

1 nicely for you to focus on California, could you?

2 California and the United States?

3 A Well, I -- you know, I suppose if I had really
4 good DROS statistics, I could.

5 Q Well, I'm sure the legislature can pass another
6 law that requires recording of rifle sales, and then it
7 would be a simple task?

8 A No, because if it's done the same way handguns
9 are done now, we still wouldn't know much.

10 Q Paragraph 72 of your declaration, you say that
11 you don't know of any sources from which you could
12 determine what cartridges suitable for use in both rifles
13 and handguns are used more often in a handgun than in a
14 long gun.

15 Do you see that?

16 A Yes, I do.

17 Q Again, how long had you considered that concept
18 before you put this in your declaration?

19 A Well, that began when they asked me to focus on
20 this, which would have been, I don't know, September,
21 because this whole thing was not on my horizon and -- and
22 so as I spoke to them and had to think my way through it,
23 I -- I've shot a Skorpion. I know what it is. I had
24 never considered it vis-à-vis a .32 Colt made in 1902.
25 And so as we had these discussions, I said, "Okay. Well,

1 I'd better focus on these things and think about them."

2 And so probably two months, two and a half months until it
3 was printed here, but a lot of discussions.

4 Q And considering your experience and your use of
5 both handguns and rifles over time, as you sit here today,
6 do you still believe that you're unable to identify a
7 single cartridge that's shot more often out of a handgun
8 than a rifle?

9 A No. No, we simply haven't discussed --

10 Q Okay.

11 A We have discussed a few rounds.

12 Q Can you identify any cartridges for me that are
13 shot more often out of a handgun than a rifle?

14 A Okay. Well, I have no experience -- I've never
15 seen a rifle that was chambered for a .25 ACP cartridge.
16 Maybe there was. I've never seen one of them.

17 Q Okay.

18 A I know of no .25 submachine guns, so there's no
19 conflict there. What I've -- again, what I've done is
20 I've gone through a lot of the cartridges/calibers that
21 have been kicked back and forth, and I'm prepared to
22 discuss whatever cartridge you want to --

23 Q Okay. And I'll get through those.

24 All right. I think I'm done with your
25 declarations. You can -- I don't know if you want to tidy

1 up a little bit or...

2 You've mentioned a couple times that the DROS
3 system is not perfect.

4 What problems do you see with the DROS system?

5 A Well, we've gone through the fact that I have 19
6 handguns.

7 Q Yes.

8 A I've had more than that. About -- awhile before
9 Wil Cid retired as chief of the bureau, I asked him to run
10 me through DROS -- there's a procedure that the bureau has
11 for doing that -- and identify all the firearms that DROS
12 thinks I have or have had, because I bought my first
13 handgun that was DROS'd in 1964. And I asked Wil
14 specifically, as I was told that there's some of the DROS
15 system that's online and some that has to go back and be
16 hand searched, so I asked him, "Okay. Profile me." Okay?
17 What I got back was a list of four handguns, one of which
18 I'd bought in '73 and sold in '73, and that was correct.
19 Two of the .22 revolvers that I've described to you were
20 there. The fourth pistol, I'm not sure it's mine because
21 the maker that's designated is wrong. The serial number's
22 correct, the caliber's correct, but the make is wrong. So
23 I don't know if that's mine or not. But here's what I
24 know as well. I know that I have receipts from stores
25 where I bought -- like the Walther PPK/S that's described

1 there. It's not in DROS. The .45 that I shot with that
2 then CCI put serial numbers on is not in the DROS. There
3 was a handgun that I bought for my daughter that I did an
4 operation of law transfer on and neither I nor she is in
5 the DROS, but the pièce de résistance is the Glock. I
6 bought that from DOJ and it's not in the DROS. Now, to
7 the degree that I am a microcosm of the credibility of the
8 DROS system, I submit to you that it's not very good.

9 Q Have you purchased any handguns in California in
10 the last ten years?

11 A No, huh-uh.

12 Q Okay. When was the last time you purchased a
13 handgun in California?

14 A Wait. Yes, I did. The .22 Magnum revolver
15 that's in the DROS system is one I purchased probably in
16 2003 or '4, but I still have the printout from Wil that I
17 got and the correspondence.

18 Q And that is on the printout?

19 A Yes. Yeah.

20 Q So in general, you believe that the DROS
21 information is inaccurate? Potentially inaccurate?

22 A I'm even more concerned with its incomplete. I
23 know the DROS account has had surpluses galore in some
24 years, and I know that when I tried to get information on
25 assault firearms, whatever those were, there was a

1 decision made by the group that I was sort of
2 coordinating -- it was made by Sherman Block, the sheriff
3 of Los Angeles -- that they didn't want to collect
4 information, it was going to be collected from labs,
5 because they knew that the information collected wouldn't
6 support the thesis of the bill.

7 I have been concerned that there's never really
8 been a management review of DROS. I mean, is it getting
9 used? I asked two former chiefs of BI if, in their law
10 enforcement career, they'd ever used DROS to solve a crime
11 and they said no.

12 So I know we have a system. I know the
13 information is incomplete. I know that, in my case, it's
14 incomplete and inaccurate. And the data that you provided
15 I don't believe is the kind of information that management
16 needs to make decisions.

17 Q Do you remember what year it was when former
18 Chief Cid requisitioned your information?

19 A 2000 -- well, see, Cid retired a year ago, two
20 years ago? I forget. It was -- it was about a year
21 before he retired. And then I forget the process I had to
22 go through. I had to submit something to approve them to
23 check it out, and then I got correspondence from one of
24 the guys in the bureau, which I still have, but it was
25 two, possibly three years ago.

1 Q Okay.

2 MR. DALE: Counsel, I just noted your expert
3 wrote something down on a piece of paper and handed it
4 over through Ms. Graham. I'm wondering if that's going to
5 be produced to us as part of your expert's writings.

6 MR. KRAUSE: Sure, if you want.

7 MR. DALE: Okay. Thank you.

8 MR. KRAUSE: Big folder.

9 You okay? Break time? Anything?

10 THE WITNESS: I'm fine.

11 MR. KRAUSE: Everybody good?

12 MR. DALE: We're doing great. Thank you.

13 Q BY MR. KRAUSE: Go through a few bits of the
14 newspaper.

15 Mark this Exhibit 6.

16 (Whereupon Defendants' Exhibit 6 was
17 marked for identification.)

18 Q This is an article from The Sacramento Bee that
19 appears to have been authored by you on July 5th, 2010.

20 A Yes.

21 Q Are you familiar with this article? Or I guess
22 it's an opinion.

23 A It's an op-ed piece.

24 Q Op-ed piece?

25 A Yeah.

1 following calibers to be handgun ammunition calibers
2 within the meaning of Sections 12060, 061 and 12318: .45,
3 9mm, 10mm, .40, .357, .38, .44, .380, .454, .25 and .32.

4 Sitting here today, would you agree that any
5 cartridges of ammunition and the calibers identified by
6 the Department of Justice are chambered more often in a
7 handgun than a rifle?

8 MR. DALE: Objection. Vague and ambiguous as to
9 "chambered more often."

10 Q BY MR. KRAUSE: Do you understand what that
11 means, "chambered more often"?

12 A Well, can you restate it? Because I lost you
13 partway through the question.

14 Q Would you agree that any cartridges of ammunition
15 in the calibers that were just identified are chambered
16 more often in a handgun than a rifle?

17 MR. DALE: Same objection.

18 THE WITNESS: Okay. I'll have to explain here.
19 As Special Agent Supervisor Graham spoke to, in part, in
20 his deposition, there's a disconnect between the name of a
21 cartridge and the caliber. A .44 isn't a .44. A .32
22 isn't a .32.

23 Q Sure. And we don't need to go through that. I
24 understand that because it's a measurement and I think we
25 can shortcut this if I just skip to the cartridges.

1 A Yeah, but when you put the word "caliber" in it,
2 it's hard to skip by it.

3 Q I understand, but let's just strike my prior
4 question and we'll just move on.

5 Based on your experience and expertise, would you
6 agree that the .45 ACP cartridge is handgun ammunition?

7 A No.

8 Q Why not?

9 A A little story. The .45 ACP cartridge was
10 developed in the early 1900s for some handguns that
11 Browning was designing, and those served in World War I.
12 And toward the end of World War I, John Thompson developed
13 the Thompson submachine gun, which became a fairly big
14 deal in law enforcement, came too late to use in the war,
15 but it was used by our military to fight in Nicaragua, in
16 Shanghai and a variety of places where the Marine Corps
17 was. At the beginning of World War II, they geared up and
18 produced, between the Thompson submachine gun, the Greiss
19 gun that fired the same round and the Reising gun,
20 something on the order of 3 million submachine guns and
21 there were more .45 handguns produced than there were
22 submachine guns, but the -- in terms of which consumes the
23 most, the handgun was never a principal battle arm. It
24 was a backup. And the submachine guns were, you know,
25 airborne assault firearms. You know, they were used

1 extensively in the Pacific, so taking us through the
2 Korean War and on into Vietnam, because those same guns
3 served all through the Vietnam conflict, the -- there was
4 tremendous amount of use of .45 ACP in long guns. And
5 those guns were subsequently sold, given away to, you
6 know, Vietnam, the Philippines, I don't know where all
7 they went to, but there has been so much submachine gun
8 use of .45 ACP over the century that I suppose if you
9 researched it, you could get closer, but I don't think
10 it's a given that the .45 ACP, given my perspective on
11 worldwide and through time, has been fired more, say, in a
12 handgun than it has in a submachine gun.

13 Q Putting aside the historical background and
14 historic usage, in California today, would you say that
15 the .45 ACP cartridge is more often used in a handgun or
16 in a rifle?

17 MR. DALE: Objection. Incomplete hypothetical.

18 THE WITNESS: Well, there are rifles that use the
19 .45 ACP cartridge.

20 Q BY MR. KRAUSE: Okay. ACP stands for Automatic
21 Colt Pistol?

22 A Colt pistol, yes.

23 Q Okay. Can you identify what rifles chamber a .45
24 ACP cartridge?

25 A One of the guns is the Marlin Camp .45 that I

1 described that I own one of them and -- can't bring more
2 to mind. There are just a few of them, but -- and what I
3 don't know is I don't know the usage that the millions of
4 submachine guns that are floating around the world that
5 shoot that cartridge is in relationship to what we're
6 doing here. Clearly, in this state, people can't have
7 Thompson submachine guns, for the most part, unless DOJ,
8 you know, decides to bless them with one, but move across
9 the border and in Nevada you can own a Thompson gun if you
10 want to and in 36 states, the Joe Six Pack can own a
11 machine gun. So to be sure in my response, I would want
12 to know -- I would want to talk to the BATFE folks and
13 find out the number of licensed Thompson submachine guns
14 that there are in the United States, because I -- I know
15 they're -- I've fired quite a few of them myself, so --
16 and I know that there are stores in Las Vegas, for
17 instance, that rent them. And there's a constant parade
18 of tourists that are throwing down lots of bucks to shoot
19 those guns, a lot of rounds being burned up. So I know
20 that you're uncomfortable with my worldwide view, but even
21 the national view, California is not representative of the
22 nation in terms of, say, submachine guns.

23 Q How many .45 handguns are available in California
24 that chamber the .45 ACP, to your knowledge?

25 A Not a clue. Not a clue.

1 Q More than a hundred?

2 A Now, do you mean different designs? Models?

3 Q Different manufacturers, different models. Any
4 distinct handgun that chambers the .45 ACP.

5 A Well, the difficulty that I would have is I'd
6 have to identify the universe and then run it against the
7 approved for-sale list in this state because the
8 manufacturers of gun X may not have submitted it to DOJ
9 for the drop test and the other things that are required.
10 So you can go to the -- you can go to the gun journals
11 like the Gun Digest to see sort of what the universe is.
12 If you have read the 2008 report from BATFE on gun
13 production, you can look at the makers who make .45s by
14 maker name, and it shows the exact number that they
15 produced each year. As I mentioned before, you can't draw
16 much in the way of conclusions from the DROS because,
17 while .45 is up there at the top, you don't know if those
18 are new sales or whether those are transfers and so you
19 don't know what the universe is.

20 Q Okay. But for sale in California right now, how
21 many rifles are there that chamber the .45 ACP round?

22 A Very few. I'm going to guess, perhaps, three or
23 four, but that is a flat guess.

24 Q So despite knowing that there will be so few
25 rifles that chamber this .45 ACP for sale in California

1 and comparatively many handguns that chamber the .45 ACP,
2 you still disagree that this round of ammunition is
3 handgun ammunition for purposes of the challenged
4 statutes?

5 A Well, again --

6 MR. DALE: Objection. Argumentative. Incomplete
7 hypothetical. Misstates his prior testimony.

8 Go ahead.

9 THE WITNESS: The question is not really how many
10 are for sale here in the state now, it's -- the question
11 is, how many exist? Because .45 ACP long guns in various
12 forms have been sold here for a long time. For instance,
13 the Numrich Arms Corporation made a gun that looked like
14 the Thompson machine gun. It's not. You can't sell it
15 here because it's an assault weapon, but there are those.
16 There are a variety of bolt action guns that were
17 converted because the head size, the .45 is the same as a
18 .308 or .30-06. You can put it in bolt action. So sales
19 are one dimension, but what is important is, what is the
20 universe of firearms that can discharge the cartridge?
21 And I don't know.

22 Q Okay. Next cartridge, the .45 GAP -- which I
23 believe stands for Glock Action Pistol?

24 A Yeah.

25 Q Based on your experience and expertise, would you

1 agree that the .45 GAP cartridge is handgun ammunition?

2 A I've never seen a GAP round. I've never seen a
3 Glock chambered for a GAP round. I've read about them. I
4 know of no long gun that's chambered for it.

5 Q Okay. So you have no reason to believe that it's
6 not exclusively handgun ammunition?

7 A I do not.

8 Q I think we've covered the 9mm Luger, also known
9 as the 9x19, also known as the 9mm Parabellum, but I guess
10 let me ask again.

11 Based on your experience and expertise, would you
12 agree that the 9mm Luger cartridge is handgun ammunition
13 for purposes of the challenged statutes, meaning that it's
14 used more often in a handgun than a rifle?

15 A Well, again, given my worldwide-through-time
16 perspective, I would disagree with that because I assume
17 that in the world, that cartridge is being used more in
18 submachine guns than it is in handguns.

19 Q What if we changed the focus to the United States
20 or California, would your opinion change?

21 A There -- there are still things that I wouldn't
22 know, because the DROS sales information, as soft as it
23 is, doesn't give you a real sense of -- well, we don't
24 know anything about long guns at all from DROS and I don't
25 know how many Marlin Camp 9s were made. I don't know how

1 many uppers for AR 15s were made that use the 9. I mean,
2 on and on and on. I could -- I think it would just be
3 irresponsible to say, "Oh, yeah." There are so many
4 submachine guns in the United States and in the world and
5 a lot in this state too that burn those rounds up that I
6 think a study would probably conclude that it's more often
7 used in long guns.

8 Q Worldwide?

9 A Yes. Possibly even in the United States,
10 depending on the police use and military use. There
11 are -- the military burns a lot of those in -- you know,
12 with the SEALs and -- because most -- most shooters, you
13 know, they buy a box, they go out and shoot once a year,
14 two or three times a year, they may have a gun, some
15 cartridges, but they don't put that many rounds through
16 it. The world of submachine guns and training with those
17 is you shoot a bunch. And so that's my sincere belief,
18 that --

19 Q So do you interpret principally for use in a
20 handgun to mean the number of rounds cycled through a
21 particular type of weapon?

22 A It's that and it's the number of firearms for
23 them. There are -- again, I -- I said in one of the
24 things I wrote that to me, the ultimate way you determine
25 whether something is for handgun or rifle is what you

1 shoot it in. And if more 9s are being sold to shoot in --
2 or if more 9s are fired in submachine guns and that's who
3 Federal or whoever else is producing them for, they're
4 filling contracts for the military or police and the
5 military and police are shooting them in their guns, then,
6 yeah, submachine guns. I mean, if the people who drafted
7 the law had been a little bit more precise, we wouldn't be
8 in this position, but that's my view of it.

9 Q Based on your experience and expertise, would you
10 agree that the 9mm Federal cartridge is handgun
11 ammunition?

12 A The only gun that I know that that round was
13 chambered for was a Ruger revolver. I have never seen a
14 long gun chambered in that -- or know of one.

15 Q So you would consider that to be handgun
16 ammunition?

17 A Yes.

18 Q Based on your experience and expertise, would you
19 agree that the 9mm Mauser cartridge is handgun ammunition?

20 A That's a tricky one. And the reason is, is I
21 believe a fair amount of the 9mm Mauser production was for
22 machine pistols. The Germans made some, the Spanish made
23 some. They were called, I believe, the 714. Some of them
24 had detachable magazines. Some had fixed. That's one
25 that I'd have to do some research on, but I probably come

1 down on -- on your side of it because most of the machine
2 pistols had detachable stocks and, therefore, it wouldn't
3 be a long gun as we're discussing it here. So as I think
4 my way through it, yes.

5 Q Okay. Thank you.

6 Based on your experience and expertise, would you
7 agree that the 10mm auto cartridge is handgun ammunition?

8 A What I would have to know there is, there are
9 long guns in upper receivers. I believe the FBI -- I
10 don't know whether they had 10s or .40s or if they had
11 both, that's -- I would be unsure on that.

12 Q Well, let me ask you this:

13 What long guns, to your knowledge, can chamber a
14 10mm cartridge -- 10mm auto cartridge?

15 A I think I may have listed some in the declaration
16 here. Let me go and refresh that because I'm afraid I
17 might be getting 10 and .40 transposed here and I wouldn't
18 want to do that. Let's see. That would have been in this
19 one. That -- that's right. I got myself twisted around
20 here. I was referring to the .40, not the 10. So in
21 answer to your question, on the 10, no, I don't know of a
22 rifle right offhand that I can bring to mind that's
23 chambered for the 10.

24 Q Okay. So you would consider the 10mm auto
25 cartridge to be a handgun cartridge?

1 A Yes.

2 Q Based on your experience and expertise, would you
3 agree that the .40 S&W auto is a -- is handgun ammunition?

4 A Well, no. That's where more work would have to
5 be done, because as I say in here on page 11 of the
6 document filed on September the 29th, there's a list of
7 the Beretta Storm, the Hi-Point, the Kel-Tec, the Olympic
8 Arms, PC for carbine and those things and I don't think I
9 could agree on that. I think one would need to know
10 substantially more than we know.

11 Q How many long guns chamber the .40 S&W auto
12 round?

13 A Well, from the list that I made is one, two,
14 three, four, five -- looks like about six are the ones
15 that I put down on the list here.

16 Q Do you have an estimate of how many handguns
17 chamber the .40 S&W auto round?

18 A Ruger, Smith. No, I'd have to research that. A
19 number of them. And there are various models of those.

20 Q Can you give me an estimate? More than 20?

21 A No, I can't.

22 Q Okay. Based on your experience and expertise,
23 would you agree that the that ACP cartridge is handgun
24 ammunition?

25 A Yeah, as I said before, I know of no long gun

1 that's chambered for that.

2 Q Okay. Same question as to the .32 ACP.

3 A I would say no. And that was the monologue I
4 took you through on the VZ 61 Skorpion and the follow-ons
5 to that. The .32 ACP cartridge has a tremendous following
6 in submachine guns worldwide.

7 Q In California, however, what would your answer
8 be?

9 A Well, I know --

10 MR. DALE: Objection. Incomplete hypothetical.
11 Sorry. Sorry for the interjection.

12 THE WITNESS: I know of no long guns that are
13 chambered for it. There are precious few handguns that
14 are still being chambered for it.

15 Q BY MR. KRAUSE: So your conclusion that it is --
16 that the .32 ACP cartridge is not handgun ammunition is
17 based on its use outside the United States?

18 A Yes.

19 Q Okay. Based on your experience and expertise,
20 would you agree that the .357 S&W Magnum is handgun
21 ammunition?

22 A No.

23 Q Why not?

24 A Well, 40 years ago if we'd had this discussion,
25 virtually every police department and sheriff's department

1 would have carried one of those, a wheel gun of some sort.
2 Now you'd be hard pressed to find one. There are a world
3 of .38 and .357 revolvers floating around, but there's
4 also a world of rifles that are chambered for them,
5 including a CHP commemorative and all manner of stuff that
6 comes from the Italians and these are part of the cowboy
7 gun world.

8 Q And those are for sale in California?

9 A Yes. Yes. As a matter of fact, the principal
10 distributor, EMF, is California based.

11 Q Do you have a rough estimate or -- of the number
12 of long guns that can chamber the .357 S&W Magnum
13 cartridge?

14 A No. I brought the Cowboy Chronicles along, and
15 their ads, and there are four of them. And through the
16 years, there have been -- the Israelis made one called the
17 Desert -- no, they called it the Wolverine. Browning has
18 made them. There have been a lot of them over the years.
19 Whether they're still being sold, I don't know. They're
20 still in circulation. But the principal ones that are for
21 sale here now are the cowboy battalion ones.

22 Q Do you have an estimate of how many handguns can
23 chamber the .357 S&W Magnum cartridge?

24 A You mean in models or in count?

25 Q What's -- you mean total number versus models?

1 A Yeah.

2 Q I don't expect you probably have a count, so
3 maybe models.

4 A Through time, Smith & Wesson has had a lot of
5 them. Colt has had some. Ruger has had quite a few.
6 Rossi. I'm trying to think of who else comes to mind.
7 There are a lot of models of .357s, be they Deringers or
8 revolvers or single action, double action or -- that would
9 require some study to count.

10 Q Okay. Based on your experience and expertise,
11 would you agree that the .357 SIG, S-I-G, cartridge is
12 handgun ammunition?

13 A With that cartridge, I have never seen a long gun
14 that's chambered for it.

15 Q So you would agree that the .357 SIG is handgun
16 ammunition?

17 A Yes.

18 Q Based on your experience and expertise, would you
19 agree that the .44 S&W Special is handgun ammunition?

20 A No.

21 Q Why not?

22 A Well, again, we're into the same thing as with
23 the .357. The .44 Special will work in a .44 Magnum.
24 It's like the relationship between the .22 long rifle and
25 the .22 long. All manner of .44 Special firearms that

1 will accept a .44 Special cartridge have been made and
2 I -- I looked at the -- at the DROS stats on .44s and
3 .454s and that's when I thought, you know, well, I don't
4 know whether these are new sales or whether these are, you
5 know, transfers. And there are quite a few -- the
6 impression I have is there are quite a few. I haven't
7 gone to the National Shooting Sports Foundation or various
8 folks to find out if I can get gun production from Marlin,
9 because they make them, and Browning made them. I have no
10 idea what their sales are, but I know that there is an
11 open question that until you resolve some counts to really
12 know what's being sold and what's been sold over time.

13 Q Okay. All right. How about the .44 S&W
14 American? Based on your experience, is that cartridge
15 handgun ammunition?

16 A That's a vintage round.

17 Q Is it? Okay. Tell me about it.

18 When was it manufactured?

19 A Well, I want to say the .44 Smith & Wesson
20 American is an antique round.

21 Q Okay. I've leave it at that. I saw it. I asked
22 about it. I'll move on.

23 In your experience and expertise, would you agree
24 that the .44 auto Mag cartridge is handgun ammunition?

25 A I've never seen that chambered in a long gun or

1 know of one.

2 Q So you would consider the .44 auto Mag to be
3 handgun ammunition?

4 A Yes.

5 Q Based on your experience and expertise, would you
6 agree that the .44 Remington Magnum cartridge is handgun
7 ammunition?

8 A No. And I just -- go back to what I said for .44
9 Special.

10 Q Cowboy ammunition?

11 A Well, they are popular in rifles. The Ruger has
12 a bolt action. They have a semi auto. There are
13 Brazilian ones. There are a lot of .44 Magnum rifles,
14 some of which are cowboy design, but it's broader than
15 cowboy.

16 Q Okay. Based on your experience and expertise,
17 would you agree that the .44 S&W Special is handgun
18 ammunition?

19 A I thought we just did the .44 Special.

20 Q Did we?

21 A Yeah.

22 Q Oh, we did. That's repeated. Never mind.
23 Strike that.

24 Based on your experience and expertise, would you
25 agree that the .380 revolver cartridge is handgun

1 ammunition?

2 A .380 revolver?

3 Q Yeah.

4 A .380 revolver?

5 Q I read it in a book somewhere.

6 A Well, if it's designated like that, it's a

7 British cartridge and it would be for a Bulldog. I -- I

8 have --

9 Q If you're not familiar with it, that's all you

10 have to say.

11 A Well --

12 Q I don't want you to guess.

13 A Okay. Well --

14 Q I'm not here to trick you. I'm honestly not.

15 A If we can find it in Cartridges of the World, I

16 can respond to it.

17 Q Yeah, it's listed in Cartridges of the World

18 and -- do you have the -- if you want to -- oh, do you

19 have it in front of you?

20 MR. GRAHAM: It's there, but...

21 MR. KRAUSE: Did you find a page for it?

22 MR. GRAHAM: No, I didn't. Sorry. I was looking

23 at other stuff.

24 MR. KRAUSE: Okay. Never mind. British. You

25 were correct. ".38 revolver cartridge is a British

1 innovation for the Webley revolver and originated about
2 1868 to '70."

3 THE WITNESS: Did I pass?

4 MR. KRAUSE: You did. One thing I won't do is
5 question your firearms knowledge.

6 MR. DALE: Is that a stipulation?

7 MR. KRAUSE: What is that, the expert
8 designation? No. There is no dispute that he is an
9 expert in ammunition in firearms.

10 Q BY MR. KRAUSE: Let's see. Let's turn to the
11 next one. Based on your experience and expertise, would
12 you agree that the .380 automatic Colt pistol cartridge is
13 handgun ammunition?

14 A No.

15 Q Even though it has "pistol" in its title?

16 A Well, in the American title, it does.

17 Q Okay.

18 A It's also the .9 Kurz, the 9x17, the .9 Corto.
19 It has a variety of names. No. That has -- that has been
20 used extensively in the submachine guns in the third
21 worlds as well and the things like the .32 and the .380 in
22 my experience are firearms that don't get a whole lot of
23 rounds put through them. They're, you know, below the bed
24 or up in the closet sort of guns and, again, you'd -- to
25 nail this down, you'd really want to look at the universe

1 of submachine guns, particularly the ones that flowed from
2 the VZ 61 Skorpion, because there was a 64. There are all
3 sorts of model numbers. And that cartridge was part of
4 that development.

5 Q Okay. Focusing on California, how many long
6 guns, to your knowledge, that can chamber a .380 ACP
7 cartridge are for sale in California, if you know?

8 A The only non-handguns as we're describing them
9 here that I'm aware of are machine pistols that wouldn't
10 be in the civilian trade. The Military Armament
11 Corporation, the MAC, it was called, had a .380 machine
12 pistol, but beyond that, I'm not aware of a rifle that is
13 chambered for that round.

14 Q Okay. So your conclusion that the .380 ACP
15 cartridge is not handgun ammunition is based on --

16 A Across time, around the world.

17 Q Across time, around the world --

18 A Yeah.

19 Q -- foreign firearms?

20 A Yes.

21 Q Okay. Based on your experience and expertise,
22 would you agree that the .454 Casull cartridge is handgun
23 ammunition?

24 A That's chambered for rifles -- in rifles as well.
25 That was one of the things that I really alerted to on the

1 DROS stats, the number of .454 sales. That seems
2 inordinately high because that's a very expensive revolver
3 and very unpleasant to shoot, and so I look at the numbers
4 on your DROS stats and think, "This can't be. This --
5 this must include stuff that" -- so having said that and
6 knowing that rifles are available chambered for it, I'd be
7 reluctant to make the statement I've made on other
8 cartridges until I know more about sales and what exists,
9 because the .454 Casull is relatively new. As cartridges
10 go, it's a .45 Long Colt on steroids with a stronger web
11 in the case and my experience is that's a pretty small
12 universe of handguns. And so some level of long gun sale
13 would -- wouldn't seem to me to be real hard to match the
14 handgun sales because it's such a niche firearm.

15 Q How -- what long guns, to your knowledge, can
16 chamber the .454 Casull that are for sale in California?

17 A Most of the ones that I've been aware of are
18 modifications that people have had done, not -- they --
19 they didn't buy a .454 Casull from Company A. They took a
20 rifle that would accept it and had it rebarreled,
21 rechambered for -- so that they could use it, say, with
22 their Casull pistol or for whatever the reasons were, but
23 most of the Casulls that I'm aware of are not factory
24 produced.

25 Q Okay. But .454 Casull cartridges do fit into

1 handguns that are sold in California?

2 A Yes.

3 Q So your conclusion that the .454 Casull cartridge
4 is not handgun ammunition is based upon sales and -- the
5 existence of long guns outside of California or -- help me
6 understand that.

7 A I'm not saying it's not. I'm saying that the
8 data is insufficient to draw the conclusion. I'm -- I'm
9 miffed by the DROS stats because of the numbers and
10 thinking, "This can't be." This is -- so many Casulls
11 being made, unless they're just -- the guns are recycling.

12 Q Somebody buys one and doesn't like it and moves
13 it on. It's the same gun, but it's just passing around?

14 A So I'm not saying it's not. I'm saying the
15 responsible approach would be to know more.

16 Q Okay. That's fair.

17 Based on your experience and expertise, would you
18 agree that the .38 Special cartridge is handgun
19 ammunition?

20 A Same thing with .357 Magnum. That's the .22 long
21 rifle, .22 long. If you have a .357 long gun, you can
22 shoot .38 Specials in it.

23 Q And in your experience, a lot of long guns
24 chambering the .38 Special have been sold and are very
25 popular?

1 A Most of them are chambered for .357 because that
2 way you get both.

3 Q Okay.

4 A The -- in my experience, the firearms that I see
5 .38 Specials and .357 Magnum both in handguns have just
6 sort of dropped off the chart. I mean, they're still
7 being made and they're still -- but as compared to
8 40 years ago, there's a world of difference.

9 Q But if you consider the historic implications and
10 the high numbers that existed in the past, does that
11 change your conclusion about the potential for .38 Special
12 cartridges to be handgun ammunition?

13 A Well, as I said, I have a .357 model 19 and I
14 have a .357 Ruger Security Six, and neither one of them
15 has had a round through it in 15 years, so existence and
16 use aren't necessarily the same thing. And so that's why
17 I think you have to look to not just what's sold, but were
18 these rounds being expended. And the cowboy thing, for
19 instance, tremendous amount -- you can see in the ads how
20 cartridge manufacturers have moved to cater to the cowboys
21 with reduced loads, black powder loads designed
22 specifically for the competitions that they have.

23 Q Isn't the .38 Special/.357 still pretty popular
24 among people who purchase them for home defense?

25 A There is -- the -- I know that Smith & Wesson

1 pushes their small frame revolvers for people with small
2 hands as home defense guns. I have no sense for what they
3 sell. I know that those titanium frames and those little
4 things are extremely unpleasant to shoot, so then it's a
5 question -- you have a gun sold where you're getting
6 rounds fired through it. And part of my response to you
7 is, "Where are the rounds getting fired?"

8 Q Okay. Based on your experience and expertise,
9 would you agree that the .38 S&W cartridge is handgun
10 ammunition?

11 A I know of no long gun that is chambered for that.

12 Q Okay. So you would consider the .38 S&W to be
13 handgun ammunition, yes?

14 A Yes.

15 Q And finally, last but not least, based upon your
16 experience and expertise, would you agree that the .38
17 automatic cartridge is handgun ammunition?

18 A Okay. Now, are we making a distinction now
19 between -- are we talking about the .38 Super or are we
20 talking about the -- there's a -- there was an interim
21 round that -- basically between the 9x17 and the .38
22 Super, which may be what you're referring to --

23 Q It might be. Let's wait for the book.

24 Yeah, .38 Super automatic. Introduced by Colt in
25 1929 as an improved version of the older .38 auto, the

1 Super auto is identical to the original cartridge except
2 that it uses a more powerful loading.

3 A Okay. So your question, then, is about the .38
4 Super or both?

5 Q Super automatic, yeah.

6 A I know of no long guns that were chambered for
7 that, although there are some Spanish-made stuff that it
8 would possibly work in. That's not what they were
9 designed to use.

10 Q Okay. So in your opinion, the .38 Super or Super
11 automatic would be handgun ammunition?

12 A Yes.

13 Q Okay. All right. Let's just -- I'm just about
14 done.

15 I just need to find out if those declarations
16 made it.

17 MS. GRAHAM: Yes. I've got them. My secretary
18 is making a copy of them.

19 MR. MONFORT: Two were sent. There was one that
20 was not sent. We've been trying to confirm -- it was a
21 few years ago -- whether or not it was actually filed in
22 the case or not. I know that we obtained one from him and
23 I don't know if there was a signed copy that was actually
24 filed. So to the extent we could figure that out later
25 and provide it to you.

1 MR. KRAUSE: That's fair.

2 (Off-the-record discussion.)

3 Q BY MR. KRAUSE: Into the hypothetical world.
4 Back when you were still employed by the Department of
5 Justice, if you were still employed by DOJ and the
6 attorney general asked you to create a list of cartridges
7 that would be more often chambered or fired from the
8 handgun, what cartridges would you include on that list?

9 MR. DALE: Objection. Vague and ambiguous as
10 "chambered in a handgun" and incomplete hypothetical.

11 Q BY MR. KRAUSE: And in addition, you would be
12 focusing on California and excluding use by law
13 enforcement and the military.

14 MR. DALE: Same objection.

15 THE WITNESS: Well, the -- I would do with the
16 attorney general what I did on the Roberti-Roos. I would
17 lay it out to him the way I did it for you, and I might
18 just add that I prevailed on the first assault
19 weapon-related thing and Van de Kamp said he wouldn't
20 support the bill, much to the dismay of senior staff and
21 then Stockton occurred and politics consumed us, but at
22 all steps of the way, I said, "No, this is a mistake."

23 Q BY MR. KRAUSE: But if he said, "Come on. I need
24 a list. I need a list of cartridges that are handgun
25 ammunition in California that are chambered more often in

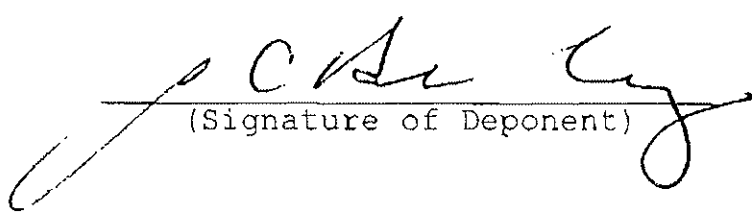
1 trial, so long as it reflects any changes that were made
2 to the original.

3 MR. KRAUSE: Okay. So stipulated.
4

5 (Whereupon the deposition adjourned
6 at 4:34 p.m.)
7
8
9

10 I have read the foregoing deposition
11 transcript and by signing hereafter, approve same.
12

13 Dated 12-28-2010.
14

15
16 
17 (Signature of Deponent)
18
19
20
21
22
23
24
25

1 DEPOSITION OFFICER'S CERTIFICATE

2
3 STATE OF CALIFORNIA)
4 COUNTY OF SAN FRANCISCO) ss.

5
6 I, Lindsey Perry , hereby certify:

7 I am a duly qualified Certified Shorthand
8 Reporter, in the State of California, holder of
9 Certificate Number CSR 12806 issued by the Court
10 Reporters Board of California and which is in full force
11 and effect. (Bus. & Prof. § 8016)

12 I am not financially interested in this action
13 and am not a relative or employee of any attorney of the
14 parties, or of any of the parties. (Civ. Proc. §
15 2025.320(a))

16 I am authorized to administer oaths or
17 affirmations pursuant to California Code of Civil
18 Procedure, Section 2093(b) and prior to being examined,
19 the deponent was first placed under oath or affirmation
20 by me. (Civ. Proc. §§ 2025.320, 2025.540(a))

21 I am the deposition officer that
22 stenographically recorded the testimony in the foregoing
23 deposition and the foregoing transcript is a true
24 record of the testimony given. (Civ. Proc. §
25 2025.540(a))

1 I have not, and shall not, offer or provide
2 any services or products to any party's attorney or
3 third party who is financing all or part of the action
4 without first offering same to all parties or their
5 attorneys attending the deposition and making same
6 available at the same time to all parties or their
7 attorneys. (Civ. Proc. § 2025.320(b))

8 I shall not provide any service or product
9 consisting of the deposition officer's notations or
10 comments regarding the demeanor of any witness,
11 attorney, or party present at the deposition to any
12 party or any party's attorney or third party who is
13 financing all or part of the action, nor shall I collect
14 any personal identifying information about the witness
15 as a service or product to be provided to any party or
16 third party who is financing all or part of the action.
17 (Civ. Proc. § 2025.320(c))

18
19 Dated: DECEMBER 20, 2010
20
21

22 Ludwig F. Remy.
23
24
25

EXHIBIT G

1 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

2 IN AND FOR THE COUNTY OF FRESNO

3 ---oOo---

4 SHERIFF CLAY PARKER, TEHAMA COUNTY)
5 SHERIFF; HERB BAUER SPORTING GOODS;)
6 CALIFORNIA RIFLE and PISTOL)
7 ASSOCIATION FOUNDATION; ABLE'S)
8 SPORTING, INC.; RTG SPORTING)
9 COLLECTIBLES, LLC; and)
10 STEVEN STONECIPHER,)
11)
12 Plaintiffs and Petitioners,)
13)
14 v.) No. 10CECG02116
15)
16 THE STATE OF CALIFORNIA; JERRY BROWN,)
17 in his official capacity as Attorney)
18 General for the State of California;)
19 THE CALIFORNIA DEPARTMENT OF JUSTICE;)
20 and DOES 1-25,)
21)
22 Defendants and Respondents.)
23)
24)
25)

15 ---oOo---

16 TUESDAY, DECEMBER 21, 2010

17 ---oOo---

18 DEPOSITION OF

19 CLAY PARKER

20 ---oOo---

21

22

23

24

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