

EXHIBIT E

ORIGINAL

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF FRESNO

-oOo-

SHERIFF CLAY PARKER, TEHAMA)
COUNTY SHERIFF; HERB BAUER)
SPORTING GOODS; CALIFORNIA RIFLE)
AND PISTOL ASSOCIATION; ABLE'S)
SPORTING, INC.; RTG SPORTING)
COLLECTIBLES, LLC; AND STEVEN)
STONECIPHER.)

Plaintiff's and Petitioners)

vs.)

Case No. 10CECG02116

THE STATE OF CALIFORNIA; JERRY)
BROWN, IN HIS OFFICIAL CAPACITY AS)
ATTORNEY GENERAL FOR THE STATE)
OF CALIFORNIA; THE CALIFORNIA)
DEPARTMENT OF JUSTICE, AND DOES 1-)
25.)

Defendants.)

Fresno, California

December 14, 2010

-oOo-

DEPOSITION OF BARRY BAUER

Reported By:
Karla Rocha
C.S.R. No. 8982

225 West Shaw Avenue
Suite 101
Fresno, California 93704 2652

KTA
KIM THAYER & ASSOCIATES
CERTIFIED COURT REPORTERS

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I N D E X

WITNESS: BARRY BAUER

EXAMINATION

PAGE

BY MS. GRAHAM

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PLAINTIFFS' DESCRIPTION

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(None offered)

DEFENDANTS' DESCRIPTION

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HB Sales Receipt Journal AG Ammo
2009

121

1 SUPERIOR COURT OF THE STATE OF CALIFORNIA

2 COUNTY OF FRESNO

3 -oOo-

4 SHERIFF CLAY PARKER, TEHAMA)
5 COUNTY SHERIFF; HERB BAUER)
6 SPORTING GOODS; CALIFORNIA)
7 RIFLE AND PISTOL ASSOCIATION;) No. 10CECG02116
8 ABLE'S SPORTING, INC.; RTG)
9 SPORTING COLLECTIBLES, LLC;)
10 AND STEVEN STONECIPHER,)

11 Plaintiffs and Petitioners,)

12 vs.)

13 THE STATE OF CALIFORNIA; JERRY)
14 BROWN, IN HIS OFFICIAL)
15 CAPACITY AS ATTORNEY GENERAL)
16 FOR THE STATE OF CALIFORNIA;)
17 THE CALIFORNIA DEPARTMENT OF)
18 JUSTICE, AND DOES 1-25,)

19 Defendants and Respondents.)
20

21 -oOo-

22 Fresno, California

23 December 14, 2010

24 -oOo-

25 The deposition of BARRY BAUER was taken in the
above-entitled matter pursuant to all of the provisions
of law pertaining to the taking and use of depositions
before Karla M. Rocha, CSR, with offices at Fresno,
California, commencing at the hour of 9:09 a.m., at the
offices of Kim Thayer & Associates, 225 West Shaw
Avenue, Suite 101, Fresno, California.

1 APPEARANCES OF COUNSEL:

2 For the Plaintiffs and Petitioners:

3 MICHEL & ASSOCIATES
4 By: Joshua R. Dale
5 Co-Counsel: Sean A. Brady and Clint B. Monfort
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6 For the Defendants and Respondents:

7 STATE OF CALIFORNIA DEPARTMENT OF JUSTICE
8 By: Kimberly Graham
1300 "I" Street, Suite 1101
9 Sacramento, California 94244-2550

10 Also present: Blake Graham, Special Agent Supervisor

11 -oOo-

12 BARRY BAUER,
13 called as a witness herein, having
14 been heretofore duly sworn,
15 testified as follows:

16 -oOo-

17
18 EXAMINATION BY MS. GRAHAM

19 MS. GRAHAM: Q Good morning, Mr. Bauer.

20 A Good morning.

21 Q My name is Kimberly Graham and I'm a deputy
22 attorney general with the California Attorney General's
23 Office. I represent the State of California, the
24 Department of Justice, and the current AG, Edmond G.
25 Brown, Jr., with respect to the lawsuit that Herb Bauer

1 more often in a Glock handgun than in a Glock long gun?

2 A Yes.

3 MR. DALE: Same objections.

4 MS. GRAHAM: Q Are you familiar with a
5 nine-millimeter long gun cartridge?

6 A Yes.

7 Q Taking into consideration your personal
8 experience with firearms and ammunition, would a
9 nine-millimeter long gun cartridge be more often
10 chambered in a long gun or in a handgun?

11 MR. DALE: Before he answers, I'd like to make a
12 suggestion to maybe speed this up. As to this line of
13 questioning, if Counsel would be willing to stipulate
14 that we have a running objection based upon calling for
15 expert witness opinion, improper lay witness opinion,
16 relevance, and vague and ambiguous as to the definition
17 of "chambered in" or words used to that effect, then if
18 we could have that running objection, that way I won't
19 keep interrupting.

20 MS. GRAHAM: That's fine. No, I understand.

21 Q Mr. Bauer, just as a clarifying question, when
22 I say "chambered into a handgun or long gun," do you
23 understand what that term is?

24 A No, not necessarily, that's why I'm having
25 difficulty answering the question.

1 Q Okay. When you load a handgun or a long gun
2 with ammunition what would you call that phrase or what
3 would you call that process?

4 A Loading a handgun. I would only -- my answers
5 are based on whether they would be fired in a handgun,
6 not chambered in a handgun and stuff like that, so.

7 Q Okay, so when you say "fired," what does that
8 include?

9 A That includes everything from taking it out of
10 the box to pulling the trigger.

11 Q Okay, so let's go back then. With respect to
12 45 ACP ammunition, would you say that is more often
13 fired out of a long gun or a handgun?

14 MR. DALE: Again, I'm going to object, vague and
15 ambiguous as to "more often fired out of." It also
16 calls for an expert opinion, improperly calls for a lay
17 witness's opinion.

18 Go ahead and answer.

19 THE WITNESS: It would probably be, and I'm going
20 to speculate, more often done in a 45 handgun.

21 MS. GRAHAM: Q I don't want you to speculate,
22 Mr. Bauer.

23 A I have to speculate, I have no absolute
24 foundation for giving an absolute answer.

25 Q But taking into consideration your personal

1 experience, that's what I'm asking you to take into
2 consideration, the personal experience we discussed,
3 whether it be the long guns you've fired, your handguns
4 you've fired, your military experience, your experience
5 working at Herb Bauer's for the last 12 years, taking
6 that into consideration, would 45 ACP ammunition be
7 fired more often out of a long gun or in a handgun?

8 MR. DALE: Same objections.

9 THE WITNESS: The big issue here is working at Herb
10 Bauer Sporting Goods, because everybody that buys this
11 ammunition can use it any way they choose to use it.
12 And how they use it is something that I don't know at
13 the time that I'm selling them the ammunition, okay?

14 And so when you say my experience at Herb
15 Bauer Sporting Goods are they going to use it in a
16 rifle or pistol, because we're looking at my overall
17 body of experience, it's very difficult for me to know
18 the answer to these questions you're asking me because
19 people shoot them in anything they want to shoot them
20 in, and I know that.

21 So for me to draw a conclusion based on my
22 personal experience, my personal experience is I know
23 that all of my customers shoot these things in all
24 kinds of weapons, long guns and short guns, okay?
25 That's why I'm struggling with the answer.

1 Personally I have shot a nine-millimeter, own a
2 nine-millimeter, it's on my CCW permit. Do I have a
3 long gun at nine-millimeter? I personally don't, but
4 there are people that do. Same is true with 45.

5 Every caliber here has a long gun and a short
6 gun version of it, and so I happen to know that they
7 can all be fired in all handguns and long guns.

8 For me to draw a conclusion on were there
9 probably more shot is the speculative part and is the
10 unfair part of the question, because I know my
11 customers, because of my experience at Herb Bauer's,
12 use them in all different kinds of guns.

13 Q Notwithstanding the cartridge that I have
14 asked, specifically the 45 ACP, can be used in both the
15 long gun and in a handgun, taking into consideration
16 your personal experience that we've discussed, can you
17 provide an answer to the question of: Would 45 ACP
18 ammunition be fired more often in a long gun or in a
19 handgun?

20 MR. DALE: Same objections as before. It's also
21 been asked and answered. It's also argumentative.
22 He's provided the answer four times now, which is "I
23 don't know."

24 THE WITNESS: And I'm going to stay with that
25 answer.

1 MS. GRAHAM: Q Taking into consideration your
2 personal experience with firearms that we've discussed,
3 as we discussed, would 45 GAP ammunition be fired more
4 often in a long gun or in a handgun?

5 MR. DALE: Objection, calls for expert opinion,
6 improper lay witness opinion, calls for speculation,
7 vague and ambiguous as to "more often fired."

8 Go ahead and answer.

9 THE WITNESS: Handgun.

10 MS. GRAHAM: Q Are you familiar with a nine-
11 millimeter long gun cartridge?

12 A Yes.

13 Q Taking into consideration your personal
14 experience with firearms and ammunition, would a nine-
15 millimeter long gun ammunition be fired more often in a
16 long gun or in a handgun?

17 MR. DALE: Same objections.

18 THE WITNESS: Handgun.

19 MS. GRAHAM: Q Are you familiar with the
20 nine-millimeter Luger cartridge?

21 A Yes.

22 Q Taking into consideration your personal
23 experience with firearms and ammunition, would a
24 nine-millimeter Luger ammunition be fired more often in
25 a long gun or in a handgun?

1 MR. DALE: Same objections.

2 THE WITNESS: Handgun.

3 MS. GRAHAM: Q Are you familiar with a
4 nine-millimeter Parabellum cartridge?

5 A No.

6 Q Are you familiar with a 9 by 19 Parabellum
7 cartridge?

8 A No.

9 Q Are you familiar with a ten-millimeter Smith
10 and Wesson cartridge?

11 A Yes.

12 Q Taking into consideration your personal
13 experience with firearms and ammunition, would a
14 ten-millimeter Smith and Wesson ammunition be fired
15 more often in a long gun or a handgun?

16 MR. DALE: Same objections.

17 THE WITNESS: Handgun.

18 MS. GRAHAM: Q Are you familiar with a 40 Smith
19 and Wesson cartridge?

20 A Yes.

21 Q Taking into consideration your personal
22 experience with firearms and ammunition, would a 40
23 Smith and Wesson -- would 40 Smith and Wesson
24 ammunition be fired more often in a long gun or
25 handgun?

1 MR. DALE: Same objections.

2 THE WITNESS: Handgun.

3 MS. GRAHAM: Q Are you familiar with a 25 ACP
4 cartridge?

5 A Yes.

6 Q Taking into consideration your personal
7 experience with firearms and ammunition, would 25 ACP
8 ammunition be fired more often in a long gun or in a
9 handgun?

10 MR. DALE: Same objections.

11 THE WITNESS: Handgun.

12 MS. GRAHAM: Q Are you familiar with a 32 ACP
13 ammunition?

14 A Yes.

15 Q Taking into consideration your personal
16 experience with firearms and ammunition, would a 32 ACP
17 ammunition be fired more often in a long gun or a
18 handgun?

19 MR. DALE: Same objections.

20 THE WITNESS: Handgun.

21 MS. GRAHAM: Q Are you familiar with a 357 Magnum
22 cartridge?

23 A Yes.

24 Q Taking into consideration your personal
25 experience with firearms and ammunition, would a 357

1 Magnum ammunition be fired more often in a long gun or
2 in a handgun?

3 MR. DALE: Same objections.

4 THE WITNESS: That one is unknown because it's used
5 by cowboy shooters, goes both ways.

6 MS. GRAHAM: Q And when you say "cowboy shooters,"
7 what does that mean?

8 A Single-Action Shooting Society. It uses
9 handguns and rifles of the same caliber in their
10 activity.

11 Q Are those what are known as lever action?

12 A Yes.

13 Q Is that L-E-V-E-R?

14 A Correct.

15 Q Mr. Bauer, for the record, I'm learning all
16 these handgun terms, so if I ask you a question --

17 A That was a long gun term, lever action.

18 Q I'm learning, I'm in the process. Are you
19 familiar with 357 Sig ammunition?

20 A No.

21 Q Are you familiar with 44 Magnum ammunition?

22 A Yes.

23 Q Taking into consideration your personal
24 experience with firearms and ammunition, would 44
25 Magnum ammunition be fired more often in a long gun or

1 a handgun?

2 MR. DALE: Same objections.

3 THE WITNESS: Long gun.

4 MS. GRAHAM: Q What long guns that are sold at
5 Herb Bauer can fire a 44 Magnum?

6 A Marlin makes a model.

7 Q Is that M-A-R-L-I-N?

8 A Yes.

9 Q Do you know what model that is?

10 A No, I'm sorry, I don't.

11 Q Okay.

12 A And I'm not an expert so I can't think of
13 another one, but there are, like, three other models of
14 long guns that we sell that handle 44 Magnum
15 ammunition.

16 Q And how many handguns at Herb Bauer that have
17 been sold in the past year -- sorry. How many models
18 of handguns are sold at Herb Bauer Sporting Goods that
19 can fire a 44 Magnum ammunition?

20 MR. DALE: Objection to the extent it calls for
21 speculation.

22 THE WITNESS: I don't know the answer to that.

23 MS. GRAHAM: Q Can you provide an estimate? Is
24 there one handgun, is there ten?

25 MR. DALE: Same objection.

1 THE WITNESS: An estimate would be three.

2 MS. GRAHAM: Q Are you familiar with a 44 Special
3 cartridge?

4 A Yes.

5 Q Taking into consideration your personal
6 experience with firearms and ammunition, would 44
7 Special ammunition be fired more often in a long gun or
8 a handgun?

9 MR. DALE: Objection, it's not relevant, not likely
10 to lead to the discovery of admissible evidence, it's
11 vague and ambiguous as to "more often" or "more likely
12 fired," it improperly calls for a lay witness opinion,
13 calls for an expert opinion, calls for speculation.

14 Go ahead.

15 THE WITNESS: That's one of the ones that's very
16 similar to a 357 in the fact that it's used in rifles
17 and pistols by the cowboy shooters, and I can't tell
18 you whether it's more often used in a handgun or a
19 rifle.

20 MS. GRAHAM: Q Does Herb Bauer sell long guns that
21 can fire a 44 Special cartridge?

22 A Yes.

23 MR. DALE: Objection to the extent it calls for
24 speculation. Let the answer stand.

25 MS. GRAHAM: Q And what makes and models are

1 those?

2 MR. DALE: Same objection.

3 THE WITNESS: That's a cowboy caliber and Savage
4 makes a firearm like that.

5 MS. GRAHAM: Q And do you know the model of the
6 Savage?

7 A No, I don't.

8 Q Is there any other long gun that you can think
9 of?

10 A None that I recall.

11 Q Does Herb Bauer Sporting Goods sell a handgun
12 that can fire a 44 Special cartridge?

13 A Yes.

14 MR. DALE: Calls for speculation.

15 MS. GRAHAM: Q And what makes and models of those
16 handguns does Herb Bauer sell?

17 MR. DALE: Calls for speculation.

18 THE WITNESS: We sell both new and used handguns at
19 Herb Bauer's, and I have sold over the years both new
20 and used handguns. What make and model, I don't know.

21 MS. GRAHAM: Q Can you give me an estimation of
22 how many makes or models of handguns that you've sold
23 from Herb Bauer Sporting Goods that can fire a 44
24 cartridge -- I'm sorry, a 44 Special cartridge?

25 MR. DALE: Objection, calls for speculation.

1 THE WITNESS: I cannot recall over the 12 years how
2 many we've sold.

3 MS. GRAHAM: Q And you can't provide an estimate?

4 A No, I can't.

5 Q Okay, I'm just asking. Are you familiar with
6 a 380 ACP?

7 A Yes.

8 Q Taking into consideration your personal
9 experience with firearms and ammunition, would 380 ACP
10 ammunition be fired more often in a long gun or in a
11 handgun?

12 MR. DALE: Objection, not relevant, not likely to
13 lead to the discovery of admissible evidence,
14 improperly calls for a lay opinion, calls for an expert
15 opinion, vague and ambiguous as to "more often fired,"
16 and calls for speculation.

17 Go ahead.

18 THE WITNESS: Based on the firearms we sell, 380
19 would be a handgun ammunition.

20 MS. GRAHAM: Q Are you familiar with a 454 Casull
21 ammunition?

22 A Yes.

23 Q Taking into consideration your personal
24 experience with firearms and ammunition, would 454
25 Casull ammunition be fired more often in a long gun or

1 a handgun?

2 MR. DALE: Same objection.

3 THE WITNESS: And same answer for me as 357 and 44,
4 that cartridge goes both ways. I sell new rifles with
5 454 Casull caliber as well as handguns with a 454
6 Casull caliber.

7 MS. GRAHAM: Q What makes and models of long guns
8 do you sell at Herb Bauer that can fire a 454 Casull, to
9 the extent that you know?

10 MR. DALE: Objection, calls for speculation, may
11 also call for an expert opinion.

12 THE WITNESS: I recall a Marlin, lever action
13 Marlin that we spoke of before being of that caliber,
14 and there are others, but I don't know what they are.

15 MS. GRAHAM: Q Do you know approximately how many
16 others?

17 A Two.

18 Q Are you familiar with 38 Special ammunition --
19 or cartridge, excuse me?

20 A What?

21 Q I'm sorry, are you familiar with a 38 Special
22 cartridge?

23 A Yes, I am.

24 Q Taking into consideration your personal
25 experience with firearms and ammunition, would a 38

1 Special ammunition be fired more often in a long gun or
2 a handgun?

3 MR. DALE: I'm going to object, that improperly
4 calls for a lay opinion, vague and ambiguous as to
5 "more often fired," calls for expert opinion, calls for
6 speculation.

7 Go ahead.

8 THE WITNESS: Again, that's a cowboy caliber and
9 cowboys shoot a ton of ammunition and it could go
10 either in a rifle or in a pistol.

11 MS. GRAHAM: Do you mind if we take a break?

12 MR. DALE: No, go ahead.

13 (Brief recess.)

14 MS. GRAHAM: Q I'd like to turn to Exhibit 4,
15 which was your Declaration in Support of the Motion for
16 Summary Judgment. Do you see that one?

17 A Yes.

18 Q And I'd like to turn to Page 3 of the
19 declaration, Paragraph 11, which begins on Line 12.

20 A Yes.

21 Q Do you see that?

22 A Yes.

23 Q In reading that paragraph you indicate that
24 you fear you will be prosecuted for unknowingly
25 violating California Penal Code Sections 12060, 12061

1 and 12318, do you see that?

2 A Yes.

3 Q And what is your fear with respect to being
4 prosecuted?

5 A Well, the way AB 962 is written, at this point
6 I have no idea who or what handgun ammunition is, and I
7 don't want to violate the law by selling ammunition
8 that is perceived by some as handgun ammunition when we
9 don't perceive it as handgun ammunition, or customers
10 don't perceive it as handgun ammunition because they
11 plan to use it in a long gun.

12 Q You see on Line 17 through 19 you say --
13 sorry, let's start off at 15, "For example, I fear
14 prosecution and license revocation if I do not record
15 pursuant to Penal Code Section 12061-A3, transfer of
16 ammunition the law enforcement deems handgun
17 ammunition, even if I do not know what ammunition is
18 handgun ammunition or what ammunition law enforcement
19 will consider handgun ammunition under these laws," do
20 you see that part?

21 A Yes.

22 Q If the State of California and the Department
23 of Justice were to provide you with a list of handgun
24 cartridges similar to the list that we discussed today,
25 and as was listed in the specially prepared

1 deposition.

2 We're going to adopt the same stipulation we
3 used yesterday with Mr. Stonecipher in which the court
4 reporter has and will be able to reproduce, with one
5 caveat, and that caveat is that rather than Mr. Bauer
6 reviewing an electronic copy, because he is going to be
7 in town, the court reporter will actually get and mail
8 to our office the original and we will forward that on
9 to Mr. Bauer and subject to the deadlines that are in
10 the original stipulation.

11 MS. GRAHAM: Thank you. So stipulated.

12 (Time noted 12:54 p.m.)

13

14 -oOo-

15 I declare under penalty of perjury under the
16 laws of the State of California that the foregoing is
true and correct.

17

18 Executed at Fresno California on 12/29
2010.

19

20

21

Barry Bauer
BARRY BAUER

22

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24

25

1 STATE OF CALIFORNIA)
) ss.
2 COUNTY OF FRESNO)

3 I, Karla M. Rocha, a Certified Shorthand
4 Reporter in the State of California, residing in
5 Clovis, do hereby certify:

6 THAT the witness in the foregoing deposition
7 named BARRY BAUER was by me duly sworn to testify to
8 the truth, the whole truth and nothing but the truth
9 for the taking of the testimony herein;

10 THAT said deposition was reported in shorthand
11 by me at the time and place above stated, that I am a
12 Certified Shorthand Reporter, and thereafter
13 transcribed under my direction and control.

14 I FURTHER CERTIFY that I am not interested in
15 the outcome of said action, nor connected with, nor
16 related to any of the parties in said action or to
17 their respective counsel.

Karla M. Rocha
Karla M. Rocha
CSR #8982

EXHIBIT F

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IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF FRESNO

---oOo---

SHERIFF CLAY PARKER, TEHAMA COUNTY)
SHERIFF; HERB BAUER SPORTING GOODS;)
CALIFORNIA RIFLE and PISTOL)
ASSOCIATION FOUNDATION; ABLE'S)
SPORTING, INC.; RTG SPORTING)
COLLECTIBLES, LLC; and)
STEVEN STONECIPHER,)
Plaintiffs and Petitioners,)
v.)
THE STATE OF CALIFORNIA; JERRY BROWN,)
in his official capacity as Attorney)
General for the State of California;)
THE CALIFORNIA DEPARTMENT OF JUSTICE;)
and DOES 1-25,)
Defendants and Respondents.)

No. 10CECG02116

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THURSDAY, DECEMBER 16, 2010

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DEPOSITION OF
STEPHEN HELSLEY

---oOo---

REPORTER: LINDSEY R. PERRY, CSR #12806, RPR, CRR

1 APPEARANCES

2 For the Plaintiffs and Petitioners:

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9 OFFICE OF THE ATTORNEY GENERAL

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12 For the Bureau of Firearms:

13 STATE OF CALIFORNIA DEPARTMENT OF JUSTICE
14 OFFICE OF THE ATTORNEY GENERAL

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1300 I Street, Suite 1101
16 Sacramento, CA 94244
kimberly.graham@doj.ca.gov

17 Also present:

18 Blake Graham
19 Dawn McFarland

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1 10 Cheaper Than Dirt Web site 145
printout, two pages.

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3 11 Amended response to specially 147
4 prepared interrogatory No. 5,
5 four pages.
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1 and there are a number of companies that specialize in
2 aftermarket barrels for these things. So if you want to
3 design a cartridge that's got your own name on it, you
4 know, the 263, you know, Smith and Jones, boy, they'll
5 build it for you, but those records aren't kept, that I
6 know of, because you're dealing with barrels and not with
7 a serial-numbered frame.

8 Q Thank you for explaining that. Somehow I feel
9 that paragraphs 52 through 64 are all directed at me. I
10 don't know why. "For the person who knows little about
11 firearms." Maybe it's to Sean and Clint. I don't know.

12 A At times, it certainly was.

13 Q Go to paragraph 66 of Exhibit 5.

14 A Okay.

15 Q You state that, "There's no generally-accepted
16 definition of handgun ammunition or any
17 commonly-understood delineation between handgun ammunition
18 and any other ammunition used in the firearms industry,
19 let alone one that allows one to determine whether certain
20 cartridges are principally for use in handguns."

21 On what facts do you base that statement?

22 A That has been my experience in the materials that
23 I have and the things that I've read. The problem with a
24 lot of this is terms are casually used and thrown around
25 and if -- there are handguns that shoot .30-06 cartridges

1 and I have friends that refer to that as handgun
2 ammunition because they shot it in a handgun. I had never
3 really thought about the distinctions we're talking about
4 here until I got involved in this because, as I said
5 before, I think it was a false choice, but I don't recall
6 seeing something from Department of Defense or from
7 various sources saying this is handgun ammunition and this
8 is rifle ammunition.

9 Q In your experience and based on all of your work
10 and training and research and teaching out there, isn't
11 there, though, an understanding of sorts about what
12 calibers or what cartridges of ammunition are handgun
13 ammunition, that are commonly understood to be -- to be
14 used more often in handguns, and so they are categorized
15 in Cartridges of the World, for instance, as handgun
16 cartridges, pistol cartridges --

17 A Well, I had this --

18 MR. DALE: Hold on.

19 THE WITNESS: Sorry.

20 MR. DALE: Objection. Compound, vague and
21 ambiguous, incomplete hypothetical, argumentative.

22 Go ahead.

23 THE WITNESS: I've had this discussion with one
24 of my friends, and I threw the question out to him, "Well,
25 what is handgun ammunition?" And he rattled off some

1 stuff real quickly. And then I put some more conditions
2 on it. I said, "Well, how about Thompson con- -- and how
3 about" -- and then the surety that he had with the first
4 response sort of crumbled in light of the follow-up
5 questions. And then he said, "Oh, yeah." It was
6 something that he hadn't thought about. "Gee, the 9x19 is
7 a handgun, you know, so it's handgun ammunition." I said,
8 "Well, okay, but if more were shot in submachine guns than
9 were shot in handguns -- I don't know what they are, but
10 if they were, then what would it be?" He said, "Well, I
11 guess it would be submachine gun ammunition." Well, he
12 just -- it just wasn't something that he'd thought about.
13 And he had a first response, but then with a follow-up
14 question, then he changed.

15 So to your question, yeah, there are all sorts of
16 folks who will say, "Sure," but then when you apply the
17 California definition, whatever it's going to be, against
18 it, then it's not quite so clear.

19 Q BY MR. KRAUSE: Okay. And is that the same point
20 you're getting at in paragraph 70 where you say, "While
21 firearms and ammunition literature sometimes makes
22 reference to handgun ammunition and rifle ammunition when
23 referencing some cartridges, I assume the authors never
24 anticipated making the technical distinctions necessitated
25 by California Penal Code Section 12060"?

1 A Yes.

2 (Whereupon Blake Graham entered the
3 deposition.)

4 Q BY MR. KRAUSE: Why do you believe that books
5 like Cartridges of the World, then, have a category of
6 handgun ammunition?

7 MR. DALE: Objection to the extent it calls for
8 speculation.

9 Q BY MR. KRAUSE: Based on your experience.

10 MR. DALE: Same objection.

11 THE WITNESS: One of the prisms that I look at it
12 through is Handguns of the World -- or I'm sorry,
13 Cartridges of the World is basically designed for people
14 in the United States and the -- as I responded to you
15 before, I see this from the view of across time and across
16 the world.

17 And submachine guns, for instance, with a 9x19
18 round, we'll use that one again, that's a far less common
19 thing here than it is in foreign countries where, for
20 instance, a civilian may not be able to own a handgun at
21 all, but the police have scads of machine guns.

22 So I suspect that they were describing the way
23 they see it in the United States. I don't think that's
24 unreasonable for them to do.

25 Q BY MR. KRAUSE: So in the United States, it

1 wouldn't be unreasonable to think of the cartridges listed
2 in Cartridges of the World as handgun ammunition?

3 MR. DALE: I'm going to object. Misstates his
4 prior testimony. It's also outside the scope of his
5 expertise.

6 Go ahead.

7 THE WITNESS: Well, to the degree that you don't
8 need to be precise, which is the nature of a lot of the
9 debate about guns, clip versus magazine, assault weapon
10 versus assault rifle, it's -- it's not -- it's not
11 surprising. I don't know that they would do the same
12 thing if they had to reconcile it against the code in this
13 state, but I don't think they'd worry about that because
14 they're dealing with 50 states. Almost did a Barack there
15 and said 57 states.

16 Q BY MR. KRAUSE: Someday there might be.

17 (Off-the-record discussion.)

18 Q BY MR. KRAUSE: I mean, certainly you don't think
19 they're just being arbitrary in listing the cartridges
20 they list in Cartridges of the World, for instance, as
21 pistol cartridges or handgun cartridges.

22 MR. DALE: I'm going to object. It's vague and
23 ambiguous. It's argumentative. It's also -- calls for
24 speculation.

25 THE WITNESS: They have to put them someplace,

1 and I note that as it relates to, say .44 Magnum or .357,
2 they note in the text of their description that these are
3 for long guns as well. So I suppose they could have put
4 them in the long gun section and said they're used in
5 handguns as well, but they put them where they put them
6 and noted there was a broader use.

7 Q BY MR. KRAUSE: Well, the California statute does
8 account for the fact that certain cartridges of ammunition
9 could be classified as handgun ammunition, notwithstanding
10 the fact that they're used in some rifles as well.

11 MR. DALE: I'm going to object that calls for a
12 legal conclusion. It assumes facts not in evidence. It's
13 argumentative.

14 Q BY MR. KRAUSE: Can California citizens, your
15 average citizen, buy a submachine gun?

16 A If DOJ gives a permit to them.

17 Q Does that happen very often?

18 A No.

19 Q And this is, after all, a California law;
20 correct? So --

21 A Well.

22 Q -- isn't it appropriate to focus on events in
23 California and California-centric considerations when
24 analyzing this law?

25 MR. DALE: Objection. Calls for a legal

1 conclusion. Outside the scope of this particular expert's
2 designation. It's vague and ambiguous.

3 THE WITNESS: Do I think so? No, because those
4 cartridges aren't made here in the first place. The
5 majority of the guns aren't made here. This is a national
6 traffic and sales distribution system. And part of the
7 problem with Roberti-Roos and other things is for those
8 who make and distribute these to figure out what we expect
9 of them.

10 Q BY MR. KRAUSE: Paragraph 72, lines 11 through 13
11 on page 21.

12 A Uh-huh.

13 Q You say that neither your library nor your
14 experiences provide you with knowledge as to what
15 cartridges are principally for use in a handgun.

16 When you state that you don't know what
17 ammunition is handgun ammunition, how long did you think
18 about that concept before you made that statement in the
19 declaration?

20 A Well, I can tell you one of the things I did. I
21 took cartridges and I walked them through my historical
22 timeline. And for instance, the .32 ACP designed turn of
23 the 20th century. For quite awhile, it was handgun round,
24 but then it got adapted to submachine guns, particularly
25 the VZ 61, a Czech made. And since then there have been

1 all sorts of models of that. It's gotten tremendous use
2 in third world countries. It's called -- the Skorpion is
3 the name for it. As I took various cartridges and tried
4 to resolve where they fit in this thing, from my
5 perspective, it didn't make sense. You know, I couldn't
6 decide the principal use in handguns because .32s, there
7 are a lot of .32s floating around. I'm sure more so in
8 Europe because it's never been that big a seller here, but
9 the scope of the .32 ACP or 765, as it's known in Europe,
10 there have been a lot of those things made and they're
11 involved in, you know, the horrible things that go on in
12 Africa and, you know, packed full of third world
13 countries, and so I look at it and I say, "Gee, there's a
14 pretty good chance that the .32 is probably getting fired
15 out of submachine guns a whole lot more than it is from
16 handguns." I don't know that. I don't know that it's
17 knowable, but it -- it makes it hard to say, "Oh, well,
18 yeah, gee, the 765 is principally a handgun round."

19 Q That's based on information not -- in the United
20 States not just in California but worldwide?

21 MR. DALE: Objection. Misstates his testimony.

22 THE WITNESS: Yes. And again, as I've done in
23 each description, my responses to you are through time and
24 around the world.

25 Q BY MR. KRAUSE: I don't suppose I could ask