

1 that our language is the same in case we're talking about  
2 the same thing.

3 Q Okay. I actually have .32 Short Colt on my list,  
4 so that is included in your caliber list?

5 A Yeah. Correct.

6 Q Okay. And I asked you about the .32-40  
7 Remington.

8 What about the .32-40?

9 A That's -- again, that's not going to be a handgun  
10 round.

11 Q Is that .32 caliber ammunition?

12 A Yes.

13 Q What about -- does the caliber list encompass  
14 the .32-40 Bullard?

15 A I'm not familiar with that round, sir.

16 Q Okay. Does the caliber list encompass the .32  
17 Winchester Special?

18 A It's not going to be a handgun round that I'm  
19 aware of.

20 Q Is that .32 caliber ammunition?

21 A Based on your description alone, I -- it probably  
22 is.

23 Q So you're not -- you're not aware of that  
24 particular cartridge -- you don't have knowledge as to  
25 that one as to whether or not it's .32 caliber?

1 Q Sorry. .44. I apologize. I misspoke.

2 A Okay. Yeah, I'm not -- I'm not familiar with the

3 round, so I don't want to guess.

4 Q Okay. Thank you.

5 Let's see. In your responses to Plaintiffs'

6 special interrogatories, you identify .45 caliber

7 ammunition as handgun ammunition; is that correct?

8 A Yes, sir.

9 Q Okay. You state ammunition which can be of

10 varying dimensions --

11 MR. KRAUSE: You broke up there. Could you

12 repeat that, please?

13 Q BY MR. MONFORT: Is it accurate to say that .45

14 caliber ammunition in your caliber list describes

15 ammunition which can be of varying dimensions?

16 MR. KRAUSE: Objection. Vague and ambiguous.

17 THE WITNESS: Yes, I would probably limit the .45

18 to the .45 ACP, .45 Long Colt and the .45 GAP.

19 Q BY MR. MONFORT: I'm sorry. Just for the -- can

20 you repeat those one more time for me, please? My pen ran

21 out of ink.

22 A Yeah, .45 ACP, .45 Long Colt --

23 Q Uh-huh.

24 A -- and .45 GAP, gap.

25 Q Okay. Do you have any idea how many cartridges

1 now, we still have a little ways to go in this deposition,  
2 so I'll move on.

3 MR. KRAUSE: Actually, could we take a  
4 five-minute break right now?

5 MR. MONFORT: Sure. That works for us too.  
6 What time is it?

7 MR. KRAUSE: It's about seven after, so --

8 MR. MONFORT: Want to just do 4:15?

9 MR. KRAUSE: 4:15?

10 MR. MONFORT: Yeah.

11 MR. KRAUSE: Okay.

12 MR. MONFORT: Okay. Thanks.

13 (Recess taken.)

14 Q BY MR. MONFORT: All right. Mr. Graham, are you  
15 there?

16 A Yes.

17 Q Okay. I'm going to move on to another caliber  
18 identified in your caliber list.

19 You identified 9mm as a caliber of handgun  
20 ammunition; is that correct?

21 A Yes, sir.

22 Q I'm going to go through a few different --  
23 different cartridges of ammunition, and I'm going to ask  
24 you to identify for me whether or not you consider these  
25 cartridges to be 9mm.

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9mm Mauser?

A 9mm Mauser is a handgun round.

Q I would just like you to identify for me whether or not it is 9mm cartridge.

Is 9mm Mauser 9mm caliber?

A Yes.

Q Is 9x57mm a 9mm caliber?

A Yes.

Q Is 9x47mm Swift 9mm ammunition?

A I'm not familiar with that particular cartridge, sir, so it -- by your first part of your question, it sounds like -- as if it is, but I have no specific knowledge of that cartridge.

Q Okay. So you don't know whether that is 9mm caliber; is that correct?

A Well, sir, like I said earlier, you may be making up cartridges that don't exist, so I can't answer to something I have no knowledge of.

Q Okay. I mean, whether I'm -- whether it's a real cartridge or not or I'm making it up, you don't know whether that's 9mm; is that correct?

A Correct.

Q Okay. Thank you.

9x35mm R?

A I'm not familiar with it, sir.

2

## **EXHIBIT I**



1 Q Okay. But with specific regard to making sure  
2 you gave your best and fullest answer on the DOJ's behalf  
3 for this particular set of interrogatories, do you recall  
4 specifically being asked to help them verify these  
5 responses?

6 MR. KRAUSE: Objection. Vague and ambiguous.

7 THE WITNESS: I guess -- I'm not sure what you  
8 mean by "them."

9 Q BY MR. DALE: I'm talking specifically about your  
10 employers, the Department of Justice, and Mr. Krause.

11 A Okay. Yes, I would say in the last two weeks or  
12 so, you know, some --

13 Q Okay. So within the last two weeks, did you  
14 review any gun magazines to help you verify the responses  
15 or prepare for this deposition?

16 A Specific gun magazines? I don't recall looking  
17 at a magazine. I think we would have produced something  
18 like that to you if -- if I had. I don't remember doing  
19 any -- doing that.

20 Q Okay. So from the time period you were asked to  
21 help verify the accuracy of the responses in Exhibit B up  
22 till today, is -- is there any specific magazine that you  
23 can recall reviewing to help -- to help you verify those  
24 responses?

25 MR. KRAUSE: Objection. Asked and answered.

1 THE WITNESS: Yes, I -- I think I've answered it,  
2 sir. I don't recall. And if we -- if I had, we would  
3 have provided you with a copy, you know, for your  
4 discovery requests.

5 Q BY MR. DALE: Okay. So you don't recall  
6 reviewing a specific magazine?

7 A No.

8 Q Okay. So at any time within the past year, can  
9 you recall reviewing a magazine which listed popular  
10 ammunition counts in it?

11 A I may have reviewed a magazine that had that  
12 information in it, but I don't recall -- you know, it's  
13 not something that I made a notation on or, you know,  
14 stored it away for -- you know, for that particular  
15 reason. I get magazines in the mail and I'll read them.  
16 I have one on my desk that's unopened I got this  
17 morning -- or got sometime yesterday. It's still sealed  
18 in a little mailing package.

19 Q So if I asked you to cite a particular article  
20 that you used to help inform your decision as part of your  
21 second step of determining whether .45 is appropriately  
22 included on the DROS caliber -- I'm sorry, on the DOJ's  
23 caliber list, you couldn't cite for me a specific article  
24 you relied upon; is that correct?

25 A That is correct.



1 Q Okay. And within the past year, you can't recall  
2 any specific article by publication name or by author name  
3 or by date of publication that specifically listed popular  
4 types of ammunition that were being sold or bought; is  
5 that correct?

6 A Yes.

7 Q Okay. So other than your general reading of  
8 magazines over the years, there's no specific information  
9 within magazines that you can point me to that helped  
10 inform your decision regarding that second step of  
11 determining whether .45 caliber ammunition was properly  
12 included on the DOJ's caliber list; is that correct?

13 MR. KRAUSE: Objection. Vague and ambiguous.  
14 Misstates the witness's prior testimony.

15 THE WITNESS: I don't know that -- how that  
16 question is different than the last one, sir.

17 Q BY MR. DALE: Well, whether you understand or  
18 not, is that true? That you can't point to me a  
19 particular magazine article that you used to help you as  
20 part of formulating your opinion regarding whether .45  
21 caliber ammunition is appropriately included on the DOJ's  
22 caliber list?

23 A I believe I've already answered this, but I -- I  
24 can't recall any specific magazine articles that I used.

25 Q Okay. Very good. I appreciate that.



1 document and the Cheaper Than Dirt, these were all Web  
2 sites that you used to help you as part of this second  
3 step of confirming that .45 caliber ammunition was  
4 properly included in the DOJ's caliber list; is that  
5 correct?

6 A Yes.

7 Q Were there any other Web sites besides those that  
8 we've marked as Exhibit F that you used in order to help  
9 inform your opinion?

10 A I'm trying to think if there's -- I think maybe  
11 the -- not an ammunition vendor, if you will.

12 Is that -- are you limiting your question to  
13 ammunition vendors or sellers Web sites?

14 Q I'm limiting my question to any Web sites that  
15 would be accessible to the public that you used in helping  
16 form this second step. So, again, I'm not trying to trick  
17 you. I'm just trying to make sure I'm covering all of  
18 them.

19 A Okay. I would say -- possibly the -- yeah,  
20 that's -- that seems like it's the right Web site list.

21 Q Okay. All right. And let me ask you, what  
22 particular information on these Web sites -- and you can  
23 go ahead and take a look at Exhibit F -- did you rely upon  
24 to help make your determination that .45 caliber  
25 ammunition was properly included on the DOJ's caliber

1 list?

2 A Some of the -- basically, some of the calibers  
3 and cartridges listed here on the Cheaper Than Dirt -- it  
4 says "page one of two," so I'm speaking about the one that  
5 says "most popular handgun ammunition" is kind of a second  
6 column or block of rounds below that. The .45 ACP is  
7 listed in the "most popular" section. Down a little bit  
8 farther down is the .45 Long Colt. You know, that type of  
9 information there. The .45 GAP.

10 Q Okay. Did you, at any point, contact the  
11 administrators of this Web site or the owners of the  
12 Cheaper Than Dirt Web site to find out what they meant  
13 about "most popular"?

14 A No.

15 Q No.

16 Did you do any other type of independent  
17 investigation to determine whether or not Cheaper Than  
18 Dirt's representation of what the most popular ammunition  
19 they sold was an accurate representation?

20 A Did I contact other Web sites? Is that what your  
21 question was?

22 Q Did you do anything to find out? So contact  
23 other Web sites, call the owner, call a competing Web site  
24 and find out that Cheaper Than Dirt's reputation regarding  
25 what its most popular ammunition type sold was an accurate

1 representation?

2 A No. I made no other -- no phone calls to  
3 ammunition vendors to check on the validity of Cheaper  
4 Than Dirt's, I guess, statements that they make.

5 Q Okay. And then let's look at the J & G Sales.

6 What part of this particular Web site did you  
7 rely upon to help formulate your opinion that .45 caliber  
8 ammunition was appropriately included on the DOJ's caliber  
9 list?

10 A The section here that says "ammo for handguns"  
11 and it gives a listing of various rounds, there's a  
12 portion of it that says ".45 ACP, .45 GAP and .45 LC,"  
13 which I understand to be Long Colt.

14 Q Okay. And again, you didn't contact the  
15 proprietors of J & G Sales, either the store or Web site,  
16 to determine how they came up with this particular  
17 listing; is that correct?

18 A Correct.

19 Q Okay. And would it be fair to say that,  
20 similarly true, you didn't contact the proprietors of  
21 Cabela's or Midway USA to determine how they ended up  
22 listing those calibers on their Web sites?

23 A That's correct.

24 Q Okay. Now, I note that on each of those, there  
25 aren't listings of how much of each ammunition is sold.

1           Is that a correct representation?

2   A           Yeah, I don't -- I didn't see anything like that

3   when I was perusing the sites and I don't think there's

4   that type of information, at least on any site I've seen

5   in the past.

6   Q           Okay. So would it be fair to say that you don't

7   know, even though they're characterizing this stuff as

8   popular, exactly how much of each ammunition they're

9   selling?

10   A           Yeah, based on their Web sites, I can't tell you

11   an exact round count.

12   Q           Okay. Now, let's go back and take a look at the

13   Cheaper Than Dirt Web site printout that's part of Exhibit

14   F. And specifically, looking under "handgun ammunition,"

15   that's the page that you previously testified to that has

16   "most popular" and below that has "handgun ammunition."

17           Do you see that Web page?

18   A           Yes, sir.

19   Q           Okay. And one of the handgun ammunitions listed

20   is .45 Long Colt; correct?

21   A           Yes.

22   Q           Okay. Now, .45 Long Colt, I guess, is fired in

23   a .45 caliber handgun; is that right?

24   A           Correct.

25   Q           Can it also be fired in a .45 caliber rifle?



1 sold within the past five years comprised the total number  
2 of guns that are currently in circulation in California;  
3 correct?

4 MR. KRAUSE: Objection. Vague and ambiguous.

5 THE WITNESS: I think you asked this question  
6 earlier and --

7 Q BY MR. DALE: Yeah, let me ask it an easier way.

8 You don't know whether or not the guns sold in  
9 the last five years comprise five percent of the total  
10 guns in circulation or 75 percent, right?

11 A No --

12 Q You don't have any basis for forming an opinion  
13 about that; correct?

14 A No, sir. Not at this time.

15 Q Okay. Okay. And I think you testified that if  
16 you went back and got to look at more of the records, some  
17 of the ones that you identified might -- might change; is  
18 that correct?

19 A Yeah. Obviously, given more information, one's  
20 opinion can change over time with more information  
21 available, but given what I had available to me, I -- I  
22 chose to list certain calibers. That's all.

23 Q Okay. Okay. As part of your methodology, at any  
24 point, did you attempt to identify research studies that  
25 might have examined what the most popular or the most

1 prevalently used types of ammunition are?

2 A No, sir. That was not a consideration that I  
3 thought of during the course of this evaluation.

4 Q Okay. As you sit here today, are you aware of  
5 any research studies that attempt to identify things such  
6 as the popularity of a particular type of gun or  
7 particular type of ammunition?

8 MR. KRAUSE: Objection. Vague and ambiguous.  
9 What do you mean by "type of ammunition"?

10 MR. DALE: Okay. We'll go back and do this step  
11 by step.

12 MR. KRAUSE: All I want you to do is identify  
13 what you mean by "type."

14 MR. DALE: And I'm just asking him a general  
15 question as to whether or not he's aware of the existence  
16 of research studies that attempt to determine the  
17 popularity of a particular cartridge or of a particular  
18 caliber or even of a particular handgun. I'm not trying  
19 to tie him into one exact caliber cartridge handgun. I  
20 just want to know if he knows if anybody has ever done  
21 those types of research study.

22 THE WITNESS: Sir, to answer your question, I --  
23 I don't know of a study like that.

24 Q BY MR. DALE: Okay. As part of your methodology,  
25 did you attempt to see if there were any polls out there



1 which had been taken to determine if a particular type of  
2 cartridge was more popular than any other type of  
3 cartridge in the State of California?

4 MR. KRAUSE: Objection. Vague and ambiguous.  
5 Argumentative.

6 THE WITNESS: I think I've explained my  
7 methodology at this point. Beyond that, I don't think I  
8 have anything to add.

9 Q BY MR. DALE: Okay. So you didn't -- you didn't  
10 attempt to determine if there were any polls that had been  
11 taken regarding ammunition in general?

12 A No.

13 Q Okay. Did you, yourself, attempt to conduct any  
14 polls with members of the general public regarding what  
15 types of ammunition they use in their handguns?

16 MR. KRAUSE: Objection. Vague and ambiguous.

17 THE WITNESS: No, sir, I didn't actively take any  
18 polls. I -- you know, I'm around gun shows and gun stores  
19 and I see what people are buying, and that's -- you know,  
20 that would have been a factor that I considered.

21 Q BY MR. DALE: Okay. Your personal observations,  
22 if I understand; correct?

23 A Yeah. I've -- if I'm at a show and I see people  
24 buying up a certain caliber, that's something I'll pay  
25 attention to and that type of information.

1 Q Okay. And as you observe -- as you have attended  
2 these gun shows and watched people buying certain  
3 calibers, did you take any notes regarding what particular  
4 calibers were selling particularly well and which ones  
5 weren't?

6 MR. KRAUSE: Objection. Vague and ambiguous.

7 THE WITNESS: I don't know if I took any -- any  
8 notes, whether they be written or electronic. It was more  
9 of just, you know, memory; that I remember seeing people  
10 buying, you know, certain calibers and not buying other  
11 calibers.

12 Q BY MR. DALE: I see. So based on your personal  
13 observations, you formed opinions regarding whether or not  
14 particular calibers or particular cartridges were more  
15 popular at gun shows than other ones; is that correct?

16 MR. KRAUSE: Objection. Misstates the witness's  
17 testimony.

18 MR. DALE: Okay. Look, I'm not trying to lock  
19 him into anything here, so I can walk him back through it,  
20 Peter, but -- I'm sorry, Mr. Krause, but -- I'll do it. I  
21 don't want to. I just want to nail down the fact that the  
22 basis for his opinion regarding what ammo sells better at  
23 gun shows is based on what he observed. And I can lay all  
24 the foundation for it and we can spend ten minutes doing  
25 it, but I'd rather not.



1 MR. KRAUSE: I just don't know that that was  
2 actually his testimony.

3 MR. DALE: Okay. Well, I -- I want to find out.  
4 Did he --

5 Q Mr. Graham, did you take any written notes  
6 regarding what you observed as to the sale of specific  
7 types -- I'm sorry, specific cartridges of ammunition at  
8 any gun show you attended?

9 A Sir, I've already testified I took no notes,  
10 whether they be written or electronic, regarding a  
11 particular cartridge being more popular. It was just  
12 something that I saw and, you know, remember certain  
13 calibers selling better than others.

14 Q Okay. So this was all based on your personal  
15 observation?

16 MR. KRAUSE: Vague and ambiguous.

17 Q BY MR. DALE: Mr. Graham, do you understand what  
18 I mean by "personal observation"?

19 A I am, but I'm not sure what "this" means. What  
20 do you mean when you say "this"?

21 Q Okay. The testimony you're giving regarding your  
22 knowledge of sales of particular -- I'm sorry, particular  
23 cartridges of ammunition at gun shows is not based on any  
24 written information that you may have compiled regarding  
25 your attendance at those gun shows.

1 Is that a correct statement?

2 A Yes, that's correct.

3 Q Okay. It was based on what you saw going to  
4 those gun shows; correct?

5 A Yes.

6 Q And you didn't sit down afterwards and record, "I  
7 saw X number of this type of cartridge being sold at this  
8 particular gun show"; is that correct?

9 A Correct.

10 Q Okay. So at the time you were observing these  
11 sales at a gun show, did you ever poll anybody at the gun  
12 shows regarding what types of weapons they planned to use  
13 the ammunition they were purchasing at that gun show?

14 A I have spoken to people over the years, and I've  
15 had general discussions about, you know, a particular box  
16 of ammo they were buying and, you know, different, "Oh,  
17 I'm going to shoot, you know, this stuff up. I've got  
18 this," or, "I've got 29mm," or whatever. I've had those  
19 discussions, you know, over the past several years.

20 Q And how many of those discussions would you  
21 estimate you've had?

22 A I wouldn't say -- I wouldn't say that it happens  
23 at every show, but maybe every other or, you know,  
24 something like that.

25 Q Okay. So -- so based on the number of shows



1 you've been to and your estimation as to how many of those  
2 discussions that you've had at each show, what's your best  
3 estimate of how many discussions you've had with members  
4 of the public or other people attending gun shows like you  
5 just described, them talking about types of guns they  
6 shoot and the ammo they use?

7 A I don't know. I'd say probably more than 20 --

8 Q Okay.

9 A -- conversations like that.

10 Q Okay. Other than -- well, let's break that down.  
11 Would it be more than 30 conversations?

12 A I -- I don't know, sir. I -- I can just say  
13 probably more than 20 over the years.

14 Q Would it be less than a hundred?

15 A Yeah, that's probably fair to say.

16 Q Okay. So somewhere between 20 and a hundred  
17 would be your best estimate; is that correct?

18 A Yes.

19 Q Okay. Anything other than your personal  
20 observation of sales going on at gun shows and the 20 to  
21 100 conversations you've had with people at gun shows that  
22 helped you form your opinion regarding the number and  
23 types of ammunition being sold at those gun shows?

24 MR. KRAUSE: Objection. Vague and ambiguous.  
25 Compound.

1 THE WITNESS: There -- I mean, I can't think of  
2 anything else beyond what you've just said.

3 Q BY MR. DALE: Okay. Okay. And, now, we talked  
4 about some of the documents you used. Cartridges of the  
5 World. You used that to help inform your opinion.

6 Rifles of the World, was that another book that  
7 you used to help inform your opinion?

8 A Yes.

9 Q Okay. Any other books besides those two? And  
10 I'm talking about books.

11 A Right. I believe the Gun Trader's Guide you've  
12 been provided with, I think, a photocopy of -- of the  
13 cover sheet. Maybe some other information about that.

14 Q Okay. Now, is it correct to say that Cartridges  
15 of the World does not have a listing of the number of  
16 rounds of a particular cartridge that are sold in any  
17 given year listed in it?

18 A I don't recall seeing that information. It's  
19 possible that it's in there, but I didn't see it.

20 Q Okay. What about Rifles of the World? Does it  
21 list the number of rounds of a particular cartridge of  
22 ammunition that are sold in any given year?

23 A Not to my knowledge, but it may.

24 Q Okay. As you sit here today, do you recall if it  
25 does?



1 THE WITNESS: Not off the top of my head, sir.  
2 I'd have to do some research.

3 Q BY MR. DALE: Okay. Well, I'm going to represent  
4 to you its actual measurement is .429.

5 A Okay.

6 Q Okay. So I -- I just want to be clear that -- is  
7 it your understanding that even though a .44 Remington  
8 Magnum is called a .44 Remington Magnum, it may not  
9 actually be a .44 caliber bullet by measurement?

10 MR. KRAUSE: Objection. Calls for speculation.  
11 Vague and ambiguous.

12 THE WITNESS: Sir, it's my understanding that --  
13 that the manufacturers may label something for marketing  
14 purposes or -- or their own reasons to differentiate it  
15 from a similar round maybe by another manufacturer out  
16 there.

17 Q BY MR. DALE: Okay. So, in fact, the popular --  
18 the .44 Remington Magnum, you previously testified that --  
19 that there are popular nomenclatures for certain calibers.  
20 Do you recall testifying to that?

21 MR. KRAUSE: Objection. Misstates the witness's  
22 prior testimony.

23 THE WITNESS: I think I recall that from  
24 yesterday, sir.

25 Q BY MR. DALE: Okay. And so would -- in your

1 opinion, would .44 Remington Magnum at .429, would that be  
2 one of those instances you were talking about where the  
3 popular nomenclature is that it's a .44, but it's actually  
4 a smaller caliber?

5 MR. KRAUSE: Objection. Vague and ambiguous.  
6 And I think it lacks foundation. Calls for speculation.

7 You've represented that it's .429, but he said he  
8 doesn't know.

9 MR. DALE: Okay. All right. So, yeah, let's --  
10 let's just kind of put that in the boat.

11 Q So, Mr. Graham, you don't know -- the .44  
12 Remington Magnum, you don't know if it's a .429 caliber;  
13 correct?

14 A Correct.

15 Q And you're being produced as the expert for the  
16 DOJ today; correct?

17 A Correct.

18 Q Okay. All right. Okay. Let's -- I -- last area  
19 I want to go over and then we're going to be done.

20 You previously testified that you decided that  
21 the .22 caliber should not be included on the DOJ's  
22 caliber list.

23 Do you recall that testimony?

24 MR. KRAUSE: Objection. Mischaracterizes the  
25 witness's testimony.

1 THE WITNESS: I think I said that it was not  
2 included at this time. Something to that effect.

3 Q BY MR. DALE: Okay. And -- and the -- I believe  
4 you testified that one of the reasons -- I'm not saying  
5 the sole reason, but one of the reasons that you had  
6 formed the opinion that it shouldn't be included was that  
7 you needed additional time to research whether or not it  
8 was principally handgun ammunition.

9 Am I characterizing your prior testimony  
10 correctly?

11 A Yes.

12 Q Okay. Okay. So as you sit here today, you don't  
13 have an opinion as to whether or not -- let me restate  
14 that. My apologies.

15 As you sit here today, you don't have an opinion  
16 as to whether or not .22 caliber ammunition is principally  
17 used in a handgun?

18 A I think I don't have enough information to render  
19 that opinion and that's why I didn't include it in the  
20 list that you have.

21 Q Okay. But if I understand your testimony, at  
22 some point, based on doing further research, you might be  
23 able to form an opinion that it is or it isn't --

24 A I may be able to, sir.

25 Q Okay. You may be able to. But you can't today.



1 You don't have the information to do it; is that correct?

2 A Yes.

3 Q Okay.

4 Mr. Krause, if you could get that item we faxed  
5 you.

6 MR. KRAUSE: You faxed me something?

7 MR. DALE: I'm sorry. We e-mailed you the 2009  
8 firearms report from the DOJ's office.

9 MR. KRAUSE: Oh, yeah.

10 MR. DALE: I'm going to go ahead and mark that as  
11 Exhibit G.

12 MR. KRAUSE: Hold on. Let me give the -- let me  
13 see if I have a clean copy for the court reporter.

14 MR. DALE: Okay.

15 MR. KRAUSE: Yeah. She's got it now. He's got  
16 it.

17 You're good to go.

18 (Whereupon Plaintiffs' Exhibit G was  
19 marked for identification.)

20 MR. DALE: Okay. Thank you. Appreciate it.

21 Q Mr. Graham, have you ever seen the report that  
22 we're marking as Exhibit G before?

23 A I saw this this morning for the first time.

24 Q Okay. So would it be fair to say you didn't  
25 consider it in forming the opinions that you've reached

1 regarding what ammunition is principally used in handguns?

2 A That's correct. I did not use this document  
3 because I'd never seen it before.

4 Q Okay. Let's go ahead and turn to what's marked  
5 as page three on that. And if you see there, the  
6 Department of Justice has broken down some findings of a  
7 report it generated.

8 Do you see that on page three?

9 A I do. There's a -- kind of a vertical graph and  
10 then a pie chart down below.

11 Q Right. And up at the top it says "weapons by  
12 caliber," right?

13 A Yes.

14 Q Okay. And apparently in this DOJ report of the  
15 65 weapons they examined, 15 used the .22 rim fire  
16 cartridge.

17 Do you see that?

18 A I do.

19 Q Okay. Having had an opportunity to take a look  
20 at this report, does it in any way change your opinion  
21 regarding whether or not .22 caliber ammunition should be  
22 included -- or should be considered principally handgun  
23 ammunition?

24 MR. KRAUSE: Objection. Vague and ambiguous.  
25 Calls for speculation. Lacks foundation.

1 THE WITNESS: Yeah, I -- I would need more time  
2 to review this document in its entirety. I've spent  
3 probably five minutes in total since this morning on this  
4 specific several-page document.

5 MR. KRAUSE: And is this a complete copy of the  
6 document or is --

7 MR. DALE: Well, this is a copy of what looks  
8 like to be the white paper of the document. I'm presuming  
9 that the underlying information that was used to compile  
10 this is somewhere at your office.

11 THE WITNESS: Well, this appears to have been  
12 produced by a different bureau and, you know, this would  
13 be like me asking you about a case that someone down the  
14 hall from you is prosecuting, sir, or is -- it's -- you  
15 know, I didn't generate the document, so I -- I need some  
16 time to review it.

17 Is there something specific here that I can maybe  
18 ask -- or answer for you?

19 Q BY MR. DALE: Well, yeah. I'm just trying to  
20 figure out -- hold on one sec.

21 Would you have the ability to go down the hall  
22 and get a copy of this report and the underlying data, in  
23 your experience, working for the DOJ? Are you granted  
24 that kind of privilege or have that kind of access?

25 MR. KRAUSE: Objection. Calls for speculation.



1 THE WITNESS: I think -- I think a request could  
2 be made through my chief to the chief of the Bureau of  
3 Forensic Services to get a copy of this. It may be  
4 available on -- on a Web page. I really don't know. Like  
5 I said, I haven't seen this before this morning. You  
6 know, these stats here that are in this document, I  
7 presume, are accurate, otherwise they wouldn't put them  
8 out there.

9 Q BY MR. DALE: Okay. All right. And as you sit  
10 here today, do you have any knowledge as to why the  
11 Department of Justice did not provide a copy of this  
12 document to you prior to formulating your opinion?

13 MR. KRAUSE: Objection. Vague and ambiguous.  
14 Calls for speculation. Relevance.

15 THE WITNESS: No, I don't have an opinion as to  
16 why.

17 Q BY MR. DALE: Okay. You don't have any knowledge  
18 as to why; correct?

19 A Correct. I don't know why.

20 Q Okay. Okay. And as you sit here today, do you  
21 have any knowledge as to who was involved in generating  
22 this report from that other branch of DOJ?

23 A It just states the Bureau of Forensic Services,  
24 so presumably, their staff.

25 Q Okay. Prior to forming your opinions, did you go

1 to anybody at the Bureau of Forensic Services and ask them  
2 for information regarding the use of particular  
3 cartridges?

4 A No.

5 Q No. Okay.

6 And did you ever talk to the range master  
7 regarding information he might have regarding specific  
8 cartridges that are used?

9 MR. KRAUSE: Vague and ambiguous. Objection.

10 THE WITNESS: When you say --

11 Q BY MR. DALE: Okay. And did you attempt to speak  
12 to the range master at all to help inform your opinions  
13 regarding ammunition that's principally used in handguns?

14 A Who is the range master you're speaking of?

15 Q I'm -- at the DOJ range.

16 A We have approximately, I don't know, several  
17 hundred agents throughout the state. There's range  
18 masters in -- in different -- you know, there's four or  
19 five different bureaus, multiple range masters within each  
20 bureau. I'm a range master myself.

21 Q Okay. Did you speak to any of the other range  
22 masters prior to formulating your opinion?

23 MR. KRAUSE: Objection. Vague and ambiguous.

24 Did --

25 Q BY MR. DALE: Did you speak to any of the other

1 range masters at any of the other DOJ facilities in the  
2 State of California in order to get information to help  
3 you form the opinions you're expressing today?

4 A I can't recall specifically asking them, after  
5 being given this assignment, to -- you know, in answer to  
6 your question, no.

7 Q Okay. And I'm assuming you did not receive any  
8 written materials from any of the range masters at any of  
9 the DOJ facilities regarding their observations as to  
10 types of ammunition used at the ranges or cartridges or  
11 calibers or any information of that sort?

12 A I didn't receive any information, but I know that  
13 we all shoot the same caliber weapons and there is a  
14 standardization throughout the Department of Justice, if  
15 that -- are you getting -- is that what you're asking?

16 Q Yes.

17 A Okay.

18 Q All right. So I'm going to go ahead and wrap up  
19 here so I understand.

20 In forming your opinions, you based those  
21 opinions on a review of the DROS and AFS records  
22 initially; correct? That was your first step?

23 A Yes.

24 Q Okay. And then your second step was you looked  
25 at the Web sites we've identified, the books we've



1 identified and then called upon your personal knowledge in  
2 order to augment that first step; is that correct?

3 A Yes.

4 Q Okay. And you didn't take any polls in order to  
5 form your opinion; correct?

6 MR. KRAUSE: Objection. Vague and ambiguous.

7 THE WITNESS: I -- I did not poll members of the  
8 general public, which was what I think you asked earlier  
9 today.

10 Q BY MR. DALE: Right. Did you poll any firearms  
11 dealers?

12 A No.

13 Q No. Okay.

14 So were there any other sources of information  
15 that you used, other than what we just went over, to help  
16 inform your opinion regarding which ammunition is  
17 principally used in handguns?

18 A Other than the document that I prepared here  
19 breaking down nonhandguns that use handgun ammunition.  
20 And again, that's something that I just created when I  
21 was, you know, trying to think of weapons that fired these  
22 calibers.

23 Q Okay. All right. And nothing besides that  
24 document which you generated and the other items which we  
25 just discussed were used by you to help you formulate your

1 opinion; is that correct?

2 A I can't think of any -- you know, I think you've  
3 been provided with that document. There's the document  
4 from SAAMI, which is the Small Arms Ammunition  
5 Manufacturers Institute. It gets into some -- what they  
6 consider handgun ammunition.

7 Q Okay. Hold on one sec.

8 Okay. All right. Are there any other opinions  
9 that you formed regarding the scope of your expertise that  
10 you've been designated to testify to here today that you  
11 haven't had an opportunity to express?

12 MR. KRAUSE: Objection. Vague and ambiguous.

13 THE WITNESS: I can't think of anything at this  
14 time, sir.

15 Q BY MR. DALE: Okay. During the course of your  
16 being asked by the Department of Justice to form opinions  
17 regarding handgun ammunition principally used in handguns,  
18 have you formed any opinions other than those you've  
19 expressed during the two days of deposition we've taken?

20 MR. KRAUSE: Objection. Misstates the witness's  
21 testimony.

22 THE WITNESS: Just to be clear, could you repeat  
23 the question?

24 Q BY MR. DALE: Yeah. Other than the opinions that  
25 you've testified to over the past two days, have you

1 know about it. And if the answer's no, then that's fine.  
2 And if our guy gets up and says that X cartridge is  
3 such-and-such and he offers an opinion otherwise, then  
4 we've got two options: We bring him and sit him back down  
5 and retake his testimony or we point to wherever it is in  
6 his testimony from today and yesterday's proceedings where  
7 he testified differently than what he's offering.

8 MR. KRAUSE: That's fine. I understand. Okay.

9 MR. DALE: Okay. So let me offer the question  
10 one more time, and then you can interpose your objection,  
11 and then we'll -- we'll get his answer.

12 Does that work, Mr. Krause?

13 MR. KRAUSE: Sure. I may not even object now.

14 MR. DALE: Okay.

15 Q All right. Mr. Graham, in your capacity as a  
16 retained and designated expert for the DOJ, do you intend  
17 to offer any other expert opinions in this matter other  
18 than those you've expressed in the last two days of  
19 deposition?

20 A Not to my knowledge, sir.

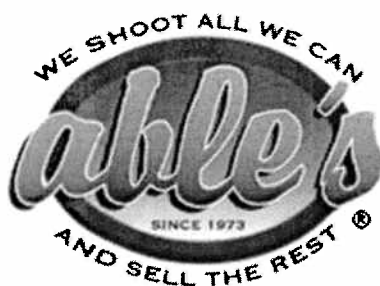
21 MR. DALE: All right. Well, I think we're good.  
22 Give me one more brief minute and I'll try to get us out  
23 of here. I'm going to put you on mute for a sec.

24 (Off the record.)

25 MR. DALE: I'm sorry. I'm told I have one more



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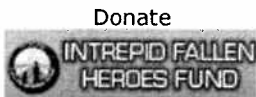
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