14 counsel ask some of the plaintiffs for some
 15 information whether or not they had firearms that they
 16 could no longer sell because of the law. And the
 17 response indicated that -- the response from several
 18 of the retailers indicated that they had a number of
 19 firearms for which there were no compliant magazines
 20 available.
 21 **Q. Right. Okay. And you did provide a**
 22 **copy of the questions that you submitted -- well, that**
 23 **Mr. Colin's office submitted and that the responses**
 24 **that were -- that you used and I appreciate that very**
 25 **much.**

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1 A. And as I mentioned earlier, the
 2 responses to the interrogatories, I'll provide --
 3 there's some additional supporting information from
 4 those plaintiffs that -- about additional firearms
 5 that --
 6 **Q. Okay.**
 7 A. -- they can no longer sell because there
 8 are no compliant magazines.
 9 **Q. Right. Now, you didn't -- I -- I**
 10 **appreciate that. But was that something you had seen**
 11 **when you wrote the report?**
 12 A. The first part of that research was done
 13 when I -- before I wrote the report.
 14 **Q. The survey?**
 15 A. The survey. That's right.
 16 **Q. But not the interrogatory responses?**
 17 A. That came later, but it does support the
 18 same opinion.
 19 **Q. Okay. Anything other than that survey**
 20 **that you would point out as being a basis that**
 21 **underlies this opinion?**
 22 A. Anything else?
 23 **Q. Yes. What else did you rely on, if**
 24 **anything, in forming this opinion here?**
 25 A. I have some personal knowledge, some

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1 personal experience that there's firearms out there
 2 that were designed to -- originally from the
 3 manufacturer -- to have a capacity of more than 15
 4 rounds. Some of them are relatively new models for
 5 which there's no smaller capacity magazines that are
 6 compliant, and the logical conclusion is that they
 7 cannot be sold within the State of Colorado.
 8 **Q. And are any of those that you just**
 9 **mentioned from your own personal knowledge, are any of**
 10 **those currently for sale?**
 11 A. They can't be. They're in violation.
 12 **Q. Okay. To your knowledge, are they**
 13 **current production models?**
 14 A. Yes.
 15 **Q. Can you identify one of those for me?**
 16 A. There's a -- there's an FN pistol. I'm
 17 trying to think of the model. Just got an ad for it,
 18 actually. I get a lot of wholesale because I'm an FFL
 19 holder, I -- everybody and their kid brother sends me
 20 all their marketing materials. It's a brand new FN
 21 pistol. Has a maximum capacity of 20 rounds. FN
 22 makes several other pistols that have magazine
 23 capacity of 17 rounds. Now, some of those models
 24 may -- may not even be available through wholesalers.
 25 I don't know. There's some new and some of them --

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1 there may be some compliant magazines for, but there
 2 are definitely, from my research, several models, not
 3 only from FN, CZ, Springfield, Armory, I'm trying to
 4 think of a couple other ones out there. I think there
 5 may be one called a Baby Eagle.
 6 **Q. Is that research that you did**
 7 **specifically for preparing for this report?**
 8 A. Right. I was looking -- I looked at the
 9 cut sheets that I have access to on the manufacturers'
 10 websites and after market manufacturer magazine
 11 providers, and there simply are no compliant under
 12 1224 magazines. Those guns are effectively banned.
 13 They cannot be sold in the State of Colorado. And not
 14 only that, if they are models that are in production
 15 and have been sold, and are currently in private hands
 16 in Colorado, then if anybody wants to make a private
 17 party transfer, the gun is essentially worthless
 18 because they have to sell it without the magazines.
 19 **Q. When you talk -- it sounds like this**
 20 **research was part of the internet research you did**
 21 **that's not documented, at least as of now?**
 22 A. Right. Again, I'll be happy to provide
 23 that information.
 24 **Q. I would appreciate that. All right. So**
 25 **when you say that there are -- if I understand what**

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1 you're saying, you're saying that there is -- for the
 2 FN pistol, for example, there is not -- the magazine
 3 that it comes with is capable of accepting more than
 4 15 rounds?
 5 A. Yes.
 6 **Q. That's what comes standard with the**
 7 **weapon when you buy the firearm, the magazine comes**
 8 **with it?**
 9 A. Yes.
 10 **Q. And to your knowledge, there is not**
 11 **another magazine that would -- that would fit into**
 12 **that firearm and allow it to fire that is capable of**
 13 **accepting 15 or less?**
 14 A. For several of -- several of those
 15 models that I mentioned, that's true. Specifically
 16 that FN model that has a 20 round magazine, I believe
 17 it is. I know for sure that that -- there are no
 18 after market magazines, and FN doesn't make a smaller
 19 one for that.
 20 **Q. Are there ways that you're aware of that**
 21 **the capacity of any given magazine can be reduced?**
 22 MR. COLIN: I'm sorry, can be?
 23 MR. FERRO: Reduced.
 24 MR. COLIN: Thank you.
 25 A. Yes, there are techniques for reducing

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1 the capacity of detachable box magazines.
 2 **Q. (BY MR. FERRO) What techniques are those**
 3 **that you're aware of?**
 4 A. They're commonly known as plugs or
 5 fillers, but this is another problem with 1224 is that
 6 there's no description of which of those methods would
 7 be in compliance. I think I go into that in other
 8 parts of my report, but those would -- those devices
 9 are not something that are currently being marketed
 10 for the consumer to use. And I'm not aware of
 11 manufacturers that are making magazines that include
 12 some type of Colorado specific block that would reduce
 13 the capacity of those magazines, so I'm not sure who
 14 would make those or where they would come from.
 15 **Q. And I appreciate that. That makes sense**
 16 **to me. I'm going to ask you, if you can, to set those**
 17 **concerns aside for just a moment and just asking you**
 18 **in your knowledge and expertise with magazines, think**
 19 **of any of these particular guns that you've talked**
 20 **about, whether it's the FN or something else because**
 21 **I'm not a gun expert, but you being a gunsmith, are**
 22 **you aware of a way that the capacity of that standard**
 23 **magazine could be reduced?**
 24 A. Yes.
 25 **Q. Okay. All right. I then kind of**

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1 interrupted because you were giving the list of the
 2 basis of that opinion before I took you off on that
 3 side track. Anything else that we can add that you
 4 haven't mentioned?
 5 A. I don't think so.
 6 **Q. Okay. Thank you, Mr. Shain. The next**
 7 **question, which you're probably familiar with what is**
 8 **next, is that opinion which is as to the weapons that**
 9 **the firearms that are designed and sold with magazines**
 10 **standard that hold more than 15 rounds, there's no**
 11 **smaller ones available, they're subject to the de**
 12 **facto ban, is there any particular process or**
 13 **methodology that you applied in reaching that opinion?**
 14 A. Just what I described earlier.
 15 **Q. Okay. All right. I'd like you then to**
 16 **look at the final opinion that you identify, and that**
 17 **is on page 15. It reads, "The provision that a person**
 18 **may possess a large capacity magazine if he or she**
 19 **owns a large capacity magazine on the effective date**
 20 **of this section, July 1, 2013, will have serious**
 21 **unintended consequences." Did I read that correctly?**
 22 A. Yes.
 23 **Q. And elsewhere in your report, you refer**
 24 **to the grandfather provision; is that right?**
 25 A. Yes.

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1 **Q. Is that what -- is this one and the**
 2 **same?**
 3 A. That's what it refers to, yes.
 4 **Q. Okay. Great. So I may refer to it as**
 5 **that as well and you'll know what I'm referring to?**
 6 A. Yes.
 7 **Q. Okay. Thank you. All right. Well,**
 8 **then, what is this particular opinion based on?**
 9 A. It's based again on 1224, what you refer
 10 to as the grandfather clause, being so vague and
 11 unintelligible that there's no way to -- there's no
 12 possible way for a person or for law enforcement to
 13 enforce it. Again, all the previously discussed
 14 experience and data and techniques of evaluating the
 15 deficiencies in this part of the code of the section
 16 lead to this conclusion. Because magazines are not
 17 dated. They're not serialized. There's no way to
 18 determine when they were manufactured or obtained or
 19 possessed.
 20 **Q. Anything else?**
 21 A. No, sir.
 22 **Q. Are you aware of any magazines at all**
 23 **that have some sort of marking or reflection on the**
 24 **magazine itself that reflects when it was**
 25 **manufactured?**

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1 A. I believe that Magpul has agreed to
 2 start dating or serializing their magazines that are
 3 manufactured within the State of Colorado in
 4 compliance with an agreement that they made. I don't
 5 know that they're doing it. I haven't personally seen
 6 one.
 7 **Q. Okay. Just to make sure I understand,**
 8 **are you saying that your understanding of that**
 9 **agreement is that it takes place after the -- in**
 10 **response to this law?**
 11 A. That's my understanding.
 12 **Q. Okay.**
 13 A. I'm not aware of any other manufacturer
 14 outside the State of Colorado that's required to
 15 serialize or date their magazines. They may. They
 16 may mark them in some way from a manufacturing
 17 standpoint with a code or some other type of a date.
 18 But there's nothing standardized that I'm aware of.
 19 **Q. Okay. And setting that aside, I**
 20 **appreciate that. Are you aware -- other than what you**
 21 **mentioned with Magpul, are you aware of any other**
 22 **magazines you've seen -- are you able to identify any**
 23 **where the manufacturer has put some sort of something**
 24 **on the outside of the magazine that reflects when it**
 25 **was manufactured?**

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1 A. I'm not currently aware of anybody
 2 that's doing that in compliance with Colorado law.
 3 **Q. Again, I'm not asking if it's in**
 4 **compliance. I'm just saying -- asking you, as**
 5 **somebody who is intimately involved with magazines,**
 6 **who handles them on a daily basis, going back through**
 7 **your years of experience, can you think -- have you**
 8 **seen magazines before that have some sort of a**
 9 **manufacture date reflected on the magazine?**
 10 A. I can't recall ever seeing a date. It's
 11 possible. I can recall seeing some sort of
 12 manufacturing coding. That's ordinarily, you know,
 13 done in large manufacturing production runs where they
 14 want to keep track of when certain parts were made for
 15 their own internal records. I'm not positive that
 16 they can be identified by anybody outside that
 17 manufacturing operation.
 18 **Q. Mr. Shain, you testified about some**
 19 **knowledge that you have as to manufacturing, the**
 20 **actual manufacturing of magazines.**
 21 A. Yes.
 22 **Q. And you've been inside factories, for**
 23 **example?**
 24 A. Yes.
 25 **Q. You've seen the machines operating?**

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1 A. Yes.
 2 **Q. You have -- you wrote in your report**
 3 **about your knowledge of, for example, injection**
 4 **molding and plastics and such?**
 5 A. Yes.
 6 **Q. Okay. Based on what you know, do you**
 7 **have any opinion as to whether it is possible for**
 8 **manufacturers to put a manufacture date on the**
 9 **exterior of a magazine?**
 10 A. That's outside the area of what I was
 11 asked to opine about.
 12 **Q. Is it outside your expertise?**
 13 A. I'm just -- you're asking me to
 14 develop -- to give you an opinion about something that
 15 I haven't given the requisite consideration to. I
 16 apologize. That's really not something that I feel
 17 comfortable opining about without, you know, having
 18 done the required research and consideration.
 19 **Q. What specifically would you need to do**
 20 **to be able to answer that question?**
 21 A. I would have to sit down and evaluate
 22 what kind of changes would have to be made in tooling
 23 in a manufacturing process. I might want to even talk
 24 to a manufacturer about doing that. The efficacy of
 25 those marks. In other words, will they be damaged,

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1 will they be worn off. How long will they be visible.
 2 What -- you know, is it a date, is it a code. There's
 3 questions that would need to be answered before I give
 4 you an opinion.
 5 **Q. Perhaps -- I probably wasn't being clear**
 6 **about what I'm asking, which I think is a lot more**
 7 **limited than maybe what you thought, and, that is, I'm**
 8 **just asking if based on what you know about how**
 9 **magazines are made, if you have any opinion as to**
 10 **whether it's possible, not whether feasible or whether**
 11 **it's a good or bad idea, you know, but is it possible**
 12 **for a manufacturer to put a manufactured date on the**
 13 **outside of a magazine?**
 14 A. This is that -- is it possible where
 15 I'm -- you know, I could possibly put a date on you,
 16 Counselor, I mean, everything in the world is
 17 possible. Possible we could send a man to Mars next
 18 week.
 19 **Q. Sure. I'm not totally coming out of**
 20 **nowhere on this, Mr. Shain. Are you aware of any**
 21 **magazines that actually have the name of the**
 22 **manufacturer stamped on the outside?**
 23 A. Sure.
 24 **Q. And some of these are injected, molded**
 25 **plastic magazines. Have you seen one of those that**

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1 **has the name of the manufacturer on there?**
 2 A. I probably have. It's probably on
 3 the -- on the base plate, yes. The answer would be
 4 yes.
 5 **Q. And how about with a metal frame**
 6 **magazine, have you ever seen some etching or some**
 7 **other way?**
 8 A. Usually a roll stamp. The answer is
 9 yes.
 10 **Q. I take it that other than just the name**
 11 **of the manufacturer, you've seen other information**
 12 **printed in one way or another on the outside of a**
 13 **magazine, correct?**
 14 A. Sure. I guess to get to your question,
 15 if you're going to ask me if it's possible, my answer
 16 is again, yes, it's possible.
 17 **Q. Okay. And, again, it's not just**
 18 **possible. I wasn't trying to make you opine if**
 19 **anybody can go on the moon. Then anything is**
 20 **possible. It's a little bit more than that what I'm**
 21 **asking you, isn't it?**
 22 A. Is it mechanically possible to do, the
 23 answer is yes.
 24 **Q. That's all I was asking. Thank you.**
 25 **And the type of concerns that you were mentioning**

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1 **about going more towards the feasibility of doing**
 2 **that, those are -- do you see any reasons that those**
 3 **types of concerns would not be equally applicable to**
 4 **inputting other content or information on the outside**
 5 **of the magazine, how long it might last or whether it**
 6 **could be discernable by the person reading it, what it**
 7 **means?**
 8 MR. COLIN: Overbroad. Foundation.
 9 A. I'm -- I'm confused. I apologize. Can
 10 you repeat the question? Restate the question.
 11 **Q. (BY MR. FERO) I'll try. It was a big**
 12 **one. Trying to save time. If I recall, when I was**
 13 **first asking you, and you were reluctant to render an**
 14 **opinion, which I totally understand, you talked about**
 15 **concerns that you had just off the top of your head**
 16 **sitting here. If somebody could put a date on there,**
 17 **I mean, you know, if it's stamped or whatever, how**
 18 **long would it last; is that something you said?**
 19 A. I did. There are a lot of issues and I
 20 think you bring one of them up. We can put a stamp on
 21 it. I can put a stamp or a label on there. But how
 22 long is it going to last. Is it going to affect the
 23 performance of the magazine. Is it in a place -- I
 24 think you mentioned can it be seen or be read, is it
 25 going to be damaged, is it going to be unintelligible

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1 are my concerns.
 2 **Q. What I'm asking you, then, is would you**
 3 **agree that those -- I'll ask you, are those concerns**
 4 **that in your mind would apply as well to the name of a**
 5 **manufacturer being put on the outside of the magazine?**
 6 A. Yes, they would. And I apologize. I'm
 7 confused. I don't know what this has to do with the
 8 opinions that I've rendered.
 9 **Q. Let me worry about that.**
 10 A. I'm concerned because this is an area
 11 that -- this was not within the scope of my
 12 responsibility to opine about, and I don't want to go
 13 down a road that I'm really not comfortable making up
 14 things on the fly here for you.
 15 **Q. I just want to make sure that I closed**
 16 **off. Were there any other process or methodology that**
 17 **you used to formulate this final opinion on page 15**
 18 **that we haven't discussed today?**
 19 A. I don't believe so.
 20 **Q. Okay. Thank you. All right.**
 21 **Mr. Shain, I want to -- would you -- would you agree**
 22 **that today I have asked you to sort of describe an**
 23 **overview of the process of -- that you did and how you**
 24 **reached opinions in your products liability cases?**
 25 A. I would agree that you've asked me some

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1 questions about that.

2 **Q. Would you agree, then, that you provided**

3 **some answers to those questions?**

4 A. I would agree.

5 **Q. Okay. And I've also now asked you**

6 **about each of the opinions in this report. I've asked**

7 **you, you know, the same question in the sense of, what**

8 **is this opinion based on, correct?**

9 A. Yes.

10 **Q. I've asked you, then, to tell me the**

11 **process or methodology that you got to that opinion,**

12 **correct?**

13 A. Yes.

14 **Q. Okay. And in your mind, Mr. Shain, is**

15 **this -- is there any difference in the methodology or**

16 **process that you used here versus what you used as you**

17 **generally described it today in the products liability**

18 **context?**

19 A. Well, there are nuances, you know, to

20 every examination and every process, but, in general,

21 I try and use a similar methodology. I mean, it's --

22 it's a little like high school experimenting.

23 Scientific theory. What is it that I'm trying to

24 figure out and what are the -- what's the data I have

25 available to me and how do I apply it to the facts in

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1 front of me, and so I guess the answer is yes, I -- I

2 try -- I've always tried to be as consistent as

3 possible in doing this and I think that's what I've

4 done with these opinions.

5 **Q. Okay. We did talk about one difference,**

6 **though, didn't we, about not testing an actual firearm**

7 **in this case, correct?**

8 A. Well, I think what I said was I didn't

9 find it necessary because of my intimate familiarity

10 with this product, but we certainly could do that. I

11 believe that we'll arrive at the same conclusions and

12 find the same results if we were to disassemble those

13 10 magazines. And, by the way, Counselor, I'd be

14 happy to do that if you want to schedule an

15 examination of magazines. I'll make myself available.

16 **Q. I appreciate that.**

17 A. Counsel is probably not happy with me

18 for offering, but I'm that confident that --

19 **Q. Understood.**

20 A. -- that that's the result that we'll

21 get.

22 **Q. I certainly wasn't trying to imply that**

23 **was necessary in this case. I'm just trying to -- to**

24 **me, that stuck out in my mind as a difference with**

25 **when you described what you have done in the other**

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1 **cases versus here.**

2 A. I indicated in other cases we're talking

3 about a product liability case.

4 **Q. Sure.**

5 A. Where there's an actual object that's a

6 piece of evidence. That's, I think, the difference.

7 **Q. Right. Entirely different -- what**

8 **you've been asked to do in this case is different from**

9 **what you've been asked to do in those cases; is that**

10 **correct?**

11 A. There are some differences.

12 **Q. Can you highlight them in your mind what**

13 **they are?**

14 A. I think that's the thing. This is not a

15 products case. A liability case where there's an

16 object that's alleged to have caused an injury. An

17 actual piece of evidence.

18 **Q. As opposed to that, in your mind, what**

19 **is this case about?**

20 A. This -- this case is about Section 1224

21 and the technical deficiencies and confusing and

22 ambiguous nature of the law and how it applies to

23 enforcement, compliance and all the things that we

24 just went through in my opinions.

25 MR. FERRO: Let's go off the record a

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1 second.

2 (Off-the-record discussion.)

3 **Q. (BY MR. FERRO) Mr. Shain, I think we**

4 **established already that you've read House Bill 1224,**

5 **correct?**

6 A. Yes.

7 **Q. Okay. Now I just want to make sure as a**

8 **matter of clarity, did you look at 1229 as well?**

9 A. I have read 1229, yes.

10 **Q. Okay. Did -- your opinions in this**

11 **case, are they -- I'm just not trying to constrain**

12 **you, but are they limited to 1224?**

13 A. Yes.

14 **Q. You haven't rendered opinions or written**

15 **a report about House Bill 1229?**

16 A. No.

17 **Q. Okay. All right. I believe you've**

18 **testified that you had to make -- you read the law,**

19 **and in doing so, you made a determination of -- you**

20 **interpreted that 1224, correct?**

21 A. I'm not sure that's what I said. I

22 think I said the language of 1224 speaks for itself,

23 and then my concern is that there's no clear way to

24 interpret it and arrive at an enforceable or compliant

25 situation.

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1 **Q. And that is a determination that you**
 2 **made when you read the law, correct?**
 3 A. I think originally that was one of
 4 my -- that was my major concern when I originally read
 5 the law. That's before I was retained to work on the
 6 case.
 7 **Q. Again, I'm not getting into the**
 8 **substance of what your impression was, just that the**
 9 **impression that you have of the language and the law**
 10 **was formed by you reading the law?**
 11 A. Yeah. I'm not sure how else that would
 12 happen.
 13 **Q. I think because I asked you, too, if**
 14 **there was some other opinion of the law that you had**
 15 **read that informed you how you read it?**
 16 A. No. There's no other opinion that I've
 17 read that informed me.
 18 **Q. Okay. And then based on reading the**
 19 **law, you have made opinions about how ordinary**
 20 **citizens in Colorado will or will not be able to**
 21 **comply with the law, correct?**
 22 A. Yes.
 23 **Q. And based on how you read 1224, you**
 24 **have -- you have rendered an opinion as to the ability**
 25 **either way of Colorado law enforcement officers to**

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1 **enforce 1224, correct?**
 2 MR. COLIN: Foundation. Go ahead.
 3 A. I think that mischaracterizes what
 4 the -- what I said about -- earlier about my opinion.
 5 My concern is that they won't be able to enforce it or
 6 the enforcement will be capricious and inconsistent.
 7 **Q. (BY MR. FERRO) And that -- but that is**
 8 **an opinion about the enforceability of 1224, correct?**
 9 A. Yes.
 10 **Q. For specifically as applies to Colorado**
 11 **law enforcement officers, correct?**
 12 MR. COLIN: Vague.
 13 A. Yeah. I'm just thinking because I'm not
 14 sure who else would be enforcing the law.
 15 **Q. (BY MR. FERRO) You haven't rendered an**
 16 **opinion as to UCLA's ability to enforce House Bill**
 17 **1224?**
 18 A. It's not within their jurisdiction.
 19 **Q. Right. Your opinion, by its express**
 20 **terms, is focused on Colorado as a jurisdiction,**
 21 **correct?**
 22 A. Yes.
 23 **Q. Okay. Thank you. That's all I was**
 24 **trying to understand there. Again, to render your**
 25 **opinion about enforceability of 1224, by law**

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1 **enforcement, Colorado law enforcement officers,**
 2 **you -- part of that came from your reading of 1224?**
 3 A. Yes.
 4 **Q. Now, specifically you said that the law**
 5 **speaks for itself, correct?**
 6 A. I think that I said that the language of
 7 the law, the certain quotations that you gave me,
 8 spoke -- certain quotations spoke for themselves, yes.
 9 **Q. So, then, my question is what method did**
 10 **you use to determine the meaning, or as you say, no**
 11 **discernable meaning of 1224?**
 12 A. Well, it goes back to the earlier
 13 discussion about the "designed to be readily
 14 converted" language and the examination of that
 15 language, and the examination of the magazines and
 16 trying to apply that language to the actual physical
 17 design and construction of the magazines and how
 18 they're made and how they're designed and how they're
 19 produced, what appliances, device, accessories can be
 20 attached to them, how those things are attached.
 21 **Q. Okay. Thanks. What legal training have**
 22 **you received?**
 23 A. I don't have any formal legal training
 24 other than what the legal training I received in
 25 connection with my law enforcement training.

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1 **Q. What training was that? What legal**
 2 **training -- what can you describe about that legal**
 3 **training that you recall?**
 4 A. Well, two police academies. Years and
 5 years of legal updates. As investigator, again, I
 6 went to a number of different schools that had to do
 7 with writing search warrants, investigating, you know,
 8 various crimes. All those things had to do with
 9 specifically applying laws to criminal acts. I filed,
 10 you know, many, many cases with city attorneys and
 11 district attorneys. Testified in criminal courts,
 12 so -- and I think I mentioned legal updates that we
 13 used to receive on a regular basis.
 14 **Q. That's what I wanted to follow up about.**
 15 **What was the legal update you received, can you**
 16 **describe that?**
 17 A. Several times a year, we would get a
 18 formal legal update. Usually in written form.
 19 Sometimes it involved also going to a training
 20 session. And as an officer, we would receive that --
 21 usually receive that legal update in a written form at
 22 a roll call or briefing, and then it would be briefed
 23 or discussed by a sergeant or supervisor lieutenant or
 24 above. As a supervisor, I attended formal training in
 25 legal update. We would go a couple times a year and

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1 then we would then be asked to pass that training
 2 along to patrol officers in the field.
 3 **Q. Where did you get the training from?**
 4 A. Lawyers, usually.
 5 **Q. Yeah. Okay. So would the**
 6 **lawyers -- when you say an update, I'm trying -- I**
 7 **have an idea of what I think it means to me and I've**
 8 **heard some of the other sheriffs in this case talk**
 9 **about, well, every year the DA tells us what's**
 10 **happened in the law. What decisions have come out,**
 11 **like search and seizure. There's a lot of cases over**
 12 **history, right?**
 13 A. You hit the nail on the head. Actually,
 14 that refreshes my memory because most of it was based
 15 on case law.
 16 **Q. Probably a lot was search and seizure?**
 17 A. A lot of it was search and seizure.
 18 Some had to do with specific technical changes. In
 19 other words, legislature might modify a section to
 20 include, you know, where it was once only a felony, it
 21 might be what we called an alternate felony
 22 misdemeanor, that sort of thing.
 23 **Q. So was the legal update where the -- as**
 24 **you said, at some point above the chain, there were**
 25 **lawyers, correct?**

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1 A. Yeah. Those lawyers usually -- they
 2 were contracted, usually, by -- we didn't have a
 3 police union back in those days. They had an
 4 organization in the state that kind of -- had a
 5 traveling road show of lawyers that would go out and
 6 do these legal updates for various agencies.
 7 **Q. So in the legal update, would the**
 8 **lawyers, for example, hand a case to the police**
 9 **officers and say, Here you go, this just came out, or**
 10 **would they tell you what the case said?**
 11 A. They would usually be a brief summary
 12 and then a discussion of how it changed enforcement or
 13 what the enforcement parameters were, sentencing
 14 changes, or, like you said, search and seizure, that
 15 did change a lot over the years and usually a brief
 16 discussion and a description by those lawyers,
 17 question and answer. And then we had kind of what we
 18 call the cheat sheet that had all the different codes
 19 in there, so when we get the updated version of that,
 20 we pull the old version out and it would hit the round
 21 file and then, well, you know, insert our new version.
 22 **Q. Okay. Do you recall ever a time when**
 23 **you were an officer at UCLA, either supervisor or**
 24 **patrolman, where you had to look at a case from a**
 25 **Court and figure out how the law may have changed?**

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1 A. No. We weren't -- we weren't tasked
 2 with looking at the case. It had already been decided
 3 and we were given a very clear, specific change to the
 4 law -- to the penal code section that that case would
 5 have changed. You know, for example, the only -- the
 6 only area that wasn't a -- wasn't a penal code section
 7 would be the search and seizure rules, but it was very
 8 clear, for example, you stop a car, you have exigent
 9 circumstances, you can search the car, but you can't
 10 search any closed containers within the car. And at
 11 one point, that changed. If you have exigent
 12 circumstances, you can search the car or any closed
 13 container in the car. And then it changed again, you
 14 can search the car, you can't search the closed
 15 container, but you can keep everybody there until you
 16 get a warrant to search the closed container.
 17 Those are very specific rules that were
 18 given to us in written form that -- those are the only
 19 exception to the change in the law and, for example,
 20 if a -- if the DUI limit changed from whatever the
 21 limit might have been where you were over the limit,
 22 the blood alcohol was over the limit and changed to a
 23 lower number, that was a specific change in the law
 24 where we simply had to replace that -- that part of
 25 the law with the new part of the law, and enforce

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1 based on that new part of the law. So we didn't -- we
 2 didn't -- we weren't asked to look at cases.
 3 **Q. Do you feel that you personally had the**
 4 **training and expertise to be able to look at actual**
 5 **cases and tease out those rules?**
 6 A. I wouldn't -- I wouldn't characterize it
 7 that way. I would say that I was curious about the
 8 underlying facts of the case that resulted in those
 9 changes. So I would often read the background
 10 material that had to do with how those changes came
 11 about. That was interesting to me, you know, from an
 12 intellectual point of view. But also from a law
 13 enforcement expertise point of view, it was important
 14 for me to understand instead of, you know, simply, you
 15 know, accepting the change. It was interesting for me
 16 to understand why those had changed so I could give an
 17 explanation. Especially as a supervisor, you want to
 18 be able to answer those questions. Was it necessary
 19 for me to do that? No.
 20 **Q. Do you feel that you were qualified to**
 21 **do that?**
 22 A. Qualified to read?
 23 **Q. To read U.S. Supreme Court cases.**
 24 A. I can't remember ever reading a, you
 25 know, anything but a synopsis perhaps or some sort --

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1 **Q. Something that a lawyer --**
 2 A. Condensed, exactly.
 3 **Q. That's all I'm getting at. If there**
 4 **were no lawyers to give you that information when you**
 5 **were an officer, do you -- do you think, thinking back**
 6 **to what you knew then, your training and experience**
 7 **you had, was that training and experience such that**
 8 **you would have been -- you feel you would have been**
 9 **able to do that?**
 10 MR. COLIN: Foundation.
 11 A. I really -- the answer is I don't know.
 12 **Q. (BY MR. FERRO) Because you never tried**
 13 **it, right?**
 14 A. I may or may not have. The bottom line
 15 is that when there was a change in the law that was
 16 specific to the enforcement activities that we were
 17 engaged in, we made the change and went forward and
 18 that became -- that became our guideline for
 19 enforcement. If you blew a 1.0 and the law said you
 20 were over the limit, you went to jail. If the law
 21 changed and said you blew a .08 and that was over the
 22 limit, you went to jail. That's basically how it
 23 works.
 24 **Q. Those are easy, bright lines, would you**
 25 **agree?**

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1 A. That's what you need in law enforcement,
 2 easy bright lines. I'm glad you used that phrase. I
 3 like it.
 4 **Q. All right. I took you off on a tangent**
 5 **when you responded when I asked what kind of legal**
 6 **training you've had. Any other legal training that**
 7 **you've had that you can tell me about?**
 8 A. Just what I've been exposed to products
 9 liability cases, which is --
 10 **Q. Is that legal training?**
 11 A. It has to do with procedures that I have
 12 to follow. And I guess I would consider the
 13 instruction you gave me at the beginning of the
 14 deposition legal training.
 15 **Q. Fair enough. If I asked you this, I**
 16 **apologize, have you ever attended law school?**
 17 A. No.
 18 **Q. Any law classes at a law school?**
 19 A. Not that I recall.
 20 **Q. So then you've never practiced law**
 21 **because you're not a lawyer, correct?**
 22 A. No, I think you can go to jail for that.
 23 **Q. Right. Would you consider yourself to**
 24 **be a legal scholar?**
 25 A. No.

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1 **Q. Have you ever published an article in a**
 2 **legal journal?**
 3 A. No, but I have given a presentation at a
 4 Bar convention.
 5 **Q. Have you ever published anything in a**
 6 **law review?**
 7 A. No.
 8 **Q. What was the presentation you gave to a**
 9 **Bar association?**
 10 A. It was the American Bar Association. It
 11 was a convention on firearms product liability cases,
 12 and I was invited to give a presentation on technical
 13 aspects of design characteristics and defect
 14 allegations in firearm cases.
 15 **Q. What training, Mr. Shain, have you**
 16 **received in statutory construction?**
 17 A. None.
 18 **Q. What training have you received as far**
 19 **as methods that Courts use to interpret statutes?**
 20 A. None.
 21 **Q. What training have you received as far**
 22 **as discerning the intent of a legislature?**
 23 A. None.
 24 **Q. So the opinions that you've reached in**
 25 **this case about 1224, about compliance and**

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1 **enforcement, they're not based on any of these types**
 2 **of legal questions that I just asked you that you**
 3 **haven't had training in, correct?**
 4 A. That's correct.
 5 **Q. It's not based on -- your opinions here**
 6 **are not based on any expert or legal analysis; is that**
 7 **right?**
 8 A. That's correct.
 9 **Q. Do you consider yourself to be an expert**
 10 **in legal analysis?**
 11 A. No.
 12 **Q. Statutory construction?**
 13 A. No.
 14 **Q. Discerning the intent of a legislature?**
 15 A. No.
 16 **Q. Now, you -- what you have testified**
 17 **about is your knowledge about magazines and firearms,**
 18 **correct?**
 19 A. Yes.
 20 **Q. And as well as a lot of experience with**
 21 **magazines and firearms, correct?**
 22 A. That's correct.
 23 **Q. You said it today, and it's in your**
 24 **report on page 4 that you have an intimate**
 25 **understanding of how magazines are used, how they**

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1 **function, how they're configured and how they're**
 2 **manufactured, correct?**
 3 A. Yes. Can I wrap back around to your
 4 question about legislative intent?
 5 **Q. Of course.**
 6 A. I think without formal training
 7 there's -- legislative intent is sometimes very
 8 explicit. I think like it was in this case. So
 9 although I haven't had any formal training, which is
 10 what I think you asked earlier, I think I have a
 11 pretty good idea of what the legislative intent was
 12 based on their explicit description, discussions, and
 13 the language of the section.
 14 **Q. Okay. That's your opinion, correct?**
 15 A. Yes, that's my opinion.
 16 **Q. And can you recite for me any of the**
 17 **rules that the Colorado Supreme Court has stated guide**
 18 **interpreting the intent of the legislature?**
 19 A. No, I cannot.
 20 **Q. I mean, have you ever heard of this**
 21 **phrase "canons of construction"?**
 22 A. I've heard the phrase. I'm not sure I
 23 know exactly what it means.
 24 **Q. So you wouldn't be able to recite any of**
 25 **the canons of construction for me?**

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1 A. No.
 2 **Q. Nor any specifically that are used in**
 3 **the State of Colorado by our Courts?**
 4 A. No.
 5 **Q. Would you agree that the judicial branch**
 6 **of the state is their role to interpret the law?**
 7 A. I don't have the expertise to give you
 8 an answer.
 9 **Q. Fair enough. Let's go back, then --**
 10 **well, let me say this, when you -- when you say**
 11 **that -- when you talk about -- I appreciate that, that**
 12 **you have no doubt you were able to discern the intent**
 13 **of 1224, correct? Is that what you were saying?**
 14 A. I feel pretty comfortable that based on
 15 the information that's available to me, as an ordinary
 16 citizen and as a firearms expert, that I understand
 17 the legislative intent in 1224 as it's described in
 18 1224.
 19 **Q. Have you ever seen a law where the**
 20 **legislature says, This is what we intend, it is the**
 21 **intent of the general assembly that?**
 22 A. I can't recall specifically reading that
 23 language. I'm not saying it doesn't exist or that I
 24 haven't read it. I just don't recall.
 25 **Q. You don't remember? It's possible**

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1 **you've read a law that says that?**
 2 A. I don't know. I don't recall.
 3 **Q. Can you approximate how many laws you've**
 4 **read, Colorado laws?**
 5 A. It would be just an estimate. I've read
 6 probably hundreds of the revised statutes.
 7 **Q. Okay. Do you have any sense of how many**
 8 **total there are?**
 9 A. No. I'm sure it is thousands.
 10 **Q. Okay. So what you have read is going to**
 11 **be a small percentage of the whole?**
 12 A. Right, and they're primarily the
 13 criminal codes that I've read.
 14 **Q. Mr. Shain, anywhere in 1224 where the**
 15 **legislature uses the phrase that I was suggesting, it**
 16 **is the intent of the legislature that blah, blah,**
 17 **blah? Is it stated anywhere like that in 1224?**
 18 A. I don't know. Do you have a copy that I
 19 can review?
 20 **Q. Sure, I think I do. I hope I do. I**
 21 **don't. I'll get it for you.**
 22 A. Maybe we can come back to that.
 23 **Q. Let's just move on. All right. I was**
 24 **asking you about -- just making sure that I was**
 25 **correctly characterizing what you -- your own**

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1 **experience about magazines and firearms.**
 2 A. Yes.
 3 **Q. And I think you just -- you just said --**
 4 **referred to yourself as not just an expert in**
 5 **firearms, but also as an ordinary citizen; is that**
 6 **right?**
 7 A. I think that's pretty accurate.
 8 **Q. Okay. Why do you say that?**
 9 A. Because I have to comply with
 10 California -- the Colorado Revised Statutes just like
 11 every other citizen.
 12 **Q. Any other reason that made you say it**
 13 **that way?**
 14 A. It's the truth.
 15 **Q. How does your knowledge of firearms and**
 16 **magazines compare to that of what you perceive an**
 17 **ordinary Colorado citizen has?**
 18 A. I obviously have a great deal more
 19 expertise than an ordinary citizen.
 20 **Q. Knowledge and expertise?**
 21 A. Yes.
 22 **Q. How do you know that?**
 23 A. Because I've worked with what I refer to
 24 as ordinary Colorado citizens.
 25 **Q. In your business?**

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1 A. In my business. In the concealed carry
 2 classes that I've taught. I interact with them. You
 3 know, obviously on a daily basis. And most of my
 4 professional contacts associated with my business
 5 customers, their sophistication ranges, you know,
 6 wildly. Some of them not very sophisticated and some
 7 of them very sophisticated, so it's a little hard to
 8 categorize them in one particular area, but I simply
 9 know that based on my experience that, you know, there
 10 may be a few people out there with similar experience,
 11 but for the most part, ordinary Colorado citizens have
 12 not spent their life working with firearms, examining
 13 firearms, training in firearms and doing the kind of
 14 work that I've done professionally for all these
 15 years.

16 **Q. How do you believe that your knowledge
 17 and experience with regard to firearms and magazines
 18 compares to that of Colorado law enforcement officers?**

19 A. It's based on my experience in law
 20 enforcement. I do have personal knowledge of Colorado
 21 law enforcement officers to some degree. I know a lot
 22 of them. I sponsored a Colorado police and fire games
 23 event a couple years ago. I've been lucky enough to
 24 make the acquaintance of both personally and
 25 professionally with a large number of Colorado law

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1 enforcement professionals and there's a myth that
 2 police officers are imbued with some special
 3 expertise about firearms, and that's simply not true
 4 for the most part. There's police officers in the
 5 profession that specialize in firearms much like I
 6 did, but many police officers are carrying a firearm
 7 as part of their job. It's another tool for them, and
 8 many of them come from a background that didn't
 9 involve firearms when they were growing up. And
 10 that's kind of a -- kind of the unspoken truth about
 11 law enforcement. They're trained to use that firearm,
 12 but they're not necessarily firearm experts.

13 **Q. Do you believe you have more knowledge
 14 and experience regarding firearms and magazines than
 15 Colorado law enforcement officers?**

16 MR. COLIN: Foundation. Breadth.

17 A. That's an overgeneralization.

18 **Q. (BY MR. FERRO) Okay. What about
 19 the -- do you have any knowledge as to -- or a
 20 perception of the typical base of knowledge that a
 21 typical Colorado law enforcement officer has with
 22 regards to firearms and magazines?**

23 A. No.

24 **Q. You don't?**

25 A. No, that's the problem, the section

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1 doesn't address that. There isn't a baseline of
 2 experience that can be documented. You're asking me
 3 to opine about what all the thousands of Colorado law
 4 enforcement -- law enforcement officers know about
 5 firearms and magazines. There's no way to assess
 6 that. That's one of the basic problems with the vague
 7 and ambiguous nature of this section.

8 **Q. I'm sorry, because I thought you were
 9 saying that you have more -- more knowledge and
 10 experience than average Colorado civilians; is that
 11 right?**

12 A. Yes.

13 **Q. You're able to say that?**

14 A. Yes.

15 **Q. But you're not able to say the same
 16 thing as to Colorado law enforcement?**

17 A. That's not the question that you asked
 18 me.

19 **Q. I thought it was. That's what I'm
 20 trying to ask you.**

21 A. I'm sorry. Maybe --

22 **Q. Do you feel that you have more knowledge
 23 and experience with regard to firearms than Colorado
 24 law enforcement officers?**

25 A. Again, that's an overgeneralization.

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1 **Q. Okay. And then, are you saying, then,
 2 that you -- you don't have -- I think then you said
 3 that there is not -- to your knowledge, at least in
 4 your frame of reference, there's no baseline average
 5 level of knowledge that a Colorado law enforcement
 6 officer has, the typical one has as to firearms and
 7 magazines?**

8 A. There's obviously -- there's obviously a
 9 baseline that's taught in the police academy and
 10 throughout the police officer's career. I think
 11 you're trying to get me to compare expertise, the
 12 expertise that I have with Colorado law enforcement
 13 officers.

14 **Q. Absolutely. I am.**

15 A. If you're asking me do I have greater
 16 expertise than the average Colorado law enforcement
 17 officer --

18 **Q. Yes.**

19 A. I would say yes. I apologize.

20 **Q. Thank you. Okay. And why would you say
 21 yes? What leads you to say yes?**

22 A. Because the average Colorado police
 23 officer does not spend their career focused on
 24 firearms as specific tasks, responsibility, part of
 25 their job training, repair, maintaining, evaluating,

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1 selecting, deploying and all the years since I've left
 2 law enforcement, the products work, the manufacture,
 3 the repair, the warranty work that I do, the
 4 instruction that I do. Most Colorado law enforcement
 5 officers don't have that level of expertise.
 6 **Q. And as you -- you have -- as far as you**
 7 **know, the things that you know about firearms and**
 8 **magazines are not taught at the police academy, all**
 9 **the things you know?**
 10 A. If you're asking that everything that I
 11 know about firearms and magazines are not taught at a
 12 police academy, that is true.
 13 **Q. There's a bigger quantity of information**
 14 **in your head than what they teach about firearms and**
 15 **magazines?**
 16 A. There's some basic things that are
 17 obviously taught at academies about firearms and
 18 magazines.
 19 **Q. Mr. Shain, does the average -- then,**
 20 **based on what you said, does the average Colorado**
 21 **citizen, if they were to read 1224, would they be**
 22 **reading it with the same knowledge and experience**
 23 **regarding firearms and magazines that you have?**
 24 A. No, they would not.
 25 **Q. Would the average Colorado law**

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1 **enforcement officer read 1224 with the same knowledge**
 2 **and experience regarding firearms as you have?**
 3 A. No.
 4 **Q. Can you set aside all this knowledge**
 5 **about firearms and magazines, all that expertise you**
 6 **have -- I mean, are you able to put that out of your**
 7 **mind?**
 8 A. For what purpose?
 9 **Q. Well, I appreciate that. Let's say for**
 10 **the purpose of reading 1224. Would you be able to**
 11 **read it and put all of that out of your mind?**
 12 A. Well, it's one of the things that I
 13 tried to evaluate when I wrote my opinions. If a
 14 person with rudimentary knowledge of firearms were to
 15 read that section, what would they come up with. And
 16 I think that I opined about that in the report.
 17 **Q. Right.**
 18 A. I'm not sure that there's any way for
 19 them to determine whether they're in compliance or not
 20 in compliance.
 21 **Q. Right. But you say that as someone who**
 22 **has a vast amount of training and experience expertise**
 23 **regarding firearms and magazines, correct?**
 24 A. You just asked me to set that aside and
 25 I think I answered that that's what I tried to do in

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1 looking at whether or not an ordinary citizen could
 2 somehow find some objective information in 1224 that
 3 would allow them to know whether they're in compliance
 4 or not.
 5 **Q. Well, I appreciate that. Because I did**
 6 **not -- I didn't take it that way that you were trying**
 7 **to set it aside, so what I'm now asking you is, how**
 8 **did you do that?**
 9 A. I'm -- I'm not sure how to answer that
 10 question other than to say, you simply have to
 11 intellectually -- what I did was intellectually think
 12 to myself, if I didn't know anything else but what I'm
 13 reading here, how would I figure this out.
 14 **Q. Right.**
 15 A. And the response that I came up with is
 16 I can't.
 17 **Q. Okay. Did you make any effort to**
 18 **test -- to test that, that is to see if you were able**
 19 **to accomplish setting all of your knowledge and**
 20 **experience aside and look at this just as an ordinary**
 21 **citizen would?**
 22 A. I'm not sure how I would test that.
 23 Honestly, I think that if -- if it was me back before
 24 I had accumulated this knowledge and experience, I
 25 think that I would look at the magazine in front of me

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1 and try to determine if there was something objective
 2 about it, then I could identify it. That --
 3 **Q. You're going back pretty far in your**
 4 **life, right?**
 5 A. Well, I think back to when I was 18
 6 years old and I purchased a firearm with a detachable
 7 box magazine that had a removable base plate and
 8 exterior flanges of the kind that I describe. That's
 9 what I would have been looking at when I was 18 years
 10 old. I don't want to think about what year that was.
 11 And I would have arrived at the same conclusion.
 12 There's nothing about this magazine that I can
 13 determine if I could go back in time, be that 18-year-
 14 old kid again and look at that magazine, so I'd be
 15 looking at the same thing I'm looking at now.
 16 **Q. Mr. Shain, how -- if you go back to that**
 17 **products liability case you told me about where you**
 18 **developed a new -- the first process for, you know,**
 19 **dropping and seeing if the gun would fire, and you**
 20 **mentioned that there had to be a Daubert hearing on**
 21 **that, do you recall that?**
 22 A. Yes.
 23 **Q. And the purpose of that, I think you**
 24 **said, was so that the reliability of that process**
 25 **could be probed?**

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1 A. Yes.

2 **Q. How can I probe the reliability of your**

3 **asserted ability to set all of your knowledge and**

4 **training about firearms and magazines aside and read**

5 **this law and interpret it as an ordinary citizen?**

6 MR. COLIN: Form and foundation.

7 A. I don't know, Counselor. I think maybe

8 we would have to do an experiment and take a roomful

9 of ordinary people and put the magazines in front of

10 them and put 1224 in front of them, and I believe

11 you'll get the same result. If we wanted to design

12 that experiment, I think that's the way is to take

13 it -- take my assertion that this is what an ordinary

14 person would use and design that experiment. And if

15 you're asking me to do more work and to do that, I

16 mean, I'd be happy to. But I think that that's the

17 way that you would test the reliability of that

18 conclusion.

19 **Q. (BY MR. FERRO) Okay. And do you have**

20 **experience -- experience in designing experiments like**

21 **that?**

22 A. No. I don't.

23 **Q. Do you -- are you aware of any standards**

24 **for selecting a group of people for such an**

25 **experiment?**

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1 A. I've read some studies in the past that,

2 you know, have come up in products liabilities cases

3 where experiments and things like that have been done.

4 **Q. You just don't go pick the first 10**

5 **people you find off the street, for example?**

6 A. No.

7 MR. COLIN: Foundation.

8 A. This is an area that I would leave to

9 another expert, an expert in that area.

10 **Q. (BY MR. FERRO) This isn't something you**

11 **did in this case?**

12 A. I did not do that in this case.

13 **Q. You weren't asked to?**

14 A. I was not asked to.

15 **Q. And you did not take the initiative to**

16 **do that, correct?**

17 A. I was not asked to do that.

18 **Q. Okay. And you didn't decide to do it on**

19 **your own?**

20 A. I did not do it on my own.

21 **Q. Do you feel you have the training and**

22 **expertise to even be able to do such an experiment?**

23 A. Not in the formal fashion that you're

24 describing.

25 **Q. Okay. What -- you did -- you did an**

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1 **informal survey here of the FFLs -- some FFLs,**

2 **correct?**

3 A. Yes.

4 **Q. Would you agree with the way I said it,**

5 **it's an informal survey?**

6 A. No. I think it was formal in the sense

7 that I submitted the questions, they were returned to

8 me in writing, and I included it as part of my file.

9 I think that's pretty formal.

10 **Q. Mr. Shain, you didn't serve a -- did you**

11 **send out a similar questioning to any Colorado**

12 **citizens?**

13 A. It wasn't a survey for citizens, it was

14 a survey for plaintiffs that were FFL dealers.

15 **Q. Did you send out a separate survey to**

16 **Colorado citizens?**

17 A. My -- my previous answer I think --

18 **Q. Okay.**

19 A. -- addresses that.

20 **Q. If you had, you would have put it in**

21 **your report, correct?**

22 A. Yes.

23 **Q. What about law enforcement officers, did**

24 **you survey any law enforcement officers about**

25 **enforcement of 1224?**

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1 A. No, I did not.

2 **Q. Okay. And if you had done something**

3 **like that, you would have put it in your report,**

4 **correct?**

5 A. I would have.

6 MR. FERRO: Why don't we go off the

7 record now.

8 (Recess taken, 12:44 p.m. to 1:33 p.m.)

9 **Q. (BY MR. FERRO) We're back on the record**

10 **after a lunch break. Mr. Shain, did anything happen**

11 **over lunch that would affect your continuing ability**

12 **to understand my questions and answer them truthfully?**

13 A. No.

14 **Q. Thank you. All right. Let's dig right**

15 **back in. Can you imagine any circumstance under which**

16 **House Bill 1224 would be enforceable?**

17 A. No.

18 **Q. None whatsoever? Let me rephrase that.**

19 **Have you thought about this?**

20 A. Well, I address it to some extent in the

21 opinion about the -- the confusion and difficulty and

22 I guess the answer -- let me rephrase the answer. I

23 think I can imagine some nightmarish enforcement

24 scenarios and that's the problem.

25 **Q. What would those be?**

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1 A. Those would be enforcement situations
 2 where the ambiguity of the law resulted in the arrest
 3 and incarceration and prosecution of a person who
 4 possessed a magazine that -- or I should say that
 5 should -- a person who should not have been arrested
 6 and incarcerated.
 7 **Q. What type of magazine would the person**
 8 **you're speaking of be carrying?**
 9 A. I don't know.
 10 MR. COLIN: Overbroad, speculative.
 11 A. I don't know. That's the problem is
 12 that if I can't -- with all my experience and my
 13 training and my background and all the data and
 14 knowledge that I've used and tried to apply to the
 15 facts of the case, if I can't determine which
 16 magazines are in compliance and which are not, how is
 17 the -- a police officer or an ordinary citizen going
 18 to do it.
 19 **Q. (BY MR. FERRO) What about a Magpul PMag**
 20 **30 round that would fit the AR style?**
 21 MR. KOPEL: Objection, vague. What do
 22 you mean by it?
 23 A. What is the question?
 24 **Q. (BY MR. FERRO) Can you imagine --**
 25 **would -- in your view, 1224 be enforceable as to**

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1 **someone carrying that magazine?**
 2 A. Well, it might be incorrectly enforced.
 3 I'm not sure how you would determine that the magazine
 4 was not in their possession prior to the passage of
 5 the law.
 6 **Q. Okay. Sure.**
 7 A. Unless they spontaneously confessed that
 8 they obtained it last week, I don't see --
 9 **Q. Fair enough.**
 10 A. I don't see it.
 11 **Q. Let me set that part aside. I want to**
 12 **focus on the "designed to be readily converted" or**
 13 **"capable of accepting," that if you have a 30 magazine**
 14 **that is manufactured to accept 30 rounds like the**
 15 **PMag, Magpul, you're aware of that particular**
 16 **magazine?**
 17 A. Yes.
 18 **Q. Without regard to the notion of**
 19 **grandfathering or continuous possession of it, just to**
 20 **the other part of the law that you looked at, do you**
 21 **foresee any issues with enforcement under that**
 22 **scenario?**
 23 A. I'm sorry, sir, I'm confused. Can you
 24 rephrase that question? I don't understand the nature
 25 of the question.

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1 **Q. Let me see if I can go at it this way.**
 2 **You've mentioned several different things you've**
 3 **highlighted that have concerns that led you to opine**
 4 **about the enforceability of 1224. Okay. And one of**
 5 **those, which you just highlighted was the issue with**
 6 **the grandfathering and how an officer is going to**
 7 **discern whether this magazine was purchased before**
 8 **July 1, correct?**
 9 A. Yes.
 10 **Q. Another one would be whether -- how**
 11 **someone would be able to tell if that magazine that**
 12 **was purchased before July 1 would be in an**
 13 **individual's continuous possession?**
 14 A. Yes.
 15 **Q. Okay. And then the other would be**
 16 **whether or not the magazine itself was a high capacity**
 17 **magazine?**
 18 A. You mean a magazine that would accept
 19 more than 15 rounds?
 20 **Q. Correct. For some magazines, at least I**
 21 **believe your opinion is, that there is no way to --**
 22 **there's an issue with enforcement. I won't**
 23 **characterize it. There's an issue with enforcement**
 24 **due to the way the law is phrased in defining high**
 25 **capacity magazine; is that correct?**

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1 A. I'm sorry, I'm -- I'm struggling with
 2 the question again.
 3 **Q. I'm just trying to list out some of the**
 4 **things you've already said today that I understood you**
 5 **to say about specifics -- specific reasons, bases of**
 6 **your opinion that that is -- there's an issue with**
 7 **enforceability of 1224.**
 8 A. Right. It's the part of the definition
 9 of the magazine that -- that part I'm not
 10 understanding.
 11 **Q. Okay. Well, you do have an opinion**
 12 **about the meaning of the definition of high capacity**
 13 **magazine in 1224 as it relates to the enforceability**
 14 **of the statute, correct?**
 15 A. It's not that -- it's not the meaning of
 16 the section in terms of designating how many rounds of
 17 ammunition that it will accept. That -- that's not
 18 the issue that I have a problem with. That part is
 19 clear. It's about a magazine that will accept more
 20 than 15 rounds of ammunition.
 21 **Q. Okay. So if you have a magazine that**
 22 **without any type of conversion accepts more than 15**
 23 **rounds of ammunition, would you agree with me that**
 24 **that -- that House Bill 1224 clearly prohibits**
 25 **possession, transfer of that magazine after July 1,**

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1 **2013?**
 2 A. Yes, as far as I understand.
 3 **Q. The issues that you've been describing**
 4 **about characteristics of magazines and objective**
 5 **features, and I'm trying to be quick here, all of that**
 6 **relate to magazines that possibly, due to their**
 7 **design, could be converted to accept more than 15, but**
 8 **as they are in any given configuration, perhaps only**
 9 **capable of accepting 15; is that correct?**
 10 A. Yes.
 11 **Q. That is the very common detachable box**
 12 **magazines that have a removable base plate, but accept**
 13 **15 or less as they come out of the package?**
 14 A. The question?
 15 MR. COLIN: You lost me, there. Vague.
 16 A. You described the magazine, but I'm not
 17 sure what the question is.
 18 **Q. (BY MR. FERRO) Those are the ones that**
 19 **you are -- you have expressed that the law is unclear**
 20 **about?**
 21 A. The law -- 1224 -- the ambiguity of the
 22 description is -- applies to any magazine that has a
 23 removable base plate or could be converted to accept
 24 more than 15 rounds of ammunition. Doesn't
 25 necessarily have to be a 15 round magazine that we

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1 start with. But if it's the "designed to be" part of
 2 the problem, then the issue is that all of those
 3 magazines, you know, again, based on all the
 4 experience and all the magazines that I've handled
 5 over the years and applying all that knowledge and
 6 information to the facts, that the design -- you
 7 mentioned yourself, there's no objective criteria to
 8 determine whether the law is referring to a magazine
 9 that is constructed -- to use a word substituted for
 10 design -- in a way that will accept some other type of
 11 device or allow it to be extended or to accept more
 12 than 15 rounds.
 13 **Q. And all I'm trying to do right now is**
 14 **sort of set aside all those magazines that they may**
 15 **have a removable base plate like a PMag, but if it --**
 16 **without any other device, it accepts more than 15,**
 17 **that's not what you're opining about in here as to**
 18 **ambiguity in the statute; is that correct?**
 19 A. I believe that's correct.
 20 **Q. Okay. And maybe I should ask it a**
 21 **better way. And that is, in your opinion, is there**
 22 **any ambiguity in the statute as to its application to**
 23 **magazines like a Magpul 30 round PMag that has a**
 24 **removable base plate?**
 25 A. Not as far as the number 15 goes.

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1 **Q. Okay. Mr. Shain, earlier I was asking**
 2 **you about your time with the UCLA Police Department.**
 3 **Do you remember that?**
 4 A. Yes.
 5 **Q. Okay. And this was -- this is**
 6 **University of California Los Angeles?**
 7 A. Yes.
 8 **Q. So the college has its own police**
 9 **department; is that right?**
 10 A. The University of California Police
 11 Department is actually a statewide agency. At the
 12 time I was there, it was about 365 sworn and they're
 13 broken up into, at the time, nine different stations,
 14 located on the nine different campuses and I was
 15 located in Los Angeles.
 16 **Q. Okay. At UCLA?**
 17 A. At UCLA. The station was actually at
 18 the campus.
 19 **Q. The way you just described it, was that**
 20 **the way it was the entire time you worked there?**
 21 A. Yeah. I don't know how it is today.
 22 The University of California Police Department was
 23 described under 832, which is a statute that
 24 authorizes state police, capital, state capital police
 25 and University of California police, so that the

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1 University of California police have statewide
 2 jurisdiction. So, for example, in Los Angeles, we not
 3 only had statewide jurisdiction, but concurrent
 4 jurisdiction with the City of Los Angeles, the County
 5 of Los Angeles, Santa Monica, Culver City, Beverly
 6 Hills.
 7 **Q. How did that work in practice when you**
 8 **were there, did you actually exercise jurisdiction**
 9 **outside of just the campus?**
 10 A. You bet your --
 11 **Q. Yeah?**
 12 A. You bet your life.
 13 **Q. Did it have to relate to an issue with**
 14 **the UCLA staff or student or just could be anything?**
 15 A. Any crime in progress or crime that we
 16 observed anywhere that we were, we were authorized to
 17 enforce and take action. Obviously our primary area
 18 of responsibility was the University's property and
 19 personnel. The University owned property all over the
 20 County of Los Angeles. Downtown Los Angeles had a
 21 museum, medical facilities in Santa Monica, housing
 22 facilities in Venice. So we ran a lot of concurrent
 23 and joint jurisdictional operations with those
 24 agencies that I mentioned earlier.
 25 **Q. Now, have you worked -- other than UCLA,**

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1 **were you a police officer for any other department?**
 2 A. I worked for the City of Los Angeles for
 3 a short time.
 4 **Q. How long and when?**
 5 A. Less than a year. I don't recall
 6 exactly. It was probably nine or ten months.
 7 **Q. Was that before or after the UCLA**
 8 **experience?**
 9 A. Before.
 10 **Q. Any other departments or agencies --**
 11 A. No.
 12 **Q. -- in law enforcement?**
 13 A. No.
 14 **Q. When were you last a law enforcement**
 15 **officer?**
 16 A. I left UCLA at the rank of lieutenant in
 17 1994.
 18 **Q. Do you recall the last time that you**
 19 **wrote a ticket or summons?**
 20 A. No. I really don't.
 21 **Q. Any reason to believe it wasn't 1994?**
 22 A. No. No, there is no reason to believe.
 23 I probably was doing more administrative work in '94,
 24 but I was still working in the field for various
 25 reasons.

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1 **Q. Okay.**
 2 A. We have makes arrests and protective
 3 details and a variety of other stuff that I was called
 4 upon to work in the field.
 5 **Q. Have you enforced any law since 1994?**
 6 A. Not in an official capacity.
 7 **Q. Have you enforced laws as a civilian?**
 8 A. Sure. As a federal firearms licensee,
 9 I'm required to, you know, enforce federal laws as it
 10 relates to the sale of firearms.
 11 **Q. I take it you've had occasion to do**
 12 **that?**
 13 A. Yes.
 14 **Q. Are you talking about a few occasions or**
 15 **many?**
 16 A. I don't know if I would say enforce as
 17 in comply. You mean how many firearms have I sold?
 18 **Q. No. I'm thinking of like the issue that**
 19 **came up with Von Miller where he went to buy a gun and**
 20 **during the check he had a warrant. Is that -- is that**
 21 **a process that you comply with?**
 22 A. Well, we do -- we're required to do the
 23 background check and 4473 for anybody who purchases a
 24 firearm or we transfer a firearm to, but I've never
 25 had the occasion to have -- to have to detain anybody

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1 for law enforcement as a result of that.
 2 **Q. Have you ever had to call law**
 3 **enforcement as a result of that?**
 4 A. No.
 5 **Q. Okay. Thinking back to when you were an**
 6 **officer in UCLA, did you ever enforce laws that you**
 7 **thought were confusing?**
 8 A. None that I can think of right now.
 9 **Q. Do you have any reason to believe that**
 10 **there isn't -- there was not -- a confusing California**
 11 **law on the books at that time?**
 12 MR. COLIN: Foundation, speculation.
 13 A. Well, I can think of a very confusing
 14 California law, although I never had to enforce it.
 15 **Q. (BY MR. FERRO) Okay. What was that?**
 16 A. It was the California ban on certain
 17 types of firearms. I think it was 1984 was the
 18 California law. It banned certain types of firearms
 19 and there was language in that law that was extremely
 20 confusing and ambiguous, and, in my opinion, was
 21 difficult or impossible to enforce.
 22 **Q. Do you remember what the language in the**
 23 **law was that was extremely confusing or ambiguous in**
 24 **your opinion?**
 25 A. The part that I was asked to opine about

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1 later on in life was language about flash hidens,
 2 muzzle breaks, and that sort of thing and I was asked
 3 to work as an expert consultant in a -- it was a
 4 lawsuit. I don't remember who the defendant was,
 5 whether it was the State of California or the
 6 Department of Justice or Attorney General.
 7 **Q. Did you prepare a report in that case?**
 8 A. I did quite a lengthy affidavit. I
 9 didn't do a report.
 10 **Q. Did you take a deposition or give a**
 11 **deposition?**
 12 A. You know, I went -- I remember going to
 13 Sacramento to give a deposition and it was canceled at
 14 the last minute. They -- they arrived at some type of
 15 a settlement or I'm not exactly sure what happened.
 16 **Q. Okay. Did you have any knowledge of**
 17 **that particular law you just mentioned being enforced**
 18 **within the UCLA Police Department when you worked**
 19 **there?**
 20 A. Well, I know of police officers that
 21 complied with it because I was one of them. I had to
 22 register a rifle, get fingerprinted, file a
 23 registration form and that sort of thing, but I don't
 24 remember any actual enforcement activities.
 25 **Q. Was there any directive or policy from**

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1 **the management of the UCLA Police Department to not**
 2 **enforce that law?**
 3 A. No.
 4 **Q. Was there any discussion about not**
 5 **enforcing that law?**
 6 A. No.
 7 **Q. Was there any discussion about any**
 8 **difficulty with enforcing that law?**
 9 A. Not that I can recall. Not at the time.
 10 No. And the affidavit that I referred to was after I
 11 had left law enforcement that I was asked to
 12 participate in that case.
 13 **Q. Can you recall any law that you've**
 14 **enforced in your career as a law enforcement officer**
 15 **that was difficult for you to enforce?**
 16 MR. COLIN: Overbroad.
 17 A. The importance of clear cut, and, you
 18 know, well-defined, easy to understand criminal law
 19 cannot be overstated, and I can't recall ever making
 20 an arrest where I didn't have a very definitive
 21 understanding of what the crime was, what the elements
 22 of the crime were, you know, and what the evidence I
 23 had that the crime had been committed and that the
 24 person I was arresting had committed the crime, so I
 25 guess the short answer is no.

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1 **Q. (BY MR. FERRO) What about instances**
 2 **where maybe you were involved in responding or**
 3 **investigating, but didn't make an arrest? Can you**
 4 **recall an instance that the law was difficult for you**
 5 **to enforce?**
 6 A. No, I never found the law difficult to
 7 enforce.
 8 **Q. Okay.**
 9 A. I found it clear cut and easy to
 10 enforce. Bad guys go to jail and good guys get
 11 protected.
 12 **Q. When you were a police officer, was that**
 13 **during the time that the national -- the Clinton era**
 14 **magazine capacity was in place?**
 15 A. I think that didn't take place until
 16 '94. Would have been right at the tail end. I don't
 17 remember what month.
 18 **Q. Did you have any enforcement experience**
 19 **with that law?**
 20 A. No, because we already had California
 21 law in place which was actually more stringent than
 22 the national law as I recall.
 23 **Q. In terms of the capacity, was it less**
 24 **than 10?**
 25 A. I don't think they had a capacity limit

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1 at that time. I think it encompassed more models or
 2 design characteristics. It didn't supersede federal
 3 law, but it preceded federal law.
 4 **Q. What about that -- did you have any**
 5 **experience in enforcing a magazine capacity limit?**
 6 A. No.
 7 **Q. Okay. So to your knowledge, when you**
 8 **were an officer, there was no such limit in place?**
 9 A. That's correct.
 10 **Q. Okay. What laws have you enforced in**
 11 **the State of Colorado?**
 12 A. None.
 13 **Q. Okay. And that's because you've never**
 14 **been a law enforcement here in the State of Colorado?**
 15 A. That's correct.
 16 **Q. Before the break you talked about some**
 17 **conversations you suggested that you've had with**
 18 **Colorado law enforcement officers? Did I remember**
 19 **that correctly?**
 20 A. I said that I've been lucky enough to
 21 interact with them, Colorado law enforcement, and
 22 participated in a few events. I know some of them and
 23 trained with a few of them and a couple have been
 24 customers.
 25 **Q. Have you had conversations with these**

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1 **individuals about their actual experiences in -- of**
 2 **enforcing laws in Colorado?**
 3 A. Enforcing the law in general? Or a
 4 specific law?
 5 **Q. In general, if you can answer.**
 6 A. I don't recall having that specific
 7 conversation.
 8 **Q. Do you remember anything about a**
 9 **conversation with the Colorado law enforcement officer**
 10 **that you may have had that -- about a specific law as**
 11 **far as issues within enforcement that had arisen from**
 12 **the officer's perspective?**
 13 A. No. The conversations that I can recall
 14 may have involved descriptions of arrest that they had
 15 made or calls that they had responded to. Most of the
 16 time, you know, I'm -- I'm concerned or interested in
 17 calls involving the deployment of firearms and what
 18 kind of firearms training they're using and how their
 19 equipment worked in terms of responding to calls that
 20 would involve the use of force or might not have
 21 involved force, but involved the deployment of a
 22 firearm. I don't recall any conversations that really
 23 centered around difficulty enforcing any particular
 24 law.
 25 **Q. Do you have any knowledge about the**

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1 **enforcement of House Bill 1224 by law enforcement**
 2 **officers in Colorado?**
 3 A. Do I have any specific knowledge
 4 about --
 5 MR. COLIN: Overbroad. Go ahead.
 6 A. Only what I've read in some of the
 7 documents, the Court documents that I mentioned
 8 earlier.
 9 **Q. (BY MR. FERRO) Okay.**
 10 A. That have been -- some of the responses
 11 by the sheriffs.
 12 **Q. Okay. Have you personally talked with**
 13 **any Colorado law enforcement officers about the**
 14 **enforcement of 1224?**
 15 A. Before the law was passed, I may have --
 16 I'm sure that I had a conversation or two with law
 17 enforcement officers about the potential difficulties
 18 of enforcing the law.
 19 **Q. Can you recite any specifics from those**
 20 **conversations and who they were with?**
 21 A. I don't recall which.
 22 **Q. Did you rely on those conversations when**
 23 **you formed your opinions in this case?**
 24 A. No.
 25 **Q. So is it fair to say that your opinions**

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1 **in this case were not based on any personal knowledge**
 2 **that you have of the enforcement of 1224 in Colorado?**
 3 A. Well, my opinions about the enforcement
 4 have to do with all the training and experience and
 5 all my expertise and all that other stuff that we
 6 discussed earlier that I'm applying in the same way
 7 that we applied it to the other stuff that we
 8 discussed, the to be -- "designed to be and readily
 9 converted." All that training and knowledge and
 10 experience, background in law enforcement, all of that
 11 stuff applied to the language of 1224 is what leads me
 12 to that conclusion.
 13 **Q. Right. I appreciate that and I'm not**
 14 **trying to diminish any of that. I want to see if --**
 15 **it sounds like you don't have any personal knowledge**
 16 **of the actual enforcement of 1224 in Colorado; is that**
 17 **correct?**
 18 MR. COLIN: Foundation.
 19 A. I'm not aware that 1224 has been
 20 enforced. I don't know that anybody has been able to
 21 enforce it or has enforced it in Colorado.
 22 **Q. (BY MR. FERRO) Or that they are or**
 23 **aren't, correct?**
 24 A. Or that they are --
 25 **Q. Or that they aren't able to?**

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1 A. I would love to see some documentation
 2 about an enforcement of 1224. If you have that, I
 3 would be very curious to see it.
 4 **Q. What documentation have you seen either**
 5 **way about actual enforcement of 1224?**
 6 A. That's my point, there doesn't seem to
 7 be any documentation to reflect there's been any
 8 enforcement or that there's an ability to enforce it
 9 by anybody.
 10 **Q. Did you look for such documentation when**
 11 **you prepared your report?**
 12 A. I did ask.
 13 **Q. Who did you ask?**
 14 A. I asked counsel.
 15 **Q. Did you ask anyone else?**
 16 A. I'm not sure who else I would ask, so
 17 the answer is no.
 18 **Q. I mean, did you didn't call any of the**
 19 **sheriffs' offices in the state?**
 20 A. Personally, no, I did not.
 21 **Q. Okay. Or city police departments?**
 22 A. No.
 23 **Q. Okay. Do you have any opinion, then**
 24 **that, any enforcement of 1224 in Colorado has been**
 25 **subjective?**

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1 MR. COLIN: I'm sorry?
 2 **Q. (BY MR. FERRO) Now, do you have any**
 3 **opinion that the enforcement, if any, of 1224 in**
 4 **Colorado has been subjective?**
 5 MR. COLIN: Foundation.
 6 A. I think I answered I'm not aware of any
 7 enforcement.
 8 **Q. (BY MR. FERRO) So you wouldn't be able**
 9 **to answer that?**
 10 A. Correct.
 11 **Q. Okay. That is something that you, in**
 12 **your opinion, you believe that enforcement would be**
 13 **subjective, correct? Isn't that something you put in**
 14 **your report?**
 15 A. That's one of my concerns is that it's
 16 so vague and ambiguous that there's no -- I think you
 17 used a term, I really like, a clear, bright line.
 18 There is no clear, bright line in 1224 that would
 19 remove that subjectivity.
 20 **Q. You gave a hypothetical in your report**
 21 **about someone who was picked for a traffic stop just a**
 22 **few miles away from one of the contiguous borders that**
 23 **we share with the other states that don't have**
 24 **magazine limits. Do you know what I'm talking about?**
 25 A. Yes.

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1 **Q. I believe that you raised a concern that**
 2 **what if there's a high capacity magazine sitting in**
 3 **plain view during a traffic stop, and that there would**
 4 **be enforcement issues with that, correct?**
 5 A. Well, it's a little bit more complicated
 6 than that, but that's -- I think that's the start of
 7 it, yes.
 8 **Q. I just want to ask if you have any**
 9 **knowledge of something like that actually happening.**
 10 A. I don't, because, as I said earlier, I'm
 11 not aware of there being any enforcement activity
 12 that's occurred.
 13 **Q. And then you talked about a hypothetical**
 14 **of someone inheriting high capacity magazines, do you**
 15 **recall that as well?**
 16 A. Yes.
 17 **Q. And then there could be a criminal issue**
 18 **upon that -- the actual death of the owner?**
 19 A. Yes.
 20 **Q. Do you have any knowledge of that**
 21 **actually happening?**
 22 A. I have knowledge of it happening in
 23 California where there was a similar prohibition on
 24 certain types of firearms. Are you suggesting that
 25 people that own magazines that have a capacity of more

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1 than 15 rounds don't die?
 2 **Q. I'm just suggesting if you have any**
 3 **knowledge of a criminal -- someone who has actually**
 4 **been cited or arrested, something in that nature, for**
 5 **violating House Bill 1224 after their spouse, who**
 6 **owned high capacity magazines, passed away?**
 7 A. Just because it hasn't happened yet,
 8 doesn't mean that it cannot happen because the law,
 9 the way that it's written, will make that reality.
 10 That's -- that's not a subjective assessment. There's
 11 no exception in the law for that situation that you
 12 described. So it's inevitable that someone eventually
 13 who owns a magazine that has a capacity of more than
 14 15 rounds will die.
 15 **Q. Is it inevitable that an officer will**
 16 **cite that person?**
 17 MR. COLIN: No, they'll be dead.
 18 A. What's inevitable is that whoever comes
 19 into possession of that -- of that single or multiple
 20 magazines that are in violation will be technically in
 21 violation. They will be -- they'll be a criminal by
 22 definition. That's the problem with the law.
 23 **Q. (BY MR. FERO) In your opinion?**
 24 A. It's not opinion. It's part of the
 25 code. That's what a law is. That means -- just

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1 because you don't get caught for doing it doesn't make
 2 it legal.
 3 **Q. Are you aware of any instance in which,**
 4 **this is all I'm really asking, such an inheritor has**
 5 **been charged or arrested, cited for a violation of**
 6 **House Bill 1224?**
 7 A. As I stated earlier, Counselor, I'm not
 8 aware that anybody has been able to effectively
 9 enforce this section.
 10 **Q. All right. So your report is dated**
 11 **August 1, correct?**
 12 A. Yes.
 13 **Q. All right. And that is approximately**
 14 **one month after this House Bill 1224 took effect,**
 15 **right?**
 16 A. Yes.
 17 **Q. I've already asked you about your**
 18 **knowledge about actual enforcement, but I want to make**
 19 **sure I'm clear. Did you take any -- I'm sorry. I**
 20 **would like to ask you did you take any efforts to --**
 21 **before you finalized your report on August 1, did you**
 22 **take any efforts to see how 1224, if at all, was being**
 23 **enforced in Colorado. I think you said you asked**
 24 **counsel, correct?**
 25 A. I did. I asked counsel before I

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1 completed the report, and I've asked counsel before
 2 the deposition. There seems to be no -- there's no
 3 documentation that anybody has been able to enforce
 4 1224.
 5 **Q. You sent out questions to some of the**
 6 **plaintiff FFLs in this case; is that correct?**
 7 A. I sent them to counsel.
 8 **Q. Okay. Would you just -- why don't**
 9 **we -- rather than me stumble with leading questions,**
 10 **would you please explain how that came about and what**
 11 **you did?**
 12 A. I wish I had a list of questions in
 13 front of me.
 14 **Q. Let's talk about the process. I do have**
 15 **them and I'm going to give them to you in just a**
 16 **minute.**
 17 A. I wrote those questions out as I was
 18 working my way through the development of my opinions.
 19 I thought it would be helpful for me to know -- this
 20 was a way for me to gather some data and see whether
 21 or not it squared up with my evaluation that 1224
 22 would prohibit the sale of certain firearms within the
 23 State of Colorado, and, of course, if it directly
 24 affected and how it affected the plaintiffs in this
 25 case.

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1 **Q. I think you said you went through**
 2 **counsel?**
 3 A. Yeah. I submitted the questions to
 4 counsel. They forwarded them on and then they
 5 forwarded the answers back to me.
 6 (Deposition Exhibit 2 was marked.)
 7 **Q. Mr. Shain, you've now been handed what's**
 8 **marked as Exhibit 2. Do you recognize this document?**
 9 A. Yes.
 10 **Q. What is this document?**
 11 A. This is a list of questions that I
 12 drafted that I then submitted to counsel.
 13 **Q. Okay. And do you also see any responses**
 14 **to those questions in this -- in this exhibit?**
 15 A. Yes, there's some copies of the
 16 plaintiffs' responses that are attached here.
 17 **Q. Okay. And, Mr. Shain, I will represent**
 18 **that I endeavored to provide you today with exactly**
 19 **what was provided to me by counsel. So if you would**
 20 **take a moment and confirm for me that all the**
 21 **questions that you submitted are on there and that**
 22 **every -- well, why don't we start with that. Are all**
 23 **the questions that you asked represented there?**
 24 A. Yes, as far as I know. This has been
 25 copied over into a letter form. This was the way I

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1 drafted it. The original questions were just the 1
 2 through 11 questions.
 3 **Q. Do you have any reason to believe that**
 4 **you submitted questions that counsel did not pass on?**
 5 A. I don't recall there being any other
 6 questions, no.
 7 **Q. If you would, continue on, it appears to**
 8 **me that there are included here the actual responses**
 9 **that were received. Can you confirm for me that all**
 10 **of the responses that you received are printed here in**
 11 **this exhibit?**
 12 A. As far as I recall, yes.
 13 **Q. Thank you. Mr. Shain, can you -- can**
 14 **you specify, did you receive how many -- from how many**
 15 **plaintiff FFLs did you receive responses? Because I**
 16 **tried to count it and I was confused if one of these**
 17 **was the same individual twice.**
 18 A. This seems to be out of order. Hang on
 19 a second here. The first page starts with a
 20 number -- I'm sorry, these are the continuation of my
 21 questions. That's why I'm looking at the wrong
 22 numbers, so I have one answer from a plaintiff. I
 23 have two from a plaintiff. I have three from a
 24 plaintiff. I have four from a plaintiff and then I
 25 have a follow-up to the fourth plaintiff.

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1 MR. COLIN: You missed one.
 2 MR. FERRO: What was that, Mr. Colin?
 3 MR. COLIN: He missed one.
 4 THE DEPONENT: I did? Is there five?
 5 MR. COLIN: Brough, Stehman -- Stehman,
 6 S-t-e-h-m-a-n. And you got Schultz, and then you
 7 have, at the top of this next page, Comegys.
 8 THE DEPONENT: That's three.
 9 MR. COLIN: And then in the middle --
 10 no. That's four.
 11 THE DEPONENT: That's four. I'm sorry.
 12 MR. COLIN: Brough is one. Schultz is
 13 two. Stehman. So you got Brough, one; Stehman, two;
 14 Schultz, three; Comegys, four; Burrud, five, and then
 15 a follow-up from Burrud. At least that's how I count
 16 these.
 17 MR. FERRO: Thanks, Mr. Colin.
 18 **Q. (BY MR. FERRO) Do you agree with -- with**
 19 **counsel's count of five responses?**
 20 A. Five, yeah, now I've got them. Now.
 21 Sorry.
 22 **Q. All right. Do you know how many FFLs**
 23 **are plaintiffs in this case?**
 24 A. I'm sure it's part of my file. I don't
 25 recall.

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1 **Q. So you don't know if it's more than**
 2 **five?**
 3 A. I don't recall right now.
 4 **Q. Okay. And do you know if any of**
 5 **the -- was this sent to all of the plaintiff FFLs?**
 6 A. I don't know.
 7 **Q. And then you don't know -- do you know**
 8 **if all the plaintiff FFLs who received it responded?**
 9 A. These are the responses I got. That's
 10 all.
 11 MR. COLIN: I will state for the record
 12 that all responses that we received from our FFLs were
 13 passed along to you, to both of you.
 14 MR. FERRO: Thank you.
 15 **Q. (BY MR. FERRO) All right. And at the**
 16 **time of that -- the top of the page you see where it**
 17 **says -- it refers to this as a survey of practices?**
 18 A. Yes.
 19 **Q. Is that your term?**
 20 A. Yes.
 21 **Q. Okay. Why do you call this a survey?**
 22 A. I'm not sure what else to call it.
 23 **Q. Okay. Fair enough. What does a survey**
 24 **mean to you?**
 25 A. It means that when asking a group of

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1 people the same questions and getting back a group of
 2 responses.
 3 **Q. Have you done surveys like this before?**
 4 A. I've done surveys before that are --
 5 have to do with training issues. I haven't done a
 6 survey regarding FFL issues like this. I've done, you
 7 know, surveys that have to do with my law enforcement
 8 customers, what type of firearms they use, what type
 9 of ammunition do they use, what kind of training do
 10 they do, how many times a year do they do it. You
 11 know, specifics about that sort of -- those sorts of
 12 things.
 13 **Q. Have you received any training in**
 14 **statistics?**
 15 A. Other than high school statistics,
 16 probably not.
 17 **Q. Okay. How about statistical analysis?**
 18 A. Again, whatever I remember taking a
 19 statistics class in high school and that's all I can
 20 recall. I'm not sure what exactly the curriculum was
 21 back then.
 22 **Q. Fair enough. You relied on these**
 23 **responses; is that correct?**
 24 A. Yes.
 25 **Q. You formed opinions based on these**

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1 **responses?**
 2 A. I think it's -- it's more correct to say
 3 that they supported my opinions.
 4 **Q. Okay. You -- was it true to say your --**
 5 **that the support had been formed before you read these**
 6 **responses?**
 7 A. I was in the process, I think, of
 8 confirming my -- my understanding of my beliefs about
 9 some of these issues, and, so, again, I'll repeat it
 10 that they supported my opinion. I don't know that my
 11 opinion was fully developed or had evolved.
 12 **Q. Did the survey responses confirm your**
 13 **opinion?**
 14 A. They confirmed some of my opinions.
 15 **Q. Specifically what did they confirm?**
 16 A. Well, for example, gunsmith and milling
 17 machine questions had to do with the readily converted
 18 issue. The access to the kind of technology tools and
 19 working knowledge that would allow somebody to make an
 20 extension from scratch. That's what those first
 21 couple of things had to do with.
 22 **Q. Anything else?**
 23 A. The questions about number four that
 24 have to do with malfunctions supported one of the
 25 opinions that I already had an opinion. It just

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1 confirmed that they had -- they had experienced the
 2 same issues that I had in terms of gunsmiths working
 3 on guns that have malfunctions and that the magazines
 4 are an integral part of that system and need to be
 5 evaluated as the overall function of the gun is
 6 evaluated. In other words, we've got to have the
 7 magazines with the gun in order to work on the gun and
 8 repair the gun, function check the gun, test fire the
 9 gun and that helped to confirm that they're doing the
 10 same thing that I'm aware of most gunsmiths are --
 11 that's common what gunsmiths do.
 12 **Q. Anything else?**
 13 A. Sure. The number five has to do with
 14 the prevalence of semi-automatic firearms that used
 15 detachable magazines compared with other types of more
 16 traditional -- I think I refer to them as old school,
 17 in the report. The overwhelming trend towards
 18 semi-automatic handguns for sporting purposes, that
 19 helped confirm that. And number six was a question
 20 about that had to do with confirming that magazines as
 21 a separate entity after market or factory magazines
 22 are a common commodity for firearms dealers to stock
 23 and sell to their customers as a separate item, not
 24 necessarily the ones that come with the firearm that
 25 they're selling.

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1 **Q. That's the one I was kind of interested**
 2 **in.**
 3 A. Which one?
 4 **Q. The one you just talked about.**
 5 A. Number six?
 6 **Q. Yeah, about whether they like the M-16**
 7 **pistol you talked about earlier. Is that in this**
 8 **category?**
 9 A. You're looking at seven.
 10 **Q. Oh, I am. Sorry.**
 11 A. Number seven is fascinating because it
 12 confirms, you know, what my experience and training
 13 and personal knowledge tells me is that for firearm
 14 systems that were designed with a capacity of more
 15 than 15 rounds came from the factory that were
 16 literally designed around that capacity. It's very
 17 uncommon to find a magazine that has a smaller
 18 capacity that will fit into the firearms, so the
 19 response from these FFL dealers confirmed what I
 20 already knew and what I already believed. I wanted to
 21 see how universal it was, and it appeared to be that I
 22 was correct.
 23 **Q. Let me stop you right there, Mr. Shain.**
 24 **I'm trying to be sensitive about time and I wanted to**
 25 **ask you about the process of this. How did you go**

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1 **about deciding who you would send these questions to?**
 2 A. I didn't go about deciding. I sent them
 3 to counsel.
 4 **Q. Did you tell counsel who you wanted them**
 5 **to be sent to?**
 6 A. To the FFL plaintiffs.
 7 **Q. Okay. How did you decide that you would**
 8 **send the questions to the FFL plaintiffs?**
 9 A. Because they're the ones that would have
 10 the answers to these questions.
 11 **Q. Do you think that this is a**
 12 **representative sample of all the FFLs in Colorado?**
 13 A. I think it's a representative sample of
 14 the FFL plaintiffs in this case. That's what I was
 15 looking for.
 16 **Q. What about all FFLs in Colorado?**
 17 A. I don't know. I didn't send a survey to
 18 all of them.
 19 **Q. Do you think this sample is**
 20 **representative of all the FFLs in Colorado?**
 21 A. I do.
 22 **Q. Why do you think that?**
 23 A. Because of the consistency of the
 24 responses, because of my own personal training and
 25 knowledge and experience in the industry. And if I

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1 could just for one second, and I know in the interest
 2 of time, I don't want to elaborate too much, but as
 3 part of my work in products liability cases, I spent
 4 many years studying the industry, not as a casual
 5 observer, but looking specifically at practices, at
 6 designs, at function and all those things. Not just
 7 in a limited way. But, for example, I go to the
 8 biggest trade show in the industry every year for the
 9 express purpose of doing research on those issues. I
 10 did that for many years in connection with my work in
 11 the products liability area.
 12 Since becoming a dealer and
 13 manufacturer, I have another reason to do that same
 14 kind of research, so when you ask me is this
 15 representative, I don't think it's just representative
 16 of Colorado, which we're specifically talking about, I
 17 think representative of the industry.
 18 **Q. You do?**
 19 A. I do.
 20 **Q. Okay. I'm just going to ask you about**
 21 **Colorado today. Do you know how many FFLs there are**
 22 **in Colorado?**
 23 A. I don't. I've heard the number of 1,000
 24 used, but I can't confirm that.
 25 **Q. And would you have any reason to**

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1 **question my representation that it's at least 1,661?**
 2 A. No.
 3 **Q. Okay. Does that sound totally off base**
 4 **to you?**
 5 A. No, I wouldn't dispute that at all.
 6 **Q. Your query involved a total of five of**
 7 **those FFLs, correct?**
 8 A. Yes.
 9 **Q. And that would actually be less than**
 10 **half a percent of the total, correct?**
 11 A. Half a percent?
 12 MR. COLIN: Want a calculator?
 13 A. It would be like a third of a percent.
 14 **Q. (BY MR. FERRO) So that's less than half.**
 15 **.3 percent?**
 16 A. You're correct. It is less than half.
 17 **Q. Is that a statistically significant**
 18 **percentage to you?**
 19 A. That's not the significance of this
 20 survey. Significance of the survey was to find out
 21 what the impact was on the plaintiffs in this case.
 22 **Q. I appreciate that. But you just said**
 23 **that you thought it was representative not just of**
 24 **Colorado FFLs, but the national market.**
 25 A. You asked me.

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1 **Q. Right. That's fine and I want to know,**
 2 **then, if you think that less than half of 1 percent of**
 3 **all Colorado FFL being sampled, if that's a**
 4 **statistically significant percentage?**
 5 MR. COLIN: Asked and answered.
 6 A. I don't even know how to -- I think I
 7 have to say again that it wasn't intended to be a
 8 broad statistical analysis of all the FFLs in
 9 Colorado. But if you ask me if -- if it's my opinion
 10 that this is reflective of many, if not most FFL
 11 dealers, that are engaged in a similar type of
 12 business as these plaintiffs, I would have to answer
 13 yes, my opinion is that it is.
 14 **Q. (BY MR. FERRO) Did you talk with these**
 15 **respondents?**
 16 A. No.
 17 **Q. How did you verify their responses?**
 18 A. I had to rely on counsel's
 19 representation that these responses came from them. I
 20 have no reason to doubt that.
 21 **Q. Did you visit their stores?**
 22 A. No.
 23 **Q. Examine their inventory?**
 24 A. No.
 25 **Q. Financial records?**

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1 A. No.

2 **Q. Did you talk with any other FFLs in**

3 **Colorado about these questions?**

4 A. Let me back up. The financial -- some

5 of their financial information is disclosed in their

6 responses to those interrogatories. But that was, of

7 course, after I wrote the report.

8 **Q. Okay. And those are just summations,**

9 **correct?**

10 A. Yeah.

11 **Q. Did you look at actual financial**

12 **documents?**

13 A. No, I did not.

14 **Q. Now, if I just expanded it then from the**

15 **plaintiff FFLs that responded here, I mean, if we**

16 **think about all the Colorado FFLs, did you talk with**

17 **any of them about these questions?**

18 A. I've talked with some other FFLs. I'm

19 trying to remember if there were.

20 **Q. Did you give them these questions?**

21 A. I didn't go through these same formal

22 questions with them. In terms of having

23 conversations, ongoing conversations with other FFLs I

24 know. Just for whatever business reasons I have

25 contact with them.

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1 **Q. Sure. Because you're an FFL.**

2 A. They've all expressed similar

3 difficulties because of -- because of many of these

4 same issues.

5 **Q. Okay. Is any of that documented?**

6 A. No, it's not.

7 **Q. Are you able to document that today?**

8 A. No, but I'd be happy to go back and do

9 that work if you feel that that's necessary for me to

10 present that.

11 **Q. You didn't feel it was necessary for**

12 **your report, correct?**

13 A. Now, because, again, my report focused

14 on the impact and business practices of the plaintiffs

15 in this case and you asked me whether or not I felt

16 was representative, and in my opinion, it is

17 representative.

18 **Q. I'm curious, and it sounds -- trying to**

19 **understand if you took any steps whatsoever to verify**

20 **that opinion.**

21 MR. COLIN: The opinion that you asked

22 him for the first time moments ago?

23 MR. FERRO: Uh-huh.

24 A. Again, I have to go back to the same

25 data pool that I relied on, all my experience, all of

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1 my contact in the firearms industry, all of my work in

2 the industry. And applying that same method to these

3 facts, to the facts of the case, the opinions that

4 this helped support this action, you know, remain the

5 same. These are the plaintiffs' responses. I take

6 them to be accurate and I believe, based on all that

7 training, experience, my involvement in the firearms

8 industry, and, again, I think I mentioned earlier, I

9 get all the publications known to man from the

10 industry, all the wholesale catalogs, all the, you

11 know, the sales data, advertising data and all of that

12 goes into my opinion in this particular matter.

13 **Q. (BY MR. FERRO) Mr. Shain, can you tell**

14 **me what field of study that it would be generally**

15 **acceptable to support expert opinions on responses**

16 **that encompass less than a half a percent of the**

17 **population?**

18 MR. COLIN: Foundation, argumentative.

19 A. I don't know.

20 **Q. (BY MR. FERRO) Do you know what field of**

21 **study it would be generally accepted to support**

22 **expert's opinions on responses where no effort has to**

23 **be made to control bias?**

24 MR. COLIN: Foundation, argumentative.

25 A. I think what you're asking is did I do

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1 anything to verify the validity of these responses or

2 would I know or would I believe that that should have

3 been done? Is that what your question is?

4 **Q. (BY MR. FERRO) That's not what I asked**

5 **you.**

6 A. I'm sorry, I misunderstood.

7 **Q. You testified, I believe, that you had**

8 **been a dealer FFL since approximately 2004?**

9 A. I think so. I think that's when I got

10 my dealer FFL. May have been 2002.

11 **Q. I said approximately because you were**

12 **not being -- you wanted to make sure you weren't being**

13 **held to that date.**

14 A. I could produce the original FFL and

15 check the date.

16 **Q. That's okay. You've been a manufacturer**

17 **FFL since approximately 2010?**

18 A. I believe I got the manufacturing FFL in

19 the spring of 2010.

20 **Q. How long have you done gunsmith work?**

21 A. I've been an armorer since my tenure in

22 law enforcement, since the mid-eighties. I'd say that

23 kind of transitions to gunsmithing when I took over

24 the law enforcement for Mossberg & Sons, which was in

25 2008. I was actually doing gunsmithing before that,

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1 because, as a dealer, one of the reasons I got my
 2 dealer's license was so that we -- that I could modify
 3 and prepare law enforcement guns for law enforcement
 4 clients. Now, that's -- that's probably the beginning
 5 of gunsmithing work.

6 **Q. Okay. I want to ask you about high**
 7 **capacity magazines, and I'm going to use -- I'm going**
 8 **to tell you that my definition of that for the**
 9 **purposes of these questions is a magazine that without**
 10 **any conversion is capable of accepting -- it will hold**
 11 **more than 15 rounds of ammunition. Does that make**
 12 **sense to you?**

13 A. No. I can't adopt your characterization
 14 that they're high capacity magazines. Many commercial
 15 available firearms come standard from the manufacturer
 16 with magazines of 15 rounds and more. So I --

17 **Q. Correct.**

18 A. -- I'm not going to adopt the
 19 characterization that they're high capacity magazines.

20 **Q. Not even for the purposes of answering**
 21 **my questions? I'm not asking you to take a position**
 22 **on the law on that.**

23 A. No. I'm really uncomfortable with that
 24 description. Can you just describe them as magazines
 25 that accept more than 15 rounds?

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1 **Q. Just make it a little longer to ask.**
 2 **We've already used the time. Okay. How many**
 3 **firearms -- excuse me, how many magazines that are**
 4 **capable of accepting more than 15 rounds have been**
 5 **brought to you for repair as gunsmith in the year**
 6 **2012?**

7 A. In the year 2012? I'm going to be
 8 estimating. Six.

9 **Q. How does that compare with previous**
 10 **years?**

11 A. It may vary a few. Maybe more than six,
 12 maybe eight or nine. It may vary between, you know,
 13 maybe anything from five or six to 10 or 12, I would
 14 say somewhere, you know, in that range, although
 15 that's primarily because I don't advertise for a lot
 16 of that sort of work. That's about to change. That's
 17 not primarily my area of specialty. As you mentioned,
 18 you looked at my website. You can see we don't
 19 advertise for a lot of those type of firearms, but I
 20 have a number of them that I use it for my range
 21 classes.

22 I stock a lot of semi-automatic handguns
 23 that I allow my students to use, and I also deal with
 24 a lot of semi-automatic handguns in the product
 25 liability cases that I work with, so I handle and

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1 disassemble, and a lot of times test, function test
 2 and test fire, semi-automatic handguns with capacities
 3 of more than 15 rounds frequently.

4 **Q. I'm just asking you in terms of the**
 5 **number of people who have brought to you for repair**
 6 **and I'm only asking about magazines specifically.**

7 A. Guns with magazines or just magazines?

8 **Q. Just magazines. I want to ask you**
 9 **about guns with magazines.**

10 A. I misunderstood. I thought you were
 11 asking guns with magazines. That brought me just
 12 magazines?

13 **Q. Right.**

14 A. To repair? Zero.

15 **Q. Only -- okay. Magazines that are**
 16 **capable of accepting more than 15?**

17 A. Just the magazines? None.

18 **Q. Is that pretty much consistent**
 19 **throughout your time as gunsmith?**

20 A. No, I've had people bring magazines in.
 21 I can't remember what their capacity was as we speak
 22 right now. But I've had people bring magazines in and
 23 say, it needs a spring. I think -- I think it's
 24 damaged. The magazine. It needs a spring. I would
 25 like to replace this or I would like to see if this is

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1 still functional. I want to match this up. Will you
 2 order me three more like this.

3 **Q. About how many of those do you see a**
 4 **year?**

5 A. Like I say, I can't remember having one
 6 in 2012. I can remember getting a couple of
 7 semi-automatic firearms with magazines that had
 8 malfunctions and we had to have the magazines with
 9 them. But just the magazine, I don't remember any in
 10 2012.

11 **Q. What about previous years?**

12 A. In previous years, like I said, there
 13 have been periodically folks that say I have a problem
 14 with a magazine.

15 **Q. Sounds like it's not a regular stream of**
 16 **business for you?**

17 A. No, because people usually, because of
 18 the construction of magazines, because of the way
 19 they're designed and constructed to be disassembled by
 20 the enduser, most people are able to replace a spring
 21 or replace a follower, disassemble the magazine and
 22 clean it and maintain it on their own without the --
 23 without needing to bring it into a gunsmith to have
 24 that done.

25 **Q. How about the first six months of this**

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1 year, did you see any magazines capable of accepting
 2 more than 15 rounds for repair?
 3 A. No.
 4 Q. Did you see any firearms in the first
 5 six months of this year that were equipped with
 6 magazines capable of more than 15 rounds for repair?
 7 A. Yes.
 8 Q. How many?
 9 A. Three that I can think of.
 10 Q. Have you seen any since July 1?
 11 A. No.
 12 Q. Do you have any knowledge as to how
 13 other gunsmiths in Colorado would answer these
 14 questions?
 15 MR. COLIN: Which questions?
 16 Q. (BY MR. FERRO) About how many people are
 17 bringing in -- how many magazines or firearms equipped
 18 with magazines holding more than 15 rounds are being
 19 brought to them for repair.
 20 A. We could ask them.
 21 Q. Well, okay. Fair enough. But have
 22 you -- do you have any knowledge as to that?
 23 A. I haven't asked them.
 24 Q. Okay. So that would be no?
 25 A. (Deponent nodded head up and down.)

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1 Q. Okay. Thank you. All right. Again, we
 2 established that your report was dated August 1.
 3 Mr. Shain, do you know when you completed, finalized
 4 your report, when that was?
 5 A. Probably the day before or that day. I
 6 had very little time to write the report.
 7 Q. Understood.
 8 A. I think I was retained on the 17th of
 9 July, so I worked right up until the deadline.
 10 Q. Did you prepare any drafts of your
 11 report?
 12 A. I don't ordinarily do drafts. I do kind
 13 of a working copy and make the changes as I go. I
 14 don't really save any of those changes.
 15 Q. Good idea.
 16 A. That seems to be a standard practice.
 17 Q. Did lawyers tell you that at one point
 18 in time? You don't have to answer that. I'm only
 19 kidding.
 20 All right. Mr. Shain, in the documents
 21 that you list in the report that you looked at and
 22 that supported your opinions, you list both technical
 23 guidance letters that were issued by the Attorney
 24 General; is that correct?
 25 A. Yes.

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1 Q. And specifically you list them as items
 2 that support your opinions and conclusions, is that
 3 what it says?
 4 A. I believe so without looking at my
 5 report, but, yes, I don't have any reason to doubt
 6 that.
 7 Q. I have copies, at least of this. I
 8 apologize I didn't have 1224.
 9 A. That's okay.
 10 Q. This item has been marked as Crone
 11 Deposition Exhibit 1 and 2.
 12 Q. Mr. Shain, do you have those marked
 13 Exhibits 1 and 2 from the Crone deposition in front of
 14 you?
 15 A. I do.
 16 Q. And, again, you're familiar with these
 17 two letters, correct?
 18 A. Yes.
 19 Q. You've read them before?
 20 A. Yes.
 21 Q. Turning to the May 16, 2013 letter. How
 22 does this letter support your opinions in the report?
 23 A. These two documents really are
 24 inter-related, so let me start with the one that you
 25 cited, which was the May 16, and there's a -- there is

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1 a discussion here in the definition of large capacity,
 2 in quotation marks, magazine that appears to be an
 3 attempt to describe the meaning of the term "designed
 4 to be converted" or specifically says large capacity
 5 magazine, not designed to be converted that is almost
 6 as vague and ambiguous and unhelpful as the original
 7 1224, but what's more significant is that the Office
 8 of the Attorney General on July 10 gave me what you
 9 marked as Exhibit 2, which then goes on to say in
 10 number one of that technical guidance, that technical
 11 guidance one and 1224 are totally incorrect. That, in
 12 fact, the Office of the Attorney General has
 13 re-defined what the law is and it's completely
 14 opposite of what 1224 says.
 15 1224 discusses magazines. Technical
 16 guidance two talks about something that you add to a
 17 magazine as being what's prohibited. And this is the
 18 definition -- this proves -- technical guidance two is
 19 actually one of the best examples of why 1224 is so
 20 ambiguous and so difficult to understand and
 21 impossible to enforce because it -- it actually
 22 completely contradicts the language of 1224. What
 23 could be more demonstrative of how flawed 1224 is in
 24 its description of "designed to be readily converted"
 25 or if you break them into two parts like I did

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1 earlier.

2 As one complete phrase, technical

3 guidance two on July 10 essentially says, oh, no, 1224

4 is completely wrong. It's not the magazine. It has

5 nothing to do with the magazine. It's some other

6 thing, something else completely, so that -- that's my

7 point in including these as part of my support for my

8 opinion, that 1224 is vague, ambiguous, confusing and

9 it's a disaster.

10 **Q. Would you agree with me that both of**

11 **these letters purport to interpret House Bill 1224?**

12 A. The word interpretation is used in

13 the -- in the notation at the top of the technical

14 guidance letter. It says, "Additional technical

15 guidance on the interpretation and application of

16 House Bill 13-1224, large capacity magazine ban," but

17 it really isn't. It's not technical and it's not

18 guidance. It really says, Hey, ignore 1224. It's

19 meaningless. It's not about the magazine.

20 **Q. Mr. Shain, if 1224 was stated as this**

21 **paragraph 1 is stated --**

22 MR. COLIN: You're using number two,

23 Exhibit 2?

24 MR. FERRO: Yes.

25 **Q. (BY MR. FERRO) You follow me? If**

202

1 **that's -- if the law were phrased the way that**

2 **paragraph 1 is phrased here, would your opinions in**

3 **this case be any different?**

4 A. But it's not.

5 **Q. I grant you that.**

6 A. That's a hypothetical situation which I

7 have not been asked to opine on and I hate to

8 complain. You're asking me to make up stuff on the

9 fly here. Certainly some of my opinions would not

10 change because it doesn't change some of the -- some

11 of the subset opinions, but this is not about

12 magazines. So I guess my opinions wouldn't

13 necessarily have to change because a lot of my

14 opinions are about the language of 1224.

15 **Q. Right. Excuse me.**

16 A. You okay?

17 **Q. I think so. This technical guidance**

18 **letter, the second exhibit states that "magazines with**

19 **the capacity of 15 or fewer rounds are not large**

20 **capacity magazines as defined in HB-1224 whether or**

21 **not they have removable base plates." Did I read that**

22 **correctly?**

23 A. Yes.

24 **Q. It goes on to state, "The base plates**

25 **themselves do not enable the magazines to be**

203

1 **expanded."**

2 A. What does? I'm sorry, I'm not supposed

3 to ask questions. I apologize.

4 **Q. I want to ask you if you agree with this**

5 **statement from a technical perspective. The base**

6 **plates themselves do not enable the magazines to be**

7 **expanded.**

8 A. Technically the base plates do not.

9 It's the flange on the magazine which does.

10 **Q. That enables?**

11 A. But it's the design of the base plate

12 and the flange together that enables the magazine to

13 be.

14 **Q. What about this last sentence in that**

15 **paragraph, "To actually convert them to higher**

16 **capacity, one must purchase additional equipment or**

17 **permanently alter their operation mechanically"; is**

18 **that correct as a technical matter in your experience?**

19 MR. COLIN: Vague.

20 A. It depends on what you mean by "purchase

21 additional equipment." Someone with the knowledge to

22 make it from raw materials might have everything they

23 need to make it and may not have to purchase anything.

24 They may be able to make it in the garage and stick it

25 on there.

204

1 **Q. Fair enough.**

2 A. Permanently alter. I guess it says or

3 permanently alter. It doesn't have to be permanently

4 altered. Again, this talks about something other than

5 the magazine. This description is saying it's

6 something that you add to the magazine. This

7 complicates things even further. In addition, like I

8 said, the perfect demonstration of the flaw in 1224.

9 One of the flaws of 1224. I'm not sure what you're

10 asking. If this were -- do I agree with this last to

11 actually convert them you must purchase additional

12 equipment. Well, that's not entirely true. Or

13 permanently alter them. They don't have to be

14 permanently altered because a lot of magazine

15 extensions can be removed and replaced and removed and

16 replaced and removed and replaced. So, again,

17 technically, there's -- they're pretty weak.

18 **Q. Now, if I remember correctly, we were**

19 **talking earlier about something that you say on page**

20 **17 in your report that 1224, as you read it, either**

21 **bans all magazines that have removable base plates or**

22 **none of them; is that correct?**

23 A. Depending on how that "designed to be"

24 is interpreted.

25 **Q. I think you said that you -- you were**

205

1 **not -- you were not able to opine one way or the other**
 2 **due to the language of the bill itself, correct?**
 3 A. No, I think what I said was that my
 4 opinion is that there's no objective criteria that I
 5 can point to on a magazine, lay them out on the table
 6 together and compare them. There's nothing that I can
 7 or a police officer can or an ordinary citizen can
 8 point to as some objective characteristic, so,
 9 unfortunately, that means that the only thing that's
 10 left is that they must all be banned because there's
 11 nothing -- there's no way to determine that they have
 12 been or have not been designed to be readily
 13 converted.
 14 **Q. Would you agree with me that this second**
 15 **exhibit here, this technical guidance letter dated**
 16 **July 10 purports to state that all of them are not**
 17 **banned?**
 18 A. With all due respect, sir, this is
 19 nothing. This is not binding. It's not law.
 20 **Q. That's not what I asked you. I'm asking**
 21 **would you agree that that's what it purports to state?**
 22 A. I think that's what the Attorney General
 23 is trying to say there that it's not the magazine.
 24 **Q. That it doesn't ban all of them with**
 25 **removable base plates?**

206

1 A. I think it says that it has nothing to
 2 do with the magazine at all, so, yes, it has nothing
 3 to do with magazines with removable base plates. It's
 4 not the magazine.
 5 **Q. That's what this letter purports to say,**
 6 **that is, the Attorney General's technical guidance?**
 7 A. That's what this paragraph says, yes.
 8 **Q. Thank you. If that is what the statute**
 9 **means -- I'll withdraw that.**
 10 **You wrote that "many" -- we talked about**
 11 **this briefly -- "Many of the earlier designs, such as**
 12 **revolvers, lever and pump actions are sometimes**
 13 **perceived as old school, old tech, less effective as**
 14 **defensive tools than semi-autos with detachable**
 15 **magazines"; is that correct?**
 16 A. Yes.
 17 **Q. That's on page 5 of your report. Do you**
 18 **believe that those are less effective as defensive**
 19 **tools than semi-autos with detachable box magazines?**
 20 A. Yes.
 21 **Q. Why is that?**
 22 A. Because the overall capability of a
 23 semi-automatic firearm with a magazine that can hold
 24 more than 16 rounds is a more effective defensive
 25 tool.

207

1 **Q. Any other reason?**
 2 A. It just simply is. It's the numbers.
 3 It has to do with the numbers.
 4 **Q. Any other reasons?**
 5 A. I'm not sure what you're referring to on
 6 any other reasons why I think that the -- they're a
 7 more effective defensive tool?
 8 **Q. Correct.**
 9 A. Again, that's -- that's an area that I
 10 really wasn't asked to opine about. I realize that I
 11 comment on it in the way you describe by describing
 12 some of those other firearms as old school and less
 13 effective. What we're talking about is semi-automatic
 14 firearms that -- that may be easier for people to
 15 function because they're able to hold more rounds of
 16 ammunition, they provide greater capabilities.
 17 In the case of semi-automatic rifles,
 18 they have a much larger sight radius, they are much
 19 easier to control, smaller-statured people have an
 20 easier time shooting them. Older folks that are
 21 weaker, folks that are left-handed, folks that may
 22 have been injured and only have the use of a single
 23 hand. There are a whole bunch of reasons why
 24 semi-automatic firearms with detachable box magazines
 25 are better and have more capabilities.

208

1 **Q. Do revolvers have any advantages against**
 2 **semi-automatic pistols with detachable box magazines?**
 3 A. Here is the way I would describe that,
 4 if you'll allow me. If you have a five or six shot
 5 revolver, and I have a 17 shot semi-automatic pistol,
 6 who is going to win that fight? That's what I would
 7 tell my clients. Now, there are -- are there reasons
 8 to carry a revolver? I'm sure that every individual
 9 has to make that determination based on their own
 10 specific needs, the application that they're looking
 11 at and lots of other criteria. But in a one to one,
 12 it's about the numbers. It's about surviving the
 13 fight and using every possible tool that you can. And
 14 when it comes to that, I'll go back to my analogy.
 15 I'm sorry. You're looking at me. It's
 16 about the one about you having the revolver. I'll
 17 switch it around. I don't want you to feel like I'm
 18 picking on you. If I have the revolver and you have
 19 the 17 or 18 round capacity pistol, you're going to
 20 win that fight. That's what it boils down to.
 21 **Q. How do you -- what makes you feel that**
 22 **way? I mean, do you base that on -- on what?**
 23 A. I'm sorry, Counsel, I don't mean to
 24 laugh. I really don't.
 25 **Q. It's okay. Is it your experience as a**

209

1 **law enforcement officer, can you point to something**
 2 **specific?**
 3 A. Sure I can. Hundreds of specific
 4 things.
 5 **Q. We better not go through all of those.**
 6 A. Very briefly. If you've ever carried a
 7 gun to defend yourself, you understand intuitively
 8 what that means. That's what it boils down to. When
 9 law enforcement selects a firearm system for their
 10 people, they do so in a very serious, somber, well-
 11 educated, extremely well-researched way. And the
 12 reason behind that is we want everybody to go home at
 13 the end of their shift. And to do that, we have to
 14 select a firearm system that's going to give them
 15 every possible advantage, every possible tool in their
 16 toolbox.
 17 Now, why wouldn't I do the same thing
 18 for my civilian clients or friends or family. And so
 19 that's the reason why -- that's what makes me feel
 20 that way because all those years of studying that
 21 problem and I can go through lots of, you know, events
 22 in law enforcement history that led up to law
 23 enforcement becoming very interested in very seriously
 24 researching and testing and evaluating these issues
 25 and deciding upon the highest capacity firearms that

210

1 can be carried and deployed in order to make sure that
 2 our people go home every night.
 3 That's what it's about and when you're
 4 in a fight for your life. You know, I apologize, but
 5 I think that it's very easy in an argument like this
 6 for you to trivialize what the real reason is behind
 7 using a gun for defensive purposes. It's because you
 8 want to stay alive. And at that point, you get the
 9 very best and the most that you can to make sure you
 10 stay alive.
 11 **Q. You write that "larger capacity magazine**
 12 **design is part and parcel of modern semi-automatic**
 13 **pistol design" on page 5; is that right?**
 14 A. Yes.
 15 **Q. What do you mean by that phrase, "part**
 16 **and parcel"?**
 17 A. Well, semi-automatic firearms have
 18 evolved from what I'll call limited capacity single
 19 stack magazines into double stack magazines with much
 20 larger capacity. And, again, this is an evolution of
 21 how much capability can we the firearms industry build
 22 into a highly portable firearm system that can be
 23 deployed for defensive use. That doesn't mean
 24 exclusive of guns that may have single stack magazines
 25 and smaller capacities, but, again, for those

211

1 situations where the maximum capability is what you're
 2 after, and that's the trend in the firearms industry
 3 is to develop smaller, more portable, more effective
 4 capability firearms, and part of that formula is as
 5 much capacity as can be carried within that envelope.
 6 **Q. Are most semi-automatic pistols supplied**
 7 **with standard magazines that hold more than 15 rounds?**
 8 A. That's a question that -- that's not a
 9 fair question because there are so many different
 10 types of semi-automatic firearms and so many different
 11 sizes that they vary from, you know, micro-compact
 12 guns all the way up to full size semi-automatic
 13 pistols. There's really not an answer to that and I
 14 don't have an answer to that question.
 15 **Q. Okay. What -- are you saying -- I mean,**
 16 **help me understand what you would specifically need to**
 17 **do to be able to provide an estimate.**
 18 A. For the person who wants a gun with
 19 maximum capabilities, the commonly available and used
 20 semi-automatic firearms, standard and large frame
 21 firearms armed with 15 rounds or more, and the trend
 22 is towards more than 15 rounds. It's usually 16 or
 23 17. Some of those guns are like the FN that we talked
 24 about earlier, 20 round magazines, and so for somebody
 25 who is going to use it for home protection or bedside

212

1 gun, in their car, on a camping trip, on a hiking trip
 2 where concealability is not their primary issue,
 3 that's the most common gun that I see being ordered
 4 and used, and I see that commonly in my range classes.
 5 Law enforcement obviously is carrying
 6 the firearms that have more than 15 rounds of
 7 capacity, very commonly, and the civilian market
 8 follows suit because they look at that process that
 9 law enforcement has gone through to select and why
 10 they've selected and they feel that they deserve the
 11 same.
 12 **Q. Have you seen any national sales**
 13 **figures?**
 14 A. I have. I think I mentioned earlier
 15 that I'll get you a copy of that article, but I
 16 periodically see things from various industry sources
 17 like National Shooting Sports Foundation and reports
 18 that come out from various industry sources that talk
 19 about national sales. A lot of them talk just about
 20 background checks.
 21 **Q. So I want to follow up with what you**
 22 **were just -- some of the things you were just talking**
 23 **about that if somebody was looking for and let me get**
 24 **the phrasing right. The person who wants a gun with**
 25 **the maximum capabilities. So I want to explore, then,**

213

1 **if I had two semi-automatic pistols, one of them would**
 2 **be supplied standard with a magazine that held 15 or**
 3 **less and the other one would be supplied standard with**
 4 **a magazine that held more than 15. Can you -- can you**
 5 **walk me through the different capabilities of these**
 6 **two firearms as they would be so equipped?**
 7 A. I really think that we're getting out
 8 of -- way out of what I was on -- asked to opine on.
 9 I'm not sure how that relates to the opinions in my
 10 report. I don't mean to be rude. I'm just -- I'm
 11 just saying that that's -- that's really outside of my
 12 area. I believe that there's some other experts that
 13 have talked about that in their reports and might be
 14 more appropriate to go into that with them.
 15 **Q. Is it outside your expertise?**
 16 A. I have expertise in a lot of different
 17 areas, but that's not what I was asked to --
 18 **Q. I appreciate --**
 19 A. -- work on the scope of work that I was
 20 asked to do in this particular case.
 21 **Q. I think, in my opinion, it is a fair**
 22 **question. I understand you may disagree with that, so**
 23 **I am going to persist in asking it.**
 24 A. Could you rephrase it?
 25 **Q. I'll restate it for you. Can you**

214

1 **compare the different capabilities of these two**
 2 **firearms, both of them are semi-automatics handguns,**
 3 **one of them is supplied standard with a magazine that**
 4 **holds 15 or less, the other one is supplied standard**
 5 **with a magazine that holds 15 or more?**
 6 A. I think I'll do it simply for you. One
 7 of them will go click when the other one is still
 8 going bang. That's it.
 9 **Q. What else?**
 10 A. That's the most direct and simple answer
 11 to that question.
 12 **Q. Okay. What about reliability, is there**
 13 **any difference?**
 14 MR. COLIN: Vague. Overbroad.
 15 A. I don't believe that I talk about
 16 reliability in my report, Counselor.
 17 **Q. (BY MR. FERO) You testified today that**
 18 **is one of your primary concerns.**
 19 A. Well, it is a primary concern in terms
 20 of my experience with working with magazines. That's
 21 one of the reasons that I'm so familiar with
 22 magazines' reliability, but I don't opine whether or
 23 not different capacity magazines, that there's any
 24 relationship between reliability in the same firearm
 25 system, of different capacity magazines, I don't

215

1 recall going into that area at all.
 2 **Q. Can you answer the question?**
 3 A. I'm really not comfortable. Again,
 4 you're asking me --
 5 **Q. Are you refusing to answer the question?**
 6 A. I'm not refusing to answer the question.
 7 What I'm saying is that I haven't done the work. I
 8 haven't -- I haven't given the appropriate amount of
 9 consideration to a question like that to give you an
 10 opinion that I'm comfortable with right now. I'm not
 11 trying to be rude.
 12 **Q. I understand. I don't want to make you**
 13 **uncomfortable, but I have to ask the questions that I**
 14 **think are fairly encompassed within the report and**
 15 **maybe we agree to disagree about that.**
 16 A. I opine about designed to be, readily
 17 converted and continuous possession, grandfather and
 18 some of those things, but I wasn't asked to sit down
 19 and give any thought to your -- the question that
 20 you're raising right now. Am I qualified to address
 21 that? I am. But I haven't been asked to do that and
 22 I'm not going to supplement my report with new
 23 opinions that have nothing to do with the scope of
 24 work I was asked to do.
 25 **Q. Are you prepared to answer that question**

216

1 **today?**
 2 MR. COLIN: Just so I'm clear, is the
 3 basic question whether 15 round and less magazines are
 4 as reliable as 16 plus?
 5 MR. FERO: I'm not leading it that way.
 6 I would like to characterize if there's any difference
 7 in reliability.
 8 MR. COLIN: I lost track of all of the
 9 question with all of the conversation. I'm trying to
 10 remember. If I'm not right about it --
 11 **Q. (BY MR. FERO) I'm not trying to put**
 12 **words in your mouth. I want to know from you being a**
 13 **firearms and magazine expert, because I'm not, and,**
 14 **frankly, you are the firearms and magazine expert for**
 15 **the plaintiffs in this case. It's you. Out of their**
 16 **four experts, you're the man. So my question is, is**
 17 **there any difference between the reliability of those**
 18 **magazines in those two different firearm systems that**
 19 **you can -- that you can point out, can you comment on**
 20 **that at all from your experience and knowledge?**
 21 A. If you're asking me the exact same
 22 firearms, two magazines both manufactured by the same
 23 manufacturer to the same specifications, I -- I have
 24 no reason to believe as we sit here today that there
 25 would be any reliability issues associated with

217

1 capacity.

2 **Q. The -- you referenced some national**

3 **specs, I think, at page 4 of your report?**

4 A. Which national specs are we talking

5 about?

6 **Q. Let me double-check this.**

7 A. Fourth paragraph?

8 **Q. Yes. Those standards, they apply to all**

9 **detachable box magazines?**

10 A. Yeah. These standards actually have to

11 do with the reliability of the magazine and the

12 firearm system. They're specifically about the

13 semi-automatic pistols that are referred to, but. . .

14 **Q. They're not limited to magazines of any**

15 **particular capacity, for example?**

16 A. No. Ordinarily they don't.

17 **Q. So under that situation we were talking**

18 **about, the two different capacity magazines are**

19 **supposed to meet the same national standards?**

20 A. Well, ideally, all magazines, no matter

21 what their capacity or application, would be perfectly

22 reliable. That's the result that we're all after.

23 **Q. Are there differences in reliability**

24 **amongst magazines?**

25 A. Oh, sure there are.

218

1 **Q. They vary from manufacturer to**

2 **manufacturer?**

3 A. Yes.

4 **Q. They vary within sizes, capacities, I**

5 **mean, you could have two different 17 round magazines**

6 **and they may not have the same exact reliability.**

7 A. I think that that's probably a fair

8 statement.

9 **Q. I mean, that's just the nature of the**

10 **variance and size of this particular market, is that**

11 **fair?**

12 A. Well, it depends on the quality of the

13 manufacturing process, and, as I said earlier, the

14 specifications of the magazine and all those other

15 factors.

16 **Q. Let's go off the record.**

17 **(Recess taken, 3:08 p.m. to 3:17 p.m.)**

18 **(Deposition Exhibit 3 was marked.)**

19 **Q. (BY MR. FERRO) Welcome back, Mr. Shain.**

20 **Did anything happen during the break that would have**

21 **affected your ability to understand my questions or**

22 **answer them truthfully?**

23 A. No.

24 **Q. You have before you what's marked as**

25 **Deposition Exhibit 3. And I'll represent to you this**

219

1 **is a printout that I made from your website -- from**

2 **the AIMPRO website. Just the home page. And then**

3 **printed up a couple of blank pages.**

4 A. Yes, you did.

5 **Q. And then went to -- I didn't want to**

6 **take them out so it didn't look like I excluded**

7 **anything because it goes to your frequently asked**

8 **questions tab.**

9 A. Okay.

10 **Q. Now, is this your company?**

11 A. Yes.

12 **Q. And did you -- do you have knowledge of**

13 **this website?**

14 A. Yes.

15 **Q. All right. If you wouldn't mind taking**

16 **a minute to verify that this is a true and accurate**

17 **copy of what I've just purported it to be.**

18 A. It appears to be. I mean, it's been a

19 while since I looked at this frequently asked

20 questions and it's been modified a bunch over the

21 years, but it appears to be. Although, mine is kind

22 of overlapped. Does your copy kind of overlap in the

23 middle of that page?

24 **Q. It does look like there may be -- oh, I**

25 **see, it did print funny on page 3.**

220

1 A. That's okay.

2 **Q. It looks like the rest of it printed**

3 **okay.**

4 A. All right.

5 **Q. It might be missing some words,**

6 **actually. That's lovely. I apologize. Our entire**

7 **network was shut off this morning and I wasn't able to**

8 **do anything about it.**

9 A. It's kind of cut off on the right-hand

10 side there. Please go ahead.

11 **Q. All right. I just wanted to show you**

12 **this and do that.**

13 A. Did you have a question?

14 **Q. No. Thanks, Mr. Shain. What does the**

15 **word "converted" mean to you?**

16 A. "Converted"?

17 **Q. Uh-huh.**

18 A. It means changed, altered, modified.

19 **Q. Okay. How about the word "readily"?**

20 A. "Readily" is a little more difficult for

21 me to define or describe to you.

22 **Q. Are you able to?**

23 A. Well, it may mean easily, quickly,

24 simply. It might mean that it's something that can be

25 done without a great deal of effort. I think

221

1 "readily" is a word that has to be used in context in
 2 order to understand what, you know, what the meaning
 3 of it is.
 4 **Q. Okay. What if we put them together and**
 5 **say "readily converted," what does that mean? Can you**
 6 **define that?**
 7 A. As I think I opined in my report, part
 8 of the problem is that in the context of 1224,
 9 "readily converted" really means different things in
 10 different contexts because if you -- for example, if
 11 you have a magazine extension, and you have only the
 12 knowledge it takes to remove the base plate and put on
 13 the magazine extension, then the magazines we've been
 14 describing virtually every detachable base plate is
 15 readily convertible. If you have a magazine with a
 16 fixed base plate, like a 1911 magazine with a base
 17 plate, and you have a machine shop and a chunk of
 18 aluminum, readily might mean 30 minutes later and
 19 you've got a -- you've built yourself a magazine
 20 extension, you've got the bottom of the magazine off
 21 and attached an extension to it.
 22 If you have access to a -- what's
 23 interesting is I drove through Evergreen the other day
 24 and it has a new 3-D printer service that just opened
 25 up. And so if you have a magazine like the ones we've

222

1 been describing, with a removable base plate and you
 2 have a drawing program that you could download a
 3 number of them for free on the internet, SketchUp is
 4 one of them. I think it's an adjunct program to
 5 SolidWorks, and you can download a trial copy of
 6 SolidWorks or CAD/CAM or one of those programs.
 7 Somebody with knowledge of that program can, in a few
 8 minutes, design a program that will print on a 3-D
 9 printer and create a plastic extension to a magazine.
 10 So in that context of 1224, "readily"
 11 could be a number of different things depending on
 12 what your experience and capabilities are, what tools
 13 you might have access to, what product you might have
 14 access to. That's one of the issues I have with the
 15 ambiguity of using that term as they're combined. As
 16 you combined them, "readily converted."
 17 **Q. Now, one of the things you just said in**
 18 **that answer was if, for example, if you have a**
 19 **magazine extension and you have only the knowledge it**
 20 **takes to remove the plate and put on the extension,**
 21 **the magazines we've been describing, virtually every**
 22 **detachable base plate is readily convertible. What if**
 23 **you don't have the extension piece?**
 24 MR. COLIN: Vague, foundation.
 25 **Q. (BY MR. FERO) Would the magazine then**

223

1 **be readily convertible?**
 2 A. Well, it is because it's the same
 3 magazine. If you -- whenever you obtained the
 4 extension or anybody who does obtain an extension or
 5 one of those people that has a 3-D printer or a
 6 machine shop, and that was my exception with the
 7 technical guidance, if I might just circle back for a
 8 second, is you hit on that issue, is that the
 9 technical guidance is saying -- I think what your
 10 question is implying is you have to have a magazine
 11 extension. That that's the key. That's what --
 12 that's really what the law wants -- seeks to prohibit,
 13 but that's not what the law says.
 14 And the "readily convertible" part, you
 15 know, for a guy like me is -- that's no big deal. You
 16 know, we can make a magazine extension. I can make 10
 17 tomorrow if you want.
 18 **Q. Have you done that -- I mean, have you**
 19 **made one with a 3-D printer?**
 20 A. No.
 21 **Q. Have you seen one?**
 22 A. I've seen one.
 23 **Q. Would you ever put something like that**
 24 **on a firearm you owned?**
 25 A. Depends on the situation.

224

1 **Q. Really? Okay. So you might?**
 2 A. If I felt that I absolutely have to
 3 have -- had to have that added capacity and I
 4 understood that it wasn't a -- wasn't a very robust
 5 thing that would last forever that had a limited
 6 lifespan, I might. I might stick it on there if I
 7 knew I was going to get in a gunfight, you know, the
 8 next day or that night or if I had to give that
 9 firearm to somebody to protect themselves. The
 10 question is not whether I would do it, the question is
 11 can it be done and is it against the law under 1224.
 12 **Q. So I want to show you a magazine I**
 13 **brought with me here.**
 14 A. That's not in violation is it? Is it --
 15 does it hold more than 15 rounds?
 16 **Q. Take a look.**
 17 A. I can't accept if it does.
 18 **Q. I'm not giving it to you. I'm showing**
 19 **it to you.**
 20 MR. COLIN: He's not giving up dominion.
 21 A. The law says that doesn't matter what
 22 you do, I can't take possession of it. Isn't that
 23 what 1224 says?
 24 **Q. (BY MR. FERO) I believe there is no**
 25 **issue of criminal liability based on the technical**

225	<p>1 guidance.</p> <p>2 A. The technical guidance is not law, sir.</p> <p>3 I'm sorry.</p> <p>4 MR. COLIN: He's an Attorney General,</p> <p>5 and can offer you use immunity.</p> <p>6 A. Would you like to do that?</p> <p>7 Q. (BY MR. FERRO) Absolutely. I offer you</p> <p>8 use immunity.</p> <p>9 MR. COLIN: There you go. Go for it.</p> <p>10 Q. (BY MR. FERRO) This is solely for the</p> <p>11 purpose of answering my question.</p> <p>12 MR. COLIN: That's the use.</p> <p>13 A. Okay. I've got the magazine. It's</p> <p>14 still in the packaging.</p> <p>15 Q. (BY MR. FERRO) Uh-huh. What kind --</p> <p>16 what magazine is that, can you identify it?</p> <p>17 A. It's --</p> <p>18 Q. Feel free to open the package.</p> <p>19 A. I can open the package?</p> <p>20 Q. For the record, it came that way to me.</p> <p>21 It's not sealed. It's one of these clamp closing,</p> <p>22 plastic clamshells.</p> <p>23 A. It's not sonically welded together.</p> <p>24 Q. Correct.</p> <p>25 A. The base plate is marked Glock.</p>	227	<p>1 It's just -- it has not be used.</p> <p>2 A. I won't take it apart. If I tapped on</p> <p>3 it with something, I could get it to slide out. It's</p> <p>4 bound up here in the back. The body of the magazine.</p> <p>5 This is the follower, this thing I'm depressing right</p> <p>6 here. The follower is driven by the spring. The</p> <p>7 spring stores energy as it's compressed. The</p> <p>8 removable base plate, which I'm not able to be removed</p> <p>9 right at this moment, which seems to be stuck on or --</p> <p>10 it's moving. I don't understand why it's not coming</p> <p>11 off. And this is the detent plate that I mentioned</p> <p>12 earlier, a plunger that is forced down by the spring</p> <p>13 against the bottom of the base plate. It's</p> <p>14 embarrassing that I can't remove it. Your question?</p> <p>15 Those are the components.</p> <p>16 Q. Okay. Now, what is the capacity of that</p> <p>17 magazine?</p> <p>18 A. This one is marked -- well, the last</p> <p>19 round that it shows through these witness holes in the</p> <p>20 back is 13. I got to tell you that it appears that</p> <p>21 there's room in the bottom of this magazine for</p> <p>22 additional space, but that's the room that's left for</p> <p>23 the compression of the spring.</p> <p>24 Q. Does the packaging reflect how many</p> <p>25 rounds it's marked as?</p>
226	<p>1 Magazine is -- Glock. It's marked Glock on the back</p> <p>2 of the magazine. It's marked Glock on the removable</p> <p>3 base plate of the magazine. The packaging is marked</p> <p>4 Glock.</p> <p>5 Q. Do you have familiarity with this type</p> <p>6 of magazine?</p> <p>7 A. I do.</p> <p>8 Q. What are the components of this</p> <p>9 magazine?</p> <p>10 A. This is not a -- this is not an over 15.</p> <p>11 I have no problem with this one. It has a removable</p> <p>12 base plate so that makes me nervous. I'm sorry. What</p> <p>13 are the components?</p> <p>14 Q. Uh-huh.</p> <p>15 A. You want me to take it apart?</p> <p>16 Q. Please.</p> <p>17 A. The components are -- the components are</p> <p>18 the body of the magazine. Come on, baby. I can't get</p> <p>19 a grip on this thing here. It's so tight. Boy.</p> <p>20 MR. KOPEL: It appears to me this 10</p> <p>21 round magazine is defectively manufactured and the</p> <p>22 base plate won't come off.</p> <p>23 MR. FERRO: It's just new.</p> <p>24 A. Did you do this intentionally?</p> <p>25 Q. (BY MR. FERRO) No, I promise you.</p>	228	<p>1 A. Yeah, it shows it's a Glock model 13</p> <p>2 round magazine.</p> <p>3 Q. Do you have any specific knowledge that</p> <p>4 this Glock 23 magazine, not this one in particular,</p> <p>5 but these magazines, have you ever seen a Glock like</p> <p>6 this that would accept more than 13? Would it accept</p> <p>7 an additional round as you -- as we've talked about</p> <p>8 earlier?</p> <p>9 A. I don't know that I've ever tried it</p> <p>10 with a Glock 23 magazine. I own a Glock 23. I could</p> <p>11 give it a try when I get back to the shop.</p> <p>12 Q. Okay. Just curious if you tried it</p> <p>13 before.</p> <p>14 A. Do you have any dummy rounds with you?</p> <p>15 Q. No.</p> <p>16 A. You came unprepared, Counselor. I might</p> <p>17 be able to get 14 in there. It depends on this area</p> <p>18 from the bottom of this witness hole down to this base</p> <p>19 plate is the amount of room they leave for the spring</p> <p>20 to load up.</p> <p>21 Q. And for the follower as well?</p> <p>22 A. Depends on if this is an anti-tilt</p> <p>23 follower. It may come down that far. This gives me a</p> <p>24 really good opportunity to describe to you how</p> <p>25 difficult it's going to be for me to know whether this</p>

229

1 really holds 13, because if I go in and I modify the
 2 legs of this follower, if I cut them and allow it to
 3 go deeper into the magazine, this -- a law enforcement
 4 officer could look at this window and it may say 13.
 5 It might hold 16. It's possible. And maybe not with
 6 .40 caliber. May be more applicable to a 9
 7 millimeter, but then, again, there's a base plate,
 8 there is an after market base plate that will allow up
 9 to four additional rounds to be attached to this
 10 magazine. Whether or not that law enforcement officer
 11 knows, once that extension, if you want to call it
 12 that, that accessory is added to this magazine, is it
 13 a plus one, plus two, is it plus four, so does the
 14 magazine now hold more or just simply by -- again,
 15 back to the definition of is it "readily convertible."
 16 Even if I have to bang on this with a hammer or pry it
 17 off with a screwdriver, I can still get it off. That
 18 means I can buy one of those extensions and slide it
 19 on. Well, good Lord, Counselor, isn't that "readily
 20 convertible"?

21 **Q. So in the package I gave you -- this is**
 22 **exactly how it comes from the stores. Do you have any**
 23 **reason to disagree with that?**

24 A. No.

25 **Q. Have you seen it packaged this way**

230

1 **before?**

2 A. Yes.

3 **Q. So with what you have right there that**
 4 **came with this purchase, can you convert this to**
 5 **accept more than 13 rounds?**

6 A. Yes. With just this, what I have here
 7 in front of me? With nothing else?

8 **Q. Nothing else.**

9 A. No.

10 **Q. What would you need to make it accept**
 11 **more rounds?**

12 A. More than 13 rounds, yes, I can. I can
 13 cut the legs of that -- the follower.

14 **Q. You would need a tool to do that?**

15 A. I've got a knife in my pocket.

16 **Q. Okay.**

17 A. I could probably hack it off.

18 **Q. Have you done that before?**

19 A. I don't know if the statute of
 20 limitations has run. Have I done that before, hacked
 21 something off with my knife in the field when I didn't
 22 have any other tools? Yes. When you're out and have
 23 to do something like that, yeah, you use whatever you
 24 have. Really, would I do that for a customer or for
 25 somebody who is going to continue to use the gun?

231

1 Probably not.

2 **Q. Why not?**

3 A. Because I want to give them a good
 4 quality result. I'd probably take the follower off
 5 and use some other type of tool to cut that. These
 6 are common tools. You go to Home Depot. I don't know
 7 what you have in your garage, but you probably have
 8 something you could do that with. Could I do it with
 9 this knife? I could do it with a knife.

10 **Q. How about more than 15?**

11 A. Maybe not in this envelope. Maybe not.
 12 But more than 13, yes. That was your original
 13 question.

14 **Q. What would you need then to get it to**
 15 **hold more than 15?**

16 A. I would probably have to attach
 17 something to it.

18 **Q. Like what?**

19 A. Some type of -- what you might refer to
 20 as an extension. Some type of additional container
 21 that would extend the body of the magazine.

22 **Q. Okay. I've got some other ones here.**

23 A. Oh, boy. Do you want this one back?

24 **Q. Yes, please. I'm handing you another**
 25 **magazine, Mr. Shain, that I'm hoping you can examine**

232

1 **and describe for the record.**

2 A. This is a Kimber Kimpro magazine for a
 3 1911 style pistol. It's marked 45 ACP. And it's got
 4 a traditional style rubber bumper on the bottom and
 5 has a fixed magazine. Might be removable. I have to
 6 take the screws out to see. I mean, the floor plate,
 7 the base plate might be removable, but it's got an
 8 inside crimp.

9 **Q. Okay. Are you familiar with this type**
 10 **of magazine?**

11 A. Yes.

12 **Q. Okay. Do you have any impression as to**
 13 **the quality of this Kimber style magazine?**

14 A. They make a good magazine.

15 **Q. Okay. Now, the one I showed you before,**
 16 **I didn't ask you this, I think that was a double**
 17 **stack, correct?**

18 A. Yes.

19 **Q. What about this one?**

20 A. This is a single stack.

21 **Q. Are there any there double stack 1911**
 22 **magazines?**

23 A. Yes.

24 **Q. How is the 1911 originally designed, was**
 25 **it for -- to accept a single or double stack?**

233

1 A. Single.

2 **Q. And I think you said you -- you can't**

3 **tell if that has a removable or fixed base plate; is**

4 **that right?**

5 A. I can't tell. I believe that this

6 one -- I believe this base plate is removable.

7 **Q. Can you remove it?**

8 A. I'd need a screwdriver to take the

9 bumper pad off, and you can see there's a detent in

10 the center, and I think the base plate slides out, and

11 it has an inside crimp instead of an outside flange.

12 **Q. How many rounds does that accept?**

13 A. It's marked as seven. That's all I can

14 tell is that it's marked as seven.

15 **Q. Okay. Do you have any experience with**

16 **these style of Kimber magazines about whether they**

17 **would accept more than seven without any changes?**

18 A. Specifically with Kimber magazines, I

19 don't know. I mean, I've come across 1911 style

20 magazines that are marked as seven and you can squeeze

21 an extra round in or two, but it may very well only

22 hold seven. Depends on -- a lot of magazine

23 manufacturers leave a little extra room for

24 compression of the spring and they don't want that --

25 you know, that last round to be locked in there so

234

1 tight that it's a problem.

2 **Q. I think in your report you talk**

3 **about -- you acknowledge that there's some fixed plate**

4 **1911 magazines out there, correct?**

5 A. Yes. There are -- it's kind of a welded

6 base plate.

7 **Q. So it doesn't come off without changing**

8 **the construction?**

9 A. Doesn't come off at all. You have to

10 mill it off. You have to cut it off.

11 **Q. So would you agree on those magazines,**

12 **it was designed for the base plate not to come off?**

13 A. Yes.

14 **Q. In contrast to this one, the base plate,**

15 **as far as you can tell, designed to be removed?**

16 A. Yes.

17 **Q. Would you be able to convert this**

18 **magazine to accept more rounds of ammunition?**

19 A. Yes.

20 **Q. What would you -- how could you do that?**

21 A. I'd remove the base plate. I'd cut off

22 the four tabs that hold it in place. And I could

23 either design a box that would go around the -- this

24 magazine, a tiny little way, and probably attach with

25 set screws, depending on how much room I have in

235

1 there, and I have to give some relief so it can fit in

2 the magazine. Or the easiest way is to weld a body on

3 there. Could also do a slip fit, what's known as a

4 press fit, where I make a mating part that would fit

5 together at that point and there'd have to be enough

6 clearance for the spring and follower, of course, but

7 what I'd be looking to do is to use this room in the

8 bottom of the magazine for the additional round. And

9 then the extension, of course, in a perfect world

10 would be what would capture the compressed spring and

11 the follower. But there's a number of ways to do it.

12 The welded on extension could be conceivably, you

13 know, another 10 rounds.

14 **Q. Would you need a new spring when you**

15 **were going to add additional rounds to this magazine?**

16 A. You could leave this as an existing

17 spring and add a plate and another spring on top of it

18 or replace the whole spring with a new spring, longer

19 spring.

20 **Q. Could you just keep using the spring**

21 **that's in there?**

22 A. Depends on how many rounds you have, I

23 guess. You might still be able to get a couple rounds

24 of this because it's pretty stiff. Depends on the

25 length of the spring.

236

1 **Q. What's the issue, though, at some point**

2 **where you would need it?**

3 A. Some point the spring has no more energy

4 to push the follower up. It's completely extended and

5 you get inconsistent feeding and malfunctions.

6 **Q. Might not feed all the bullets in the**

7 **magazine?**

8 A. Right.

9 **Q. Okay.**

10 A. You want that back too, huh?

11 **Q. Thank you. What else did I bring with**

12 **me?**

13 MR. COLIN: Trick or treat.

14 THE DEPONENT: Yeah, but I don't get to

15 keep anything.

16 A. We have the same use immunity. This is

17 a 10 round magazine. Okay.

18 **Q. (BY MR. FERRO) Can you identify this**

19 **magazine, Mr. Shain?**

20 A. It's marked HK on the bottom. Heckler

21 and Koch. It's probably for a USP pistol. I'm not

22 positive. I can only go off the marking on the bottom

23 of the magazine that it's for an HK pistol.

24 **Q. Are you familiar with this type of**

25 **magazine?**

237

1 A. It's very similar to the magazine you
 2 showed me earlier.
 3 **Q. Detachable box style?**
 4 A. Relatively identical, yep.
 5 **Q. How about on this one, can you take the**
 6 **base plate off?**
 7 A. If I had some tools, I could take the
 8 base plate off.
 9 **Q. I believe this one is a little different**
 10 **from the Glock that it doesn't have the flanges?**
 11 A. Doesn't have what?
 12 **Q. A flange on the outside of the body to**
 13 **lock in the base plate.**
 14 A. This one uses a tab setup.
 15 **Q. Can you describe what you mean by a tab**
 16 **setup?**
 17 A. The base plate has two tabs that
 18 interlock into two cutouts on the sides of the
 19 magazine. It also uses a -- this is the detent system
 20 that they use on this one that engages in the base
 21 plate to keep it from coming off.
 22 **Q. Okay. Would you be able to convert this**
 23 **magazine to accept additional rounds?**
 24 A. Sure.
 25 **Q. How would you do it?**

238

1 A. I'd make an extension that locks into
 2 the -- into the base of the magazine in a similar
 3 fashion or I could do away entirely with the tabs.
 4 Again, I would have to know how deep into the magazine
 5 well this goes. But if I wanted to, I could simply
 6 epoxy an extension on here or sonically weld it on
 7 there or heat melt it. Just melt it. If I really
 8 wanted to get crazy, glue gun, anything like that to
 9 attach that extension, you know, to this.
 10 **Q. Have you used a glue gun for that**
 11 **purpose before? I'm just curious if it would work?**
 12 A. No, but it might work temporarily.
 13 Again, it wouldn't be a long term -- it's not a
 14 product that I would want to sell on the open market.
 15 If I wanted to make an extension, I could probably
 16 find a pretty good commercially available plastic
 17 epoxy that would chemically melt the plastic together
 18 to make a very permanent attachment. That would be a
 19 way to do it.
 20 **Q. Okay.**
 21 A. But if there's enough relief inside the
 22 magazine well, I might even be able to get a little
 23 lip over the bottom. If this fits absolutely flush,
 24 then I would probably have to create something that
 25 attaches so that the -- there's one continuous box all

239

1 the way down. You know what they say, Counselor, if
 2 there's a will, there's a way.
 3 **Q. Can you tell me more about this, I think**
 4 **you called it the tab style?**
 5 A. This is an unusual style magazine.
 6 **Q. It is. Okay.**
 7 A. Not a very common magazine. This is not
 8 a USP magazine because I have a USP and it has an
 9 outside flange magazine. I'm trying to think what
 10 model this would be from.
 11 **Q. Have you seen this style before where it**
 12 **doesn't use an outside flange, but uses tabs?**
 13 A. I have, but not on an HK. I think I've
 14 seen it on a .22 caliber magazine. I can't remember
 15 the manufacturer that used it. But I don't recognize
 16 this as being a very commonly -- a common design for
 17 most magazine manufacturers. And --
 18 **Q. Do you -- are there any compromises in**
 19 **that design for performance compared to the outside**
 20 **flange?**
 21 A. Well, yeah, one of the things that I
 22 think you can see is that this is not a fabulous
 23 method of attachment. In other words, there's a lot
 24 of movement in this base plate. I'm not sure, you
 25 know, how robust and strong this would be. How it

240

1 will last when it's dropped. How -- you know, how it
 2 will become damaged, which one of the parts will
 3 damage first. These plastic tabs and flanges wouldn't
 4 be my recommendation for, you know, a magazine that's
 5 going to last a long time, that would be extremely
 6 reliable. I don't know why they did this. I think
 7 you used the word compromise. I'm not sure why they
 8 would design it this way. It's an unusual design.
 9 It's not a common design and I don't find that it's
 10 particularly robust.
 11 **Q. Again, the finding of not being robust,**
 12 **is that based on just looking at it today or do you**
 13 **have prior experience?**
 14 A. Just looking at it today.
 15 **Q. Okay. Would you mind putting it back**
 16 **together for me?**
 17 MR. COLIN: There's a charge for that.
 18 A. Really? Do you expect it to work when
 19 it's back together?
 20 **Q. (BY MR. FERRO) You're going to be able**
 21 **to do this faster than anybody else in the room,**
 22 **correct?**
 23 A. You would think.
 24 MR. KOPEL: It's your magazine. You
 25 should know how to do it.

241

1 A. You borrowed this from somebody?
 2 **Q. (BY MR. FERRO) How do you know that?**
 3 A. This is the problem with this crazy
 4 design is that you have to get the detent up far
 5 enough where you can get the tabs in.
 6 **Q. Let's -- moving along here. I have one**
 7 **more I want you to look at. At least one more. This**
 8 **is another Glock magazine. See if you can take the**
 9 **base plate off of this one. This is not brand new.**
 10 A. Is there a trick of some kind?
 11 **Q. No, there really isn't. Although I did**
 12 **note that the other one you could not get off.**
 13 A. Thank you.
 14 **Q. You're using a pen to press into the**
 15 **detent; is that right?**
 16 A. Yeah, it's not going in there far
 17 enough.
 18 **Q. Is there another tool you would use?**
 19 A. I'd use a punch ordinarily. I think
 20 that's part of the problem is I'm not getting --
 21 **Q. Does it have to go in a certain**
 22 **distance?**
 23 A. Yeah, it has to go in further. This is
 24 better, but you have to be able to be able to push the
 25 detent in and use the tool to slide the mag -- the

242

1 base of the magazine off. And the pen is just --
 2 Glock makes these things super tight. I don't think
 3 it's going to happen today, Counselor.
 4 **Q. Fair enough.**
 5 A. Not without a tool. Ordinarily you do
 6 not need special tools to do this, but something I
 7 could get a little farther. It just won't go in far
 8 enough. It's too -- it's bent over when I pushed it
 9 in there. But we find the same components in there
 10 that we found in that other magazine, only this one
 11 you can see the exterior flange from this side of the
 12 magazine. The follower and the spring and the detent
 13 plate are very similar to the one that we just had.
 14 **Q. That's a single stack this time,**
 15 **correct?**
 16 A. Single stack.
 17 **Q. For the record this is Glock, can you**
 18 **tell what model?**
 19 A. .40 caliber. I was going to say it was
 20 a 21. I don't know off the top of my head. .40
 21 caliber.
 22 **Q. Set that aside because I want to hand**
 23 **you this little piece.**
 24 A. Did you want me to put that on there?
 25 **Q. I was wondering if we can't get the base**

243

1 **plate off. What did I hand you?**
 2 A. I'm in violation if I do that, right?
 3 **Q. Well, we'll get this. First of all, I**
 4 **want to ask you, what it is I handed you?**
 5 A. You handed me a magazine extension.
 6 It's a plus two.
 7 **Q. Do you know who manufactured that?**
 8 A. I don't know. It's not marked Glock.
 9 There are a dozen magazine extension manufacturers out
 10 there that make similar products.
 11 **Q. Does it appear that it would fit the**
 12 **Glock magazine that you've been handling?**
 13 A. It generally looks like it's the right
 14 size.
 15 **Q. Is that the basic style of the pinky**
 16 **extender that you write about in your report?**
 17 A. Yes, it is. You can see if it were, you
 18 know, if it were on the bottom of the magazine that it
 19 would give you that extra extension. This is for a
 20 full size gun. So you're not -- most hands are not
 21 going to get that far down on the magazine.
 22 **Q. Now, this particular extension would add**
 23 **capacity for, I think, two additional rounds; is that**
 24 **correct?**
 25 A. Yes.

244

1 **Q. That's what it's labeled on the outside**
 2 **of it, correct?**
 3 A. It says plus two.
 4 **Q. Would it -- is there a chance that would**
 5 **allow more than two?**
 6 A. I have no idea without testing it.
 7 **Q. Have you ever encountered an extension**
 8 **that said plus -- pinky extension like that that said**
 9 **plus two, but it would actually allow, in effect, plus**
 10 **three?**
 11 A. I can't say that I can recall that being
 12 the case.
 13 **Q. Okay. Now, this extension, I mean,**
 14 **other than taking the base plate off, was there**
 15 **anything else you would need to do, would you need to**
 16 **use a different follower or change any of the other**
 17 **components of the magazine to attach this pinky**
 18 **extension?**
 19 A. I don't believe that this requires that
 20 there's any change in the spring or follower. I think
 21 the plus one or plus two, the spring will work
 22 reliably.
 23 **Q. Are there other pinky extenders that**
 24 **would require changes in the magazine?**
 25 A. You call them pinky extensions. In the

245

1 world of magazine extensions, there are. There are
 2 magazine extensions that, I think, go to the extreme.
 3 10 rounds.
 4 **Q. I don't want to ask you about those.**
 5 **I'm curious about these really small pinky style.**
 6 **Extending the grip, essentially.**
 7 A. Yeah, I recently saw a company that
 8 makes one that I think will do a plus three, plus
 9 four. They make them in various sizes. Little
 10 different design than that, and I believe you have to
 11 replace the spring with those.
 12 **Q. Okay. Now I have a 30 round magazine**
 13 **for the record. So this one is --**
 14 A. Did you possess it before July 1?
 15 **Q. Yes.**
 16 A. Okay.
 17 MR. KOPEL: Has it been in your
 18 continuous possession since before July 1?
 19 MR. FERRO: I believe so.
 20 **Q. (BY MR. FERRO) I'm asking you to look at**
 21 **this for the purposes of the deposition today and for**
 22 **that only.**
 23 A. So you're giving me use immunity?
 24 **Q. Absolutely.**
 25 A. So when I accept it, I'm not in

246

1 violation.
 2 **Q. I'm not really giving you this magazine.**
 3 **I'm handing it for you to examine, for that purpose.**
 4 A. That's not what the law says. The law
 5 says you can do that, but I can't do that.
 6 **Q. I'm relying on the technical guidance**
 7 **issued by my office. I would like you to look at**
 8 **this. This is Thermold 15 round -- sorry, 30 round**
 9 **magazine for the AR platform. Could you confirm that**
 10 **for me. There's writing on there that is for**
 11 **identification purposes.**
 12 A. I see.
 13 **Q. Other than that, the other writings that**
 14 **you will see on there are from the manufacturer and I**
 15 **apologize. Can you confirm this is an AR style**
 16 **Thermold magazine?**
 17 A. Yes, it appears to be.
 18 **Q. Okay. Do you -- are you familiar with**
 19 **this style of magazine?**
 20 A. I'm familiar with Thermold. I actually
 21 have some Thermold style magazines, but they're not
 22 this style.
 23 **Q. Do you know how to remove the base**
 24 **plate?**
 25 A. Yes, this has a similar type of a tab,

247

1 dual tab. Looks like this tab goes in and -- I need a
 2 pen. This might have a spring that shoots across the
 3 room. There's a spot here for a tool to fit in.
 4 There we go. It has a block in it.
 5 **Q. What's that?**
 6 A. It's got a block.
 7 **Q. What is that?**
 8 A. This is a device that's used to limit
 9 the capacity of the magazine.
 10 **Q. Okay. Are you familiar with those?**
 11 A. Yes.
 12 **Q. Have you seen one like this, the one**
 13 **that is in this magazine?**
 14 A. I don't know who makes this one, but
 15 this is made by MagBlock. This is the same type that
 16 I'm familiar with and seen before.
 17 **Q. Does this device limit the capacity of**
 18 **this magazine?**
 19 A. Yes.
 20 **Q. So could you convert this magazine to**
 21 **accept more rounds of ammunition?**
 22 A. Yes.
 23 **Q. How would you do that? What about would**
 24 **be -- let me ask you what would be the easiest way for**
 25 **you to do that?**

248

1 A. It's easy because it has attachment
 2 points where the tab fits in, and because it extends
 3 out of the rifle, all of this is exposed. All I'd
 4 have to do is make some type of sleeve extension that
 5 would lock into these detent openings, and I'd be good
 6 to go.
 7 **Q. Could you increase the capacity of this**
 8 **magazine without using any tools?**
 9 A. Yeah. All I have to do is take out this
 10 piece.
 11 **Q. The block?**
 12 A. Sure.
 13 **Q. Okay.**
 14 A. Is that what you were after?
 15 **Q. Yeah. How do you take it off?**
 16 A. I attach it to the spring and it leaps
 17 over this bottom of the spring.
 18 **Q. Okay,**
 19 MR. KOPEL: Let the record reflect, he
 20 just removed the block from the spring.
 21 **Q. (BY MR. FERRO) As you did. Is there a**
 22 **way, Mr. Shain, to more securely install that block in**
 23 **this magazine?**
 24 A. There are a number of techniques that
 25 I've come across that include rivets and pins.

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1 **Q. Any other techniques?**
 2 A. I'm trying to think if I've seen an
 3 epoxy. I'm not sure that there's any real permanent
 4 way. Because of the nature of this plastic, you can
 5 always just break it into pieces and remove it from
 6 the spring and there's no real -- as far as I know, I
 7 don't know if there's a really permanent way.
 8 **Q. What does "permanent" mean to you?**
 9 A. Forever.
 10 **Q. And ever?**
 11 A. That too.
 12 **Q. Okay. What about "long term," what does**
 13 **that mean to you?**
 14 MR. KOPEL: Objection, vague.
 15 **Q. (BY MR. FERRO) Are you familiar with**
 16 **that word?**
 17 A. Not as it relates to this device.
 18 **Q. What about outside of that context, just**
 19 **generally?**
 20 A. "Long term"?
 21 **Q. Yeah. As opposed to short term.**
 22 A. I've been married for 28 years, is that
 23 long term enough?
 24 **Q. 28 years is long term to you?**
 25 A. That's long term. That's what I would

250

1 refer to as a long-term relationship. The design of
 2 this device is not made to be permanently installed.
 3 The nature of it is -- that it is -- can be removed so
 4 that the magazine maintenance, cleaning or repair can
 5 be affected. Magazine blocks that are permanently
 6 installed in magazines ordinarily attach to the body
 7 of the magazine and they then preclude the normal
 8 disassembly process for cleaning and maintenance.
 9 That's the drawback of those permanent or long term,
 10 as you -- long term might be that you have to use a
 11 special tool to remove it maybe.
 12 **Q. It sounds like you're aware of there's**
 13 **some way that you could install a magazine block in a**
 14 **permanent fashion?**
 15 A. Sure. You could epoxy it in place or
 16 weld it in place or rivet it. That's a misleading
 17 term. If you go back to what kind of tools do I have
 18 access to question, then I can -- I can reverse that.
 19 I can remove that.
 20 **Q. Are you aware of some techniques that if**
 21 **you reverse them that you would essentially destroy**
 22 **the magazines?**
 23 A. There's probably some techniques like
 24 that. There probably are.
 25 **Q. In order to break the block out, there's**

251

1 **no more magazine?**
 2 A. Right, and I would guess that's probably
 3 epoxy sonic welding or something along those lines
 4 that essentially makes it part of the magazine.
 5 **Q. Would you consider that to be permanent?**
 6 A. I think that's more permanent. More
 7 permanent.
 8 **Q. Certainly more permanent than what you**
 9 **have in front of you?**
 10 A. Right. You might destroy the magazine.
 11 You might not. There might be ways to machine that
 12 out. But the average person, probably they're going
 13 to damage the magazine.
 14 **Q. Can you put that back together?**
 15 A. This is getting a little tedious now.
 16 **Q. I'm sorry about that. Hand it back over**
 17 **to me and I'll give you something else to look at in**
 18 **the interest of time.**
 19 A. You'll put it back together?
 20 **Q. Believe it or not, I've done it before.**
 21 A. Really, have you?
 22 **Q. Uh-huh.**
 23 A. There you go.
 24 **Q. Thank you. I'm now handing you an item**
 25 **that was acquired over the internet.**

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1 A. Looks like a real high quality product,
 2 whatever that is. I particularly like the wood screw
 3 on the one end.
 4 **Q. What does that look like to you?**
 5 MR. COLIN: Feels like wood.
 6 **Q. (BY MR. FERRO) I'll represent to you**
 7 **that this product was sold as a magazine block.**
 8 A. LR 15 slash 20. So are you saying that
 9 it goes into a 30 round magazine like that one and
 10 then you put the screw in from the side?
 11 **Q. I don't know. What do you think? Can**
 12 **you tell?**
 13 A. Damned if I know. I'm wondering what
 14 this notch is for.
 15 **Q. The only point I was trying to make,**
 16 **Mr. Shain, is to see if -- would you agree that**
 17 **somebody could -- all the things you were talking**
 18 **about fabricating, extensions and different things you**
 19 **could do on a work bench with some aluminum, with**
 20 **whatever material that's made out of, I mean, you**
 21 **could make a block like that?**
 22 A. Yes.
 23 **Q. That's possible?**
 24 A. Sure.
 25 **Q. You could use a 3-D printer?**

253

1 A. I wouldn't make it like that. Don't use
 2 that as a representation of something I would make.
 3 **Q. I suspect you would not.**
 4 A. If your question is can a magazine
 5 blocking device be fabricated, the answer is yes.
 6 **Q. Okay. I have one other magazine for**
 7 **you, and this is another Thermold that you wrote about**
 8 **in your report.**
 9 A. Do you have any guns in there?
 10 **Q. No. Would you examine this one for me?**
 11 A. Yes.
 12 **Q. You wrote about an extending Thermold**
 13 **magazine; is that right?**
 14 A. Yeah.
 15 **Q. Is this a magazine that you wrote about?**
 16 A. I mean, yes. Yeah, I believe -- yes, I
 17 believe that this is the -- this is the magazine. I
 18 haven't seen one of these in a long time. It's the
 19 same detent system. It slides open to the second
 20 detent. There it goes.
 21 **Q. What did you just do for the record?**
 22 A. I pushed in the spring loaded detent. I
 23 don't know if it's spring loaded or plastic detent
 24 here on the side and it allowed the magazine to
 25 expand.

254

1 **Q. Okay. And in that configuration, how**
 2 **many rounds is that magazine capable of accepting?**
 3 A. I don't recall. But I think it's 40.
 4 **Q. Okay.**
 5 A. I think, as I recall, it's not marked.
 6 There's no way to tell by looking at the magazine,
 7 unfortunately, for the law enforcement. They might
 8 think it's a 30 round magazine.
 9 **Q. I'm going to press that same detent.**
 10 A. You have practiced this.
 11 **Q. Now, as in this configuration, I just**
 12 **closed that expansion, how many rounds will this**
 13 **accept?**
 14 A. I can't recall if it's 20 or 30 in this
 15 configuration.
 16 **Q. I'll represent to you that my knowledge**
 17 **is that it will accept 30 in this configuration and**
 18 **then when you press the tab and expand the magazine --**
 19 A. 45.
 20 **Q. -- it takes 45. Correct. Do you have**
 21 **any reason to question that?**
 22 A. No. I'll accept your representation.
 23 **Q. Okay. Now, I believe in your report you**
 24 **talk about this -- the way that this magazine can**
 25 **expand, you said that is not a conversion; is that**

255

1 **correct?**
 2 A. Yes, because the magazine is designed to
 3 do this. To expand. It's part of the original
 4 design. You're not changing the original design.
 5 You're not altering it. You're not modifying it.
 6 You're simply utilizing the original design.
 7 **Q. So in the context of magazines, when you**
 8 **say "conversion," there has to be a change to the**
 9 **original design of the magazine?**
 10 MR. COLIN: Vague.
 11 MR. KOPEL: Mischaracterization.
 12 A. That's not what I'm saying. What I'm
 13 saying is that -- I'll go back to those words again.
 14 You have to alter, change, modify, not the design, but
 15 the magazine.
 16 **Q. (BY MR. FERRO) Okay. So just expanding**
 17 **this magazine with the built-in telescoping piece?**
 18 A. Built-in telescoping, it's exactly my
 19 point.
 20 **Q. You agree that's what it is?**
 21 A. Yeah.
 22 **Q. You don't consider that to be a**
 23 **conversion?**
 24 A. No, because it's a built-in telescoping
 25 feature.

256

1 **Q. Okay. I haven't changed the magazine**
 2 **itself?**
 3 A. You haven't altered it. You haven't --
 4 **Q. Or modified it?**
 5 A. You have not.
 6 **Q. With external parts?**
 7 A. With anything.
 8 **Q. Tools?**
 9 A. Well, you might need a tool depending on
 10 how difficult it is to push this -- there it goes.
 11 **Q. You did it with your finger just now?**
 12 A. I have good fingernails.
 13 **Q. Okay. One more magazine. This one is a**
 14 **Magpul PMag 30 and I will represent to you this is a**
 15 **magazine that has a pin -- there is a blocker that is**
 16 **essentially the same as what I showed you in that**
 17 **other magazine. Now, this one has been installed such**
 18 **that you can see a pin in the base plate there and**
 19 **there is also epoxy inside. I'm not going to ask you**
 20 **to verify that unless you think you can.**
 21 A. I'd have to put rounds in here to know.
 22 **Q. Sure. I understand that.**
 23 A. I'm starting to feel like I'm at the
 24 bottom, and it seems like I'm more than halfway down
 25 the magazine. Kind of hard for me to tell. My finger

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1 is about yea far down. I don't know if that's 15
 2 rounds.
 3 **Q. Probably close?**
 4 A. Probably close. You mean it could be
 5 16?
 6 **Q. I don't know.**
 7 A. That's the problem.
 8 **Q. Because I haven't loaded it.**
 9 A. That's the problem.
 10 **Q. Sure. Now, let me ask you, do you see**
 11 **anything on the base plate that looks like an**
 12 **alteration, change or modification to you?**
 13 A. Well, you pointed out the pin. I think
 14 I would have discovered it.
 15 **Q. You can see that?**
 16 A. Yeah, I would have discovered there's a
 17 pin. It's a blind pin.
 18 **Q. What does that mean?**
 19 A. That means it can be inserted and then
 20 not removed without -- well, it wouldn't be hard. All
 21 I have to do is drill a hole and drive it out. I
 22 would have to use a tool. I might be able to use a
 23 knife just to expose this side of the pin. A blind
 24 pin is designed to go in one direction and not come
 25 out.

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1 **Q. Have you done that before, take out a**
 2 **blind pin?**
 3 A. Yes.
 4 **Q. What would happen to the base plate if**
 5 **you drilled through it the way you're describing?**
 6 A. It would still be serviceable.
 7 **Q. It would?**
 8 A. Absolutely. We're talking about making
 9 a very small hole. The pin hole is small. I can make
 10 a hole on this side and drive the pin out. You're
 11 telling me there's epoxy?
 12 **Q. Yes. You'll have to take my word for**
 13 **it.**
 14 A. I'd like love to try. Do you want to
 15 give it to me?
 16 **Q. I can't do that. I'm sorry.**
 17 MR. KOPEL: Are you saying it's against
 18 the law?
 19 **Q. (BY MR. FERRO) I would like you to look**
 20 **at the magazine, and tell me, do you see any factory**
 21 **markings on there?**
 22 A. Yes, I do.
 23 **Q. What are those?**
 24 A. Up at the top, the caliber indicates
 25 that it's 5.56 by 45, which is the size of the

259

1 cartridge, and it's marked PMag 30 AR, M4, Magpul
 2 Industries Corp. Little hard for me to read this.
 3 Made in the USA. I'm having a hard time. Something
 4 1LX50, generation 2M2, MOE. There's a patent number.
 5 And down at the bottom it says PMag 30. Same caliber
 6 marking on the other side. There's some manufacturing
 7 stamps on here. This is the left-hand side of the
 8 magazine.
 9 **Q. Let me take you back to that side,**
 10 **Mr. Shain. You said there was some manufacturing**
 11 **markings?**
 12 A. Uh-huh.
 13 **Q. This little circle?**
 14 A. Uh-huh.
 15 **Q. Is there anything written in the circle**
 16 **or any --**
 17 A. Numbers.
 18 **Q. Do you have any understanding of what**
 19 **that represents?**
 20 A. It's ordinarily used as a date
 21 indicator.
 22 **Q. What date does it indicate?**
 23 A. You're really going to test my eyes
 24 here. 5/13, it looks like the arrow is pointing to
 25 the number 5 and in the center of that dial is the

260

1 number 13.
 2 **Q. Do you know what that means?**
 3 A. I'm guessing. I'm guessing that it
 4 indicates that it was manufactured in 5/13.
 5 **Q. May of this year?**
 6 A. Yes.
 7 **Q. Before the law became -- 1224 became**
 8 **effective?**
 9 A. Yes.
 10 **Q. Okay. Did you -- were you -- had you**
 11 **seen Magpul -- a Magpul magazine that has a little**
 12 **circle on there with apparent date numbers?**
 13 A. I don't recall seeing that on -- I don't
 14 recall that and I have a bunch of these -- of PMags.
 15 I don't know if they're this generation. I have a
 16 third generation Mag with a window.
 17 **Q. Thank you. Couple more questions. Back**
 18 **to that Thermold telescoping, whatever you want to**
 19 **call it, magazine. You know what I'm referring to?**
 20 A. Yes.
 21 **Q. That -- that design, could that design**
 22 **be scaled up in terms of capacities?**
 23 A. I'm sure it could. There's some
 24 limitations in terms of the travel of that extension.
 25 It can only travel so far because it locks in between

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1 those two detents. But if you really want to be crazy
 2 about it, you could probably make a second extension
 3 of a similar design, so it wouldn't get bigger and
 4 bigger as it got to the bottom, because -- like one of
 5 those Russian dolls where they all fit inside one
 6 another.

7 **Q. Do you have any knowledge of what**
 8 **Thermold's intent in that design is?**

9 A. Do I have any --

10 **Q. Do you know what their intent is in**
 11 **designing and constructing a magazine that expands**
 12 **like that?**

13 A. I think that the design intent is
 14 communicated by the magazine itself. They intended to
 15 design a magazine that would expand from one size to
 16 another size.

17 **Q. Why?**

18 MR. COLIN: Speculative.

19 **Q. (BY MR. FERO) Do you know why Thermold**
 20 **made it that way?**

21 A. I can tell you as a manufacturer and a
 22 person that produces accessories, it's to make money.
 23 You come up with a product that you think is
 24 innovative because nobody else is making it and you
 25 think you have a design that's different from

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1 everybody else's, and it's different enough you can
 2 sell it commercially. That's why, you know, Ferrari
 3 makes Ferraris.

4 **Q. Do you have any knowledge as to if**
 5 **that's what Thermold was thinking?**

6 A. No, but, I mean, this is -- we're
 7 talking about the marketplace.

8 **Q. Right.**

9 A. That's why people design different
 10 styles of products. Do I know that they had a
 11 customer that came to them and said, Hey, I will buy
 12 10,000 of these if you make them for me? I don't
 13 know. Maybe that's why they did it. I have no idea.
 14 But, generally, when you design a product that departs
 15 from the rest of the industry, it's because you think
 16 that you've got an innovative design or you think
 17 there's a market for it.

18 **Q. Mr. Shain, that design, could it be**
 19 **scaled down in capacity?**

20 A. I'm not sure I understand what you mean.

21 **Q. So that one was configured in a 30 to**
 22 **45, at least that's what I represented to you as the**
 23 **spec capacity, could -- I think you said that it could**
 24 **be scaled up to larger capacity. Could it be scaled**
 25 **down to smaller capacities, but still utilize that**

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1 **extending capability?**

2 A. Let me see if I understand your question
 3 correctly. Are you saying could you start with a 10
 4 round and have it expand?

5 **Q. Yeah. Exactly.**

6 A. Theoretically I think it's possible.
 7 Again, we're going in the opposite direction. In
 8 other words, the smaller the original envelope is, the
 9 less it's going to have the capacity to expand. Could
 10 that design -- I suppose. Again, we're in that area
 11 of is anything possible, yes.

12 **Q. And have you seen any patents for this**
 13 **type of expanding telescoping design for magazines?**

14 A. I remember looking at their website. I
 15 don't remember if it said anything about a patent. I
 16 have no idea.

17 **Q. Would you be surprised to learn that**
 18 **there's several patents filed for a similar design?**

19 A. No. I've seen a patent for a gun that
 20 was built into a hat. Nothing would surprise me about
 21 patents.

22 **Q. All right. Mr. Shain, thank you very**
 23 **much for your time today. This is your chance, I'm**
 24 **at the end of my questions, do you have any**
 25 **clarifications that you'd like to add to your answers**

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1 **thus far?**

2 A. No. I think you covered just about
 3 everything.

4 **Q. Anything you need to supplement at this**
 5 **point?**

6 A. Not that I can think of.

7 **Q. All right. Thank you very much for your**
 8 **time and patience today. I appreciate your**
 9 **willingness to sit and answer my questions.**

10 A. Thank you, sir. I appreciate your
 11 professionalism and preparation.

12 MR. FERO: Gentlemen? No questions.

13 MR. COLIN: I know you're astonished by
 14 that.

15 WHEREUPON, the within proceedings were
 16 concluded at the approximate hour of 4:16 p.m. on the
 17 31st day of October, 2013.

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1 I, MICHAEL SHAIN, do hereby certify that
 2 I have read the above and foregoing deposition and
 3 that the same is a true and accurate transcription of
 4 my testimony, except for attached amendments, if any.
 5 Amendments attached () Yes () No
 6
 7
 8

 MICHAEL SHAIN

9
 10
 11 The signature above of MICHAEL SHAIN was
 12 subscribed and sworn to before me in the county of
 13 _____, state of _____,
 14 this _____ day of _____, 2013.
 15
 16
 17

 Notary Public
 My Commission expires:

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24
25 John B. Cooke, et al., 10/31/13 (td)

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REPORTER'S CERTIFICATE
 STATE OF COLORADO)
) ss.
 CITY AND COUNTY OF DENVER)

I, TRACY R. DOLAND, Certified Realtime Reporter, Registered Professional Reporter and Notary Public ID 19924009337, State of Colorado, do hereby certify that previous to the commencement of the examination, the said MICHAEL SHAIN was duly sworn by me to testify to the truth in relation to the matters in controversy between the parties hereto; that the said deposition was taken in machine shorthand by me at the time and place aforesaid and was thereafter reduced to typewritten form; that the foregoing is a true transcript of the questions asked, testimony given, and proceedings had.

I further certify that I am not employed by, related to, nor of counsel for any of the parties herein, nor otherwise interested in the outcome of this litigation.

IN WITNESS WHEREOF, I have affixed my signature this 7th day of November, 2013.

My commission expires June 12, 2016.

- Reading and Signing was requested.
- Reading and Signing was waived.
- Reading and Signing is not required.