

1 operational since the 1930s?

2 A I don't know about the '30s. I'm familiar with  
3 it going back into the '70s. I know it goes beyond that,  
4 but I can't give you a specific year beyond the -- you  
5 know, generally the '70s sometime.

6 Q Okay. Is it also correct that a system -- and  
7 I'm unsure if you had this or not -- that the system has  
8 been operated for -- automated for at least 30 years?

9 MR. KRAUSE: Objection. Mischaracterizes the  
10 witness's testimony.

11 Q BY MR. MONFORT: Has the DROS system been  
12 automated for at least 30 years?

13 A I'm not sure the exact date of the automation of  
14 the dealer record of sale system.

15 MR. KRAUSE: And objection as to "automated."  
16 What do you mean by "automated"?

17 MR. MONFORT: Computerized.

18 MR. KRAUSE: Okay.

19 THE WITNESS: I don't know what, you know,  
20 specific year, you know, the -- they had computers start  
21 doing this. I know it used to be paper documents and then  
22 it -- it eventually merged into an online system, but I --  
23 I don't know the year.

24 Q BY MR. MONFORT: Can you confirm whether or not  
25 it's been computerized for at least over the last ten

1     thing that's out there.

2     Q           Okay. Does the DROS system record -- the  
3     statistics you provided us with, are those including  
4     transfers or just sales? Because they're referred to as  
5     sales in the document, but my understanding is the dealer  
6     record of sales system records all transfers, not just  
7     sales.

8     A           Yeah, it would be sales, private party transfers.  
9     I think that's what -- I mean, that's what this list looks  
10    like it would be. It's not --

11    Q           Okay.

12    A           Let me just look -- flip through here.

13    Q           Is it your opinion that the DROS records identify  
14    whether a particular caliber of ammunition is used  
15    principally in a handgun?

16    A           Say that again.

17    Q           Is it your opinion that the DROS records identify  
18    whether a particular caliber of ammunition is used  
19    principally in a handgun?

20    A           No. It's basically a starting point for us to  
21    understand what calibers are common in handgun sales.

22    Q           Okay. Thank you.

23                Is it your opinion that these sales records  
24    identify whether a particular cartridge of ammunition is  
25    used more than -- is used more in a handgun than in a long

1 gun?

2 MR. KRAUSE: Objection. Calls for speculation.

3 THE WITNESS: Yeah, I -- I don't know that I can  
4 say that the -- the caliber here gives a breakdown as to  
5 the actual -- one caliber versus another is being used  
6 more in rifles than in handguns.

7 Q BY MR. MONFORT: Okay. Thank you.

8 So is it your testimony -- am I correct that you  
9 rely on the handgun sales data in the DROS records in  
10 determining what calibers of ammunition to include in the  
11 DOJ's caliber list?

12 MR. KRAUSE: Objection. Mischaracterizes the  
13 witness's prior testimony.

14 Q BY MR. MONFORT: Did you rely on the DROS records  
15 we're talking about in determining what calibers of  
16 ammunition to include in the DOJ's caliber list?

17 MR. KRAUSE: Objection. Asked and answered.

18 THE WITNESS: Yeah, I think I've already said I  
19 did use it as a starting point to see what the popular --

20 Q BY MR. MONFORT: Okay.

21 MR. KRAUSE: He wasn't finished answering.

22 MR. MONFORT: I'm sorry.

23 THE WITNESS: I was just going to say that the --  
24 it was a tool, basically, to determine what were the  
25 popular calibers in California in handguns. That was the

1 gist of this particular data search.

2 Q BY MR. MONFORT: Are these DROS records available  
3 to the public?

4 A I think as long as you make a purchase, you can  
5 request a copy of your own DROS records. I don't know  
6 that it's releasable to the general public. That's  
7 probably a question better posed to our legal staff.

8 Q I'm sorry. Do you know whether -- I'm not  
9 referring to a particular record. The records you  
10 reviewed, the totality of the record sales over the last  
11 five years, is that information, that sales data, is that  
12 information available to the public, in your opinion?

13 A I don't know, sir. I'm not sure if it's -- if  
14 there's any privileged information captured in this. I  
15 don't believe there is. There's nothing identifying a  
16 purchase or anything.

17 MR. KRAUSE: Are you asking whether a person  
18 could make a public records act request for it?

19 MR. MONFORT: Yes.

20 MR. KRAUSE: Do you know?

21 THE WITNESS: I don't know. It's possible.  
22 Again, our legal staff would be able to handle that  
23 question better than I.

24 Q BY MR. MONFORT: Okay. Aside from whether the  
25 public can access them, the general public, are the DROS

1 sales records available to local law enforcement?

2 A It's probably the same type of question that  
3 would go to our legal staff.

4 Q Okay. And again, I -- you're probably going to  
5 give the same answer, but I'm going to ask it.

6 Are the DROS records available to ammunition  
7 vendors?

8 A I imagine -- yeah, like you said, it's going to  
9 be the same answer. DOJ BOF legal staff could probably  
10 answer that question better than I. I don't have an  
11 answer for you.

12 Q Okay.

13 A Sorry.

14 Q How about licensed firearm retailers, dealers  
15 licensed pursuant to Penal Code Section 12071, do they  
16 have access to the DROS records?

17 A I don't know, sir. It would be, again, a  
18 question for our legal staff.

19 Q Okay. Mr. Graham, for each caliber of ammunition  
20 you identified as handgun ammunition in the DOJ's caliber  
21 list, did you perform a comparative analysis of handgun  
22 sales versus rifle sales in that --

23 A You're kind of in and out, sir. Could you repeat  
24 the question?

25 Q Sure. No problem.

1 For each caliber of ammunition you identified as  
2 handgun ammunition in the DOJ's caliber list, did you  
3 perform a comparative analysis of handgun sales versus  
4 rifle sales in that caliber?

5 A No, I'm not able to do that.

6 Q Can you please explain to me why not?

7 A Yeah, the Department of Justice is prohibited  
8 from tracking long gun sales beyond the fact of a -- maybe  
9 a prohibited person trying to buy a long gun. If -- after  
10 about five days in the background process, assuming it's  
11 going to be a pass, meaning someone's going to be able to  
12 buy the weapon, meaning a long gun, we're not able to  
13 retain that information in this -- in the computer system.  
14 So there's no similar search, you know, similar to Exhibit  
15 D that I can ask for for long guns.

16 Q Okay. In your discovery responses, you state  
17 that the listed -- the calibers identified in the DOJ's  
18 caliber list are consistently among the highest in terms  
19 of handgun volume sales over the last five years; is that  
20 correct?

21 A Yeah, to the best of my recollection, yes.

22 Q Okay. Can you tell me what you mean by "among  
23 the highest" sold? And what I mean by that, was there a  
24 cutoff point -- did a caliber of firearm, for example,  
25 have to be in the top ten or 15 each year in order to meet



1 your qualification?

2 A No. It was basically which ones were, you know,  
3 clearly principally for use in handguns that didn't have,  
4 I guess, more of a dual-use issue that would kind of cloud  
5 the issue, if that would make sense.

6 Q And you're referring to information not contained  
7 in the sales data to make that determination; is that  
8 correct?

9 MR. KRAUSE: Objection. Vague and ambiguous.

10 THE WITNESS: Could you rephrase that, sir?

11 Q BY MR. MONFORT: I'll probably just move on to  
12 another question.

13 I'm just trying to come up with what you meant in  
14 terms of among the highest sold. You know, for example,  
15 are there any calibers not listed in the DOJ's caliber  
16 list that were among the highest sold?

17 A Yeah, the .22, the 5.7x28mm. Those were, you  
18 know, among the highest, but, you know, they were  
19 basically left out at this time.

20 Q Can you tell me why?

21 A The .22, for example, it's -- it's got a heavy  
22 following in handguns and a heavy following in rifles and  
23 it's, frankly, a little too difficult to pinpoint or --

24 Q When you say it has a "heavy following" in both  
25 handguns and rifles, how do you know this?

1 A It's one of the more popular weapons -- handguns  
2 weapons sold. When I go to gun shows, I see lots of .22  
3 rifles. I see lots of .22 handguns. It's a popular and  
4 cheap cartridge to shoot. It's been around for a long,  
5 long time.

6 Q Okay.

7 A That -- that --

8 Q Do you have any data regarding the sales of .22  
9 caliber information in rifles other than seeing it sold at  
10 gun shows?

11 MR. KRAUSE: Clint, just let me -- I think you  
12 cut him off again. If you could please wait for him to  
13 finish his answers.

14 MR. MONFORT: Yeah, I'm sorry. I can't tell  
15 since I'm on the other end here.

16 THE WITNESS: That's okay.

17 Yeah, with regards to the .22s, you know, I --  
18 attending gun shows, going to gun stores, reading gun  
19 magazines, you know, research on the Internet, reviewing  
20 different, you know, reference manuals, Rifles of the  
21 World, Cartridges of the World, the Gun Trader's Guide and  
22 just my own personal experience as a gun owner, talking  
23 with other gun owners about what they find to be popular  
24 and, you know, what they typically buy and shoot.

25 Q BY MR. MONFORT: Okay. So for purposes of the



1 challenged provision, is .22 caliber ammunition handgun  
2 ammunition?

3 A Not at this time.

4 Q Not at this time? Was it at any former point in  
5 time?

6 MR. KRAUSE: Objection. Vague and ambiguous.

7 Q BY MR. MONFORT: Well, you said "not at this  
8 time." That seems to me to indicate that the status of  
9 handgun ammunition or rifle ammunition might have changed.

10 MR. KRAUSE: Or might change in the future after  
11 further research and field study, maybe.

12 THE WITNESS: Yeah, I mean --

13 Q BY MR. MONFORT: Okay. But at this time, it's  
14 rifle ammunition; is that correct?

15 A Not necessarily. It may not meet the current  
16 "principally for use" language of the aforementioned  
17 sections in the Penal Code, so it was basically left off.

18 Q Okay. What does "principally" mean, in your  
19 understanding?

20 A Probably --

21 MR. KRAUSE: Objection. I'm going to object.  
22 Calls for a legal conclusion and vague and ambiguous,  
23 but --

24 Q BY MR. MONFORT: In determining whether or not a  
25 caliber of ammunition is handgun ammunition, did you

1 consider it to be handgun ammunition if that caliber of  
2 ammunition is used more than 50 percent of the time in a  
3 handgun?

4 MR. KRAUSE: Again, objection. Calls for a legal  
5 conclusion, but please answer.

6 THE WITNESS: Okay. Yeah, basically, the  
7 majority of the time is -- is the general rule I follow  
8 when considering the different calibers that were floating  
9 around out there.

10 Q BY MR. MONFORT: Is .22 caliber ammunition used  
11 more than 50 percent of the time in handguns?

12 MR. KRAUSE: Objection. Calls for speculation.

13 THE WITNESS: I really couldn't form a strong  
14 opinion on that and that's why I didn't include it on the  
15 list here, sir.

16 Q BY MR. MONFORT: I'm sorry. You said you haven't  
17 formed a strong opinion.

18 Have you formed some opinion that might not be  
19 characterized as a strong opinion?

20 A I think the .22 is used quite a bit in both  
21 rifles and handguns, but I was unable to determine if it  
22 met the "principally for use" language as defined in the  
23 Penal Code sections.

24 Q Okay. In your understanding, does the  
25 "principally for use" standard mean ammunition that is

1 used more than 50 percent of the time in a handgun?

2 MR. KRAUSE: Objection. Asked and answered and  
3 calls for a legal conclusion.

4 THE WITNESS: Yeah, my interpretation is if it  
5 was more often than not or 50 percent or a majority of the  
6 time, and that's the best way I can say it.

7 Q BY MR. MONFORT: Okay. And then so -- I just  
8 want to ask you this question as well just so that we're  
9 clear.

10 Is .22 caliber ammunition, in your opinion, used  
11 more than 50 percent of the time in a rifle?

12 MR. KRAUSE: Objection. Asked and answered.  
13 Objection. Calls for speculation.

14 THE WITNESS: I was unable to tell if it was, you  
15 know, more likely to be shot out of a rifle or handgun on  
16 that specific caliber.

17 Q BY MR. MONFORT: And can you just -- just to be  
18 clear, can you explain to me why not?

19 A Just because of the long history of the round,  
20 the huge numbers of rifles and handguns chambered in this  
21 particular caliber and the commonness and availability of  
22 this cartridge.

23 Q Were you unable to determine it because you  
24 didn't have any data to compare it to between handgun  
25 usage and rifle usage of .22 ammunition?

1 MR. KRAUSE: Objection. Argumentative.

2 Objection. Calls for speculation.

3 THE WITNESS: The .22, you know, obviously I said  
4 earlier that there are no rifle stats from the DROS  
5 system, you know, and/or the AFS system that's linked to  
6 the DROS system. That would have made things a lot  
7 easier, to have that information available.

8 Q BY MR. MONFORT: Okay. I also note that the .22  
9 is listed in the DROS sales.

10 Does that include .225?

11 A The dealers basically -- the way these numbers  
12 appear here, if you can look at page one of Exhibit D,  
13 this is a 2006 date. About four columns down, there's a  
14 number 17,297.

15 Do you see that number, sir?

16 Q Yes.

17 A Okay. So that number there is generated because  
18 dealers in California in 2006 told the Department of  
19 Justice, using a drop-down screen on their computer  
20 screens that they transmit the DROS data from, that they  
21 made that many sales and transfers of .22 caliber  
22 handguns.

23 If, for some reason, the dealer thought that they  
24 had a -- I believe you called it .225s --

25 Q Yes.



1 A -- then one or more of those guns in that number  
2 might be that -- you know, represented there.  
3 Does that help you?  
4 Q I'm sorry. So one or more of those guns might be  
5 represented there.  
6 So you don't know whether that list includes all  
7 sales of .225, .223, .222, .221, .556 and .57; is that  
8 correct?  
9 MR. KRAUSE: Objection. Mischaracterizes the  
10 witness's testimony and he's -- he's not here offered as  
11 an expert on the DROS system, so it's calling for  
12 speculation.  
13 MR. MONFORT: I'm sorry. He's relying on it and  
14 that's why I'm curious about it because I'm a little bit  
15 unfamiliar with it, with the record.  
16 THE WITNESS: Farther down on the same page, sir,  
17 about two-thirds of the way down, .222, .221, those are  
18 listed there. They have -- they have, you know, different  
19 sales numbers. You know, 16 sales of .222.  
20 Q BY MR. MONFORT: Okay.  
21 A Fifteen sales of .221. And then you said, I  
22 think, .223 as well. There were 117 sales of those  
23 handguns, at least as identified by a gun dealer to the  
24 Department of Justice at the time of sale.  
25 Q Okay. And what about .556? Is that included

1 within the .22s?

2 A No. That's got its own designation almost at the  
3 very bottom of the list. There were five identified in  
4 2006.

5 Q Okay. Okay. Now, don't those firearms all shoot  
6 .22 caliber ammunition? Is that correct?

7 MR. KRAUSE: Objection. Vague and ambiguous.  
8 Calls for speculation.

9 THE WITNESS: To the -- yeah. The way this is  
10 broke down -- broken down, excuse me, is in this -- you  
11 know, in this fashion for the dealers to accurately  
12 document the sale of the weapons. The cartridges that  
13 each fire is going to be, you know, depending on the  
14 weapon itself -- dependent upon the weapon itself. The  
15 .22, the .223, .221, .222, I'm surprised, actually, to see  
16 a lot of those other calibers, the .222 .221, the .223  
17 listed as handgun sales because those are common rifle  
18 caliber rounds.

19 Q BY MR. MONFORT: Okay. Thank you.

20 If a rifle was transferred or sold that used  
21 the .45 Long Colt cartridge or if a handgun was  
22 transferred that used the .45 Long Colt cartridge, would  
23 it be in the .45 or .454 data?

24 MR. KRAUSE: Objection. Calls for speculation.  
25 Incomplete hypothetical.



1 THE WITNESS: Again, depending upon what the  
2 dealer put in there, assuming they put .45, then it would  
3 be listed in the -- the total next to the .45. If they  
4 used .454, then it's going to be listed next to the figure  
5 in there.

6 Q BY MR. MONFORT: So am I correct in understanding  
7 that you're relying on the dealers to actively report the  
8 sales of a particular caliber firearm and identify that in  
9 the correct caliber?

10 A Yes.

11 Q One of the calibers listed in the DROS records is  
12 .32-20.

13 Do you consider that to be a distinct caliber of  
14 ammunition?

15 MR. KRAUSE: Objection. Vague and ambiguous.

16 THE WITNESS: Could you refer me to the page  
17 you're discussing the cartridge? Oh, I see. Okay.  
18 Halfway -- about halfway down page one?

19 Q BY MR. MONFORT: Yes, .32-20. It's identified in  
20 the column at the top of the left is identified calibers.  
21 It lists .32-20 separately from .20. Do you consider  
22 this -- or .32-20 separately from .32.

23 Do you consider this to be a distinct caliber of  
24 ammunition, .33-20?

25 A No, it's probably best characterized as a

1 a -- you know, a lower receiver, for example, that's, for  
2 some reason, been DROS'd as a handgun.

3 Q BY MR. MONFORT: Okay. Do you know that that's a  
4 code?

5 A Yeah, there -- that one, I'm sure is -- it is an  
6 actual code. It's not a caliber. There is no .8888  
7 caliber.

8 Q Okay. What about the .375.

9 A .375. Can you tell me which page you're on?

10 Q I'm at the last page right below the 8888 entry.

11 A Oh, okay. Yeah, I believe that's a caliber code.  
12 It's not going to be a -- it's a caliber indication. It's  
13 not a -- like a code or something like that for the  
14 dealers.

15 Q Okay. That's a caliber?

16 A Yeah, it's a caliber reference for the dealers so  
17 that they can have a -- you know, a code to -- to make a  
18 DROS entry into the automated firearms and DROS systems.

19 Q Okay. So are there firearms that shoot  
20 ammunition of a .375 caliber?

21 A Off the top of my head, I can't tell you or name  
22 one, but, you know, it's -- it's in there for -- for a  
23 reason. I don't know what I can do to further answer that  
24 question.

25 Q How did you determine to leave that caliber off

1 your list of ammunition calibers?

2 MR. KRAUSE: Objection. Assumes facts not in  
3 evidence.

4 Q BY MR. MONFORT: Did you consider the .375  
5 caliber when determining the caliber list?

6 A I think it -- you know, I looked at the -- the  
7 list as a whole and the most popular and, I guess, the  
8 largest calibers that were being purchased and transferred  
9 in the state over the last five years or so were the ones  
10 that were put forth in this list. And this, obviously, is  
11 not -- it's got a low number of transactions involving  
12 this particular identifier.

13 Q Is it your opinion that a caliber of ammunition  
14 is only handgun ammunition if it's popular?

15 MR. KRAUSE: Objection. Vague and ambiguous.  
16 Mischaracterizes the witness's testimony.

17 THE WITNESS: The question, I think --

18 Q BY MR. MONFORT: Is it possible?

19 A Is what possible?

20 Q I'm sorry. I'm sorry.

21 Is it your testimony that you left calibers off  
22 the list if they were not popular, even if they might be  
23 principally used in a handgun?

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

1 THE WITNESS: Given -- given the short time frame  
2 available due to the perceived, I don't know, compressed  
3 court schedule on this matter, you know, the calibers that  
4 were chosen is what was -- the ones that were researchable  
5 given the short amount of time. So there's probably  
6 calibers left off that, given more time and research, you  
7 know, might actually fit the definition, but at this time,  
8 they were left off.

9 Q BY MR. MONFORT: Okay. I guess just to be clear,  
10 I know that you gave me some reason how you came to a  
11 determination or how you came in -- how you formulated  
12 this list, but just to be clear, my question is whether or  
13 not unpopular calibers of ammunition were left off the  
14 list even though they might be principally used in a  
15 handgun?

16 MR. KRAUSE: Objection. Asked and answered and  
17 mischaracterizes the witness's prior testimony.

18 If you have anything to add --

19 THE WITNESS: I -- yeah, I have nothing to add,  
20 sir.

21 Q BY MR. MONFORT: I'm sorry. I just need an  
22 answer to this question. I -- I'm not sure if I've gotten  
23 a yes or a no.

24 Were unpopular calibers of ammunition excluded  
25 from your list of ammunition calibers even though they

1 might be principally used in a handgun?

2 MR. KRAUSE: Objection. Vague. Ambiguous.

3 Mischaracterizes the witness's testimony. Argumentative.

4 If you understand what he's asking you -- I think  
5 you've given an answer, but --

6 THE WITNESS: Yeah. I don't know that I have a  
7 different answer than I've already given, Mr. Monfort.

8 MR. MONFORT: Are you instructing the witness not  
9 to answer? I haven't gotten a yes or no answer yet.

10 MR. KRAUSE: No, I'm not instructing him not to  
11 answer. I'm telling him to answer if he can answer it.

12 Q BY MR. MONFORT: Yes or no? Were unpopular  
13 calibers left off the list even though they were  
14 principally used in a handgun?

15 MR. KRAUSE: Same objections as before.

16 THE WITNESS: I think I've already answered this.  
17 Given the compressed time to --

18 Q BY MR. MONFORT: Yes or no?

19 MR. KRAUSE: He --

20 THE WITNESS: I'm trying to answer your question,  
21 but you're cutting me off right now.

22 Given the compressed time frame, the calibers  
23 that I've listed are the ones that I felt were principally  
24 for use, and I'm not saying that there are not other  
25 calibers out there that would also fit this definition,



1 but the ones that I have listed are the ones that I -- I  
2 feel strongly about.

3 Q BY MR. MONFORT: So was that a yes or a no?

4 MR. KRAUSE: Clint, he's given you his answer.  
5 He doesn't have to answer yes or no.

6 Q BY MR. MONFORT: I'm not trying to be, you  
7 know --

8 A Did you not understand that that was an  
9 affirmative?

10 Q Okay. Okay. So we're -- so we're clear. I did  
11 not understand that. Thank you for clarifying.

12 MR. KRAUSE: Well --

13 THE WITNESS: Yeah. I mean --

14 Q BY MR. MONFORT: The answer to my question is  
15 yes?

16 MR. KRAUSE: No, I don't think that's his answer.  
17 The answer was the answer given.

18 MR. MONFORT: He said did I understand that that  
19 was an affirmative. So was the answer an affirmative?

20 MR. KRAUSE: At this point, I don't even know  
21 what question we're talking about. The popularity  
22 question?

23 MR. MONFORT: No, I'll be happy to answer it  
24 again -- to ask it again.

25 Q Did you leave unpopular calibers of ammunition



1 off your list even though they are principally for use in  
2 a handgun?

3 MR. KRAUSE: Objection. Vague and ambiguous as  
4 to "unpopular."

5 THE WITNESS: If there were calibers left off  
6 that do meet the definition, I didn't have time to  
7 research further than the calibers that I did identify. I  
8 don't want to say that there are no others because I don't  
9 know that for sure.

10 Q BY MR. MONFORT: Okay. We'll move on.

11 And real quick here, I was trying my best to wrap  
12 this up within an hour, but it doesn't look like we're  
13 going to be able to wrap it up in an hour today, so I  
14 mean, if we want to pick a leaving time for everyone and  
15 reconvene tomorrow...

16 MR. KRAUSE: What time -- how much more time do  
17 you need?

18 MR. MONFORT: Two hours, I believe.

19 MR. KRAUSE: Are you available tomorrow?

20 THE WITNESS: I don't know. I'd rather just get  
21 this over with, honestly, but I don't -- I can't speak for  
22 everyone in the room.

23 MR. KRAUSE: Do you want to go off the record and  
24 have the conversation?

25 MR. MONFORT: Okay. Yes, let's go off the record

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 3, 2010  
20  
21

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**Forensic Firearm and Toolmark Terms**  
**Abstracted From The**  
**GLOSSARY OF THE ASSOCIATION OF FIREARM AND**  
**TOOL MARK EXAMINERS [AFTE]**

with selected terms referenced to the CA Penal Code and Cal. Code Regs.

and

A Short Acronym Finder [AF]

**GLOSSARY**

**Action**

The working mechanism of a firearm. May be broken down into action types as follow:

A. AUTOMATIC — A firearm design that feeds cartridges, fires, extracts and ejects cartridge cases as long as the trigger is fully depressed and there are cartridges in the feed system. Also called FULL AUTO and MACHINE GUN.

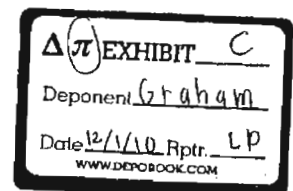
B. BOLT — A firearm in which the breech closure:

- (1) is in line with the bore at all times
- (2) manually reciprocates to load, unload and cock,
- (3) is locked in place by breech bolt lugs and engaging abutments usually in the receiver. There are two principal types of bolt actions: the turn bolt and the straight pull.

C. BOX LOCK — A design in which the hammer and hammer springs are located within the frame and the trigger assembly in the lower tang. Generally found on double barrel shotguns such as Parker, Fox, Stevens, Winchester Models 21 and 24, etc.

D. FALLING BLOCK — A single shot lever action mechanism. The breechblock slides vertically or nearly vertically, when the lever is moved, to expose or lock the breech. Example: Ruger No. 1.

E. HINGED FRAME — A design wherein the barrel(s) is pivoted on the frame. When the action is open, the barrel (2) may pivot up, down, or sideways for loading or



unloading. When the action is closed the breech of the barrel(s) swings against the standing breech. Opening is normally accomplished by movement of a top-, side-, or under-lever.

F. LEVER — A design wherein the breech mechanism is cycled by an external lever generally below the receiver.

G. MARTINI — A hammerless single shot rifle action, lever operated, in which the movement of the breechblock is entirely within the receiver and pivots at the rear.

H. REVOLVER — A firearm, usually a handgun, with a cylinder having several chambers so arranged as to rotate around an axis and be discharged successively by the same firing mechanism. See also REVOLVER.

I. ROLLING BLOCK — A single shot action in which a breechblock and hammer each rotate about their separate transverse pins in the receiver. The two members are swung rearward, away from the barrel breech to load the mechanism, or extract a cartridge case. To fire a cartridge, the breechblock is closed and locking is accomplished by the falling hammer engaging an abutment on the breechblock. Example: Remington No. 4.

J. SEMIAUTOMATIC — A repeating firearm requiring a separate pull of the trigger for each shot fired, and which uses the energy of discharge to perform a portion of the operating or firing cycle (usually the loading portion).

K. SIDELOCK — A design in which the firing mechanism is attached to a sideplate rather than being integral with the frame.

L. SLIDE — An action which features a movable forearm which is manually actuated in motion parallel to the barrel by the shooter. Forearm motion is transmitted to a breech bolt assembly which performs all the functions of the firing cycle assigned to it by the design. Also known as PUMP ACTION.

M. TRAP DOOR — An action in which a top hinged breechblock pivots up and forward to open. Locking on this action is accomplished by a cam located at the rear of the breechblock that fits into a mating recess. Also known as a CAM LOCK.

#### Air Gun

A gun that uses compressed air or gas to propel a projectile. Also called AIR RIFLE, PELLET RIFLE, PELLET GUN and BB GUN.

#### Ammunition

1. One or more loaded cartridges consisting of a primed case, propellant, and with one or more projectiles. Also referred to as FIXED or LIVE AMMUNITION.

**Ammunition, Ball**

A term generally used by the military for a cartridge with a full metal jacketed bullet or solid metal projectile.

**Assault Rifle**

1. A compact, SELECT-FIRE, detachable box magazine-fed weapon, that utilizes a centerfire rifle cartridge and is designed primarily for military use.
2. A slang term, used INCORRECTLY to describe any firearm with a military appearance or large magazine capacity.

**Ballistics**

The study of a projectile in motion; often confused with Firearms identification.

**Ballistics, Exterior**

The study of the motion of the projectile(s) after it leaves the barrel of the firearm.

**Ballistics, Interior**

The study of the motion of the projectile(s) within the firearm from the moment of ignition until it leaves the barrel.

**Ballistics, Terminal**

The study of the projectile's impact on the target.

**Barrel**

That part of a firearm through which a projectile or shot charge travels under the impetus of powder gasses, compressed air, or other like means. May be rifled or smooth.

**Barrel Length**

The distance between the end of the barrel and the face of the closed breechblock or bolt. On revolvers, it is the overall length of the barrel including the threaded portion within the frame. Barrel length normally should include compensators, flash hiders, etc., if permanently affixed.

**Bore**

The interior of a barrel forward of the chamber.

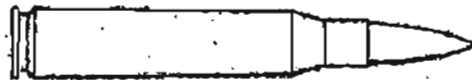
**Bore Diameter**

1. Rifled barrels; the minor diameter of a barrel which is the diameter of a circle formed by the tops of the lands.
2. Shotguns: the interior dimensions of the barrel forward of the chamber but behind the choke.



**Bottleneck Cartridge**

A cartridge case having a main diameter and a distinct angular shoulder stepping down to a smaller diameter at the neck position of the case.



**Breech**

The part of a firearm at the rear of the bore into which the cartridge or propellant is inserted.

**Breech Face**

That part of the breechblock or breech bolt which is against the head of the cartridge case or shotshell during firing.

**Bullet**

A non-spherical projectile for use in a rifled barrel.

**Bullet Core**

The inner portion of a jacketed bullet, usually lead.

**Bullet, Copper Jacketed**

A bullet having an outer jacket of copper or copper alloy and containing a lead alloy core.

**Bullet, Dumdum**

An obsolete term referring to an expanding bullet manufactured at the British Arsenal in Dumdum, India.

**Bullet, Full Metal Jacket**

A projectile in which the bullet jacket encloses the entire bullet, with the usual exception of the base. Also called FULL JACKETED, FULL PATCH, FULL METAL CASE and BALL AMMUNITION.

**Bullet Ogive**

The curved forward part of a bullet.



**Bullet, Hollow Point**

A bullet with a cavity in the nose to facilitate expansion.



**Bullet, Land and Groove Impressions**

The negative impressions on the bearing surface of a bullet caused by the rifling in the barrel from which it was fired.



**Bullet, Semi-wadcutter**

A projectile with a distinct, short truncated cone at the forward end.



**Bullet, Wadcutter**

A cylindrical bullet design having a sharp shouldered nose intended to cut target paper cleanly to facilitate easy and accurate scoring.



**Caliber**

1. Firearms: The approximate diameter of the circle formed by the tops of the lands of a rifled barrel.
2. Ammunition: A numerical term, without the decimal point, included in a cartridge name to indicate the nominal bullet diameter.

**Cannelure**

A circumferential groove generally of a knurled or plain appearance in a bullet or cartridge case. Three uses include crimping, lubrication and identification.

**Cartridge**

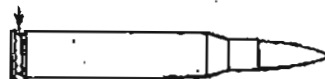
A single unit of ammunition consisting of the case, primer, and propellant with one or more projectile(s). Also applies to a shotshell.

### Cartridge Case

The container for all the other components which comprise a cartridge.

### Cartridge Case Extractor Groove

An annular groove cut in rimless, semi-rimmed, or belted cartridge cases, forward of the head, for the purpose of providing a surface that the extractor may grip to remove the case from the chamber.



### Cartridge Case Head

The base of the cartridge case which contains the primer.

### Cartridge, Center Fire

Any cartridge that has its primer central to the axis in the head of the case.

### Cartridge, Magnum

A term used to describe a rimfire or centerfire cartridge, or shotshell, that is larger, contains more shot or produces higher velocities than standard cartridges or shotshells of a given caliber or gauge. Rifles, handguns and shotguns that are designed to fire magnum cartridges or shells may also be described with the term, MAGNUM.

### Cartridge, NATO

A common designation for 9mm and 7.62 mm NATO military cartridges. These cartridges are produced under the specifications of the North Atlantic Treaty Organization.

### Cartridge, Rimfire

A flange-headed cartridge containing the priming mixture inside the rim cavity.



### Chambering

1. The forming out of a chamber in the end of a barrel blank or cylinder.
2. The act of inserting a cartridge in the chamber.

### Clip

1. A separate cartridge container to reload rapidly the magazine of a firearm. Also called STRIPPER CLIP.
2. A term sometimes improperly used to describe removable magazines.

### Comparison Microscope

Essentially two microscopes connected to an optical bridge which allows the viewer to

observe two objects simultaneously with the same degree of magnification. This instrument can have a monocular or binocular eyepiece. Sometimes referred to as a COMPARISON MACROSCOPE.

**Compensator**

A device attached to or integral with the muzzle end of the barrel to utilize propelling gases for counter-recoil. Also called MUZZLE BRAKE.

**Criminalistics**

An early definition was- "That science which applies the physical sciences in the investigation of crimes." Derived from the German word *Kriminalistik*, criminalistics has taken on a broader definition and would be more properly defined as, "That science directed to the recognition, identification, individualization and evaluation of physical evidence as it relates to some law-science matter. It also includes the reconstruction of events based on the analysis of physical evidence. It draws upon the physical and natural sciences to accomplish its mission."

**Cylinder**

The rotatable part of a revolver that contains the chambers.

**Derringer**

The generic term applied to many variations of pocketsize pistols, either percussion or cartridge, made by manufacturers other than Henry Derringer, up to present time.

**Dewat**

An acronym for Deactivated War Trophy.

**Disconnecter**

A device intended to disengage the sear from the trigger. In a semiautomatic firearm it is intended to prevent full automatic firing. Some pump action shotguns also have disconnectors.

**Distance Determination**

The process of determining the distance from the firearm, usually the muzzle, to the target based upon patterns of gunpowder or gunshot residues deposited upon that target. Where multiple projectiles, such as shot, have been fired the spread of those projectiles is also indicative of distance.

**Double Action**

A handgun mechanism in which a single pull of the trigger cocks and release the hammer.

**Dumdum Bullet**

An obsolete term used to describe an expanding bullet. Derives its name from bullets manufactured at the British Arsenal in Dumdum, India around 1900.

**Ejection**

The act of expelling a cartridge case from a firearm.

**Ejection Pattern**

The charting of where a particular firearm ejects fired cartridge cases.

**Ejector**

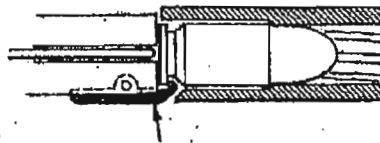
A portion of a firearm's mechanism which ejects or expels cartridges or cartridge cases from a firearm.

**Extraction**

The act of withdrawing a cartridge or cartridge case from the chamber of a firearm.

**Extractor**

A mechanism for withdrawing the cartridge or cartridge case from the chamber.



**Firearm**

An assembly of a barrel and action from which a projectile(s) is propelled by products of combustion. [*"firearm" is defined in Penal Code section 12001, subdivisions (b), (c), (d) and (e) [different meanings for different purposes].*]

**Firearms Identification**

A discipline of forensic science which has as its primary concern to determine if a bullet, cartridge case or other ammunition component was fired by a particular firearm.

**Firing Pin**

That part of a firearm mechanism which strikes the primer of a cartridge to initiate ignition. Sometimes called HAMMER NOSE or STRIKER.

**Firing Pin Impression**

The indentation of the primer of a centerfire cartridge case or in the rim of a rimfire cartridge case caused when it is struck by the firing pin.

**Flash Suppressor**

A muzzle attachment designed to reduce muzzle flash. [*"flash suppressor" is defined in regulation. (Cal. Code Regs., tit. 11, subd. (b).)*]

**Full Auto**

A firearm design that feeds cartridges, fires, extracts and ejects cartridge cases as long as the trigger is fully depressed and there are cartridges in the feed system. Actuation of the mechanism may be from an internal power source such as gas pressure or recoil, or external power source, such as electricity. Also called MACHINE GUN.

#### Function Testing

The examination of a firearm concerning its mechanical condition and operation. It is usually performed to determine if all safety features are operable and/or if the firearm is capable of firing a cartridge.

#### GSR

Abbreviation for *Gunshot Residue*.

#### General Rifling Characteristics

The number, width and direction of twist of the rifling grooves in a barrel of a given caliber firearm.

#### Gunshot Residue

The total residues resulting from the discharge of a firearm. It includes both propellant and primer residues, carbonaceous material plus metallic residues from projectiles, fouling, and any lubricant associated with the bullets.

#### Handgun

A firearm designed to be held and fired with one hand [*"handgun"* is defined in *CA Penal Code section 12001, subdivision (a)*].

#### Head

The base of the cartridge case which contains the primer.

#### Headstamp

Numerals, letters and symbols (or combination thereof) stamped into the head of a cartridge case or shotshell to identify the manufacturer, caliber, gauge or give additional information.

#### Individual Characteristics

Marks produced by the random imperfections or irregularities of tool surfaces. These random imperfections or irregularities are produced incidental to manufacture and/or caused by use, corrosion, or damage. They are unique to that tool and distinguish it from all other tools.

#### Land

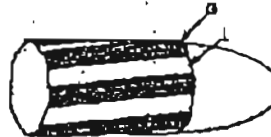
The raised portion between the grooves in a rifled bore.





#### Land and Groove Impression

The negative impressions on the bearing surface of a bullet caused by the rifling in the barrel from which it was fired.



#### Length, Overall

In a firearm it is the dimension measured parallel to the axis of the bore from muzzle to a line at right angles to the axis and tangent at the rearmost point of the butt plate or grip.

#### Magazine

1. A container for cartridges which has a spring and follower to feed those cartridges into the chamber of a firearm. The magazine may be detachable or an integral part of the firearm.

A. BLIND BOX— An integral magazine having a permanently closed bottom. Loading and unloading are accomplished through the same opening.

B. BOX — A rectangular receptacle attached to or inserted into a firearm that holds cartridges stacked on top of one another ready for feeding into the chamber.

C. DETACHABLE — Any of a large array of magazines which are removable from the firearm for reloading. [*"detachable magazine" is defined in regulation. (Cal. Code Regs., tit. 11, sec. 5469, subd. (2).)*]

D. DRUM — A drum shaped magazine in which the cartridges are arranged spirally around the central axis of the wind-up mechanism of the magazine. These were generally large-capacity magazines, being used most commonly on submachine guns. Examples: Thompson submachine gun, Luger, Russian PPSH and Degtyarov machine guns.

E. ROTARY — A form of magazine in which the cartridges are arranged about a central rotating spindle or carrier. Examples: Savage Model 99 and Mannlicher rifles.

F. STAGGERED COLUMN — A box magazine which, rather than having a single column of cartridges, has two columns staggered. This increases the capacity without lengthening the magazine. Examples: Browning Hi-Power and S&W Model 59.

G. TUBULAR — A tube-shaped magazine in which the cartridges are arranged end-to-end. It may be either under the barrel or in the butt stock.

2. A secure storage place for gunpowder, ammunition, or explosives.

**Magazine Safety**

A safety device found on some semiautomatic handguns that prevents firing unless the magazine is fully inserted into the firearm.

**Microphotograph**

A very small photograph; Microphotograph is a misnomer for PHOTOMICROGRAPH.

**Muzzle Brake**

A device at or in the muzzle end of a barrel that uses the emerging gas behind the projectile to reduce recoil.

**NATO Cartridge**

A common designation for military cartridges produced under the specifications of the North Atlantic Treaty Organization (NATO).

**NSSF**

The acronym for National Shooting Sports Foundation.

**Overall Length**

1. **Firearm:** The dimension measured parallel to the axis of the bore from muzzle to a line at right angles to the axis and tangent at the rearmost point of the butt plate or grip.
2. **Ammunition:** The greatest dimension of a loaded cartridge, i.e., from face of the head to the tip of the bullet for centerfire or rimfire or to crimp for shotshells or blanks. Not to be confused with the uncrimped length of a shotshell.

**Photomicrograph**

A photograph taken through a microscope.

**Pistol**

A handgun in which the chamber is part of the barrel. A term sometimes used for HANDGUN.

**Pistol, Double Action**

A pistol mechanism in which a single pull of the trigger cocks and releases the hammer.

**Pistol, Single Action**

A pistol mechanism, which requires the manual cocking of the hammer or striker before pressure on the trigger releases the firing mechanism.

**Powder Stippling**

Small hemorrhagic marks on the skin produced by the impact of gunpowder particles, or inanimate objects. Also used when referring any small pits or defects in objects impacted.

by unburned and partially burned powder particles.

**Powder Tattooing**

The embedding of partially consumed and unconsumed powder particles in the skin with accompanying hemorrhagic marks associated with living skin.

**Primer**

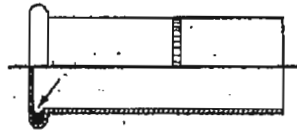
The ignition component of a cartridge,

**Primer, Centerfire**

A cartridge initiator which is assembled central to the axis of the head of the cartridge case and which is actuated by a blow to the center of its axis as opposed to rimfire which must be struck on the circumference.

**Primer, Rimfire**

A primer system in which the priming mixture is found in the circumferential rim cavity of a particular type of ammunition.



**Range of Conclusions Possible When Comparing Toolmarks**

The examiner is encouraged to report the objective observations that support the findings of toolmark examinations. The examiner should be conservative when reporting the significance of these observations.

**IDENTIFICATION**

Agreement of a combination of individual characteristics and all discernible class characteristics where the extent of agreement exceeds that which can occur in the comparison of toolmarks made by different tools and is consistent with the agreement demonstrated by toolmarks known to have been produced by the same tool.

**INCONCLUSIVE**

- A. Some agreement of individual characteristics and all discernible class characteristics, but insufficient for an identification.
- B. Agreement of all discernible class characteristics without agreement or disagreement of individual characteristics due to an absence, insufficiency, or lack of reproducibility.
- C. Agreement of all discernible class characteristics and disagreement of individual characteristics, but insufficient for an elimination.

**ELIMINATION**

- A. Significant disagreement of discernible class characteristics and/or individual

characteristics.

**UNSUITABLE**

A. Unsuitable for examination.

**Receiver**

The basic unit of a firearm which houses the firing and breech mechanism and to which the barrel and stock are assembled.

**Recoil**

The rearward movement of a firearm resulting from firing.

**Reconstruction**

The determination of the sequence of two or more events in a particular incident utilizing information derived from the physical evidence, data from the analysis of physical evidence, recognized physical laws and/or inferences drawn from experimentation related to the incident under investigation.

**Reload**

A cartridge which has been reassembled with a new primer, powder, projectile(s) and/or other components.

**Revolver**

A firearm, usually a handgun, with a cylinder having several chambers so arranged as to rotate around an axis and be discharged successively by the same firing mechanism. See SINGLE ACTION and DOUBLE ACTION.

**Ricochet**

The deflection of a projectile(s) after impact.

**Ricochet Angle**

The path taken by the ricocheted projectile or major projectile fragments as they depart the impacted surface.

**Rifle**

A firearm having rifling in the bore and designed to be fired from the shoulder [*"rifle" is defined in Penal Code section 12020, subd. (c)(20)*].

**Rifling**

Helical grooves in the bore of a firearm barrel to impart rotary motion to a projectile.

**SAAMI**

The acronym for the Sporting Arms and Ammunition Manufacturers Institute, Inc.

**Safety, Manually Operated**

Cross Bolt - A type of firearm safety operated by lateral force on a button usually located in the trigger guard.

**Grip** - An auxiliary locking device in the grip of some handguns which prevents firing until it is depressed. Example: US 1911 pistol.

**Half Cock** - This so-called safety is a sear engagement which holds the hammer back away from the firing pin.

**Lever** - A type of firearm safety operated by the movement of a pivoted lever. Example: Luger pistol.

**Sliding Button** - A safety mechanism on a firearm that is operated by a sliding motion.

**Tang** - A safety mounted on the upper receiver tang of a firearm.

**Thumb** - A safety on a firearm so located as to be operated conveniently by the thumb of the trigger hand.

**Wing** - A safety found on bolt action rifles, usually mounted at the rear of the bolt assembly, and pivots up and down at right angles to the bore line in a manner of a bird's wing.

**Shot**

Spherical pellets used in loading shotshells or cartridges.

**Shotgun**

A smooth bore shoulder firearm designed to fire shotshells containing numerous pellets or sometimes a single projectile [*"shotgun" is defined in Penal Code section 12020, subd. (c)(21)*].

**Shotshell**

A cartridge containing projectile(s) designed to be fired in a shotgun. The cartridge body may be metal, plastic or paper.

**Silencer**

A misleading word used to describe a device attached to the barrel of a firearm designed to reduce the noise of discharge. Such a device is more accurately identified as a **SOUND SUPPRESSOR**.

**Single Action**

An action requiring the manual cocking of the hammer before sufficient pressure on the trigger releases the firing mechanism.

**Slam Fire**

The accidental discharge of a firearm upon closing of the action which may be due to one of the following:

1. A firing pin that has stuck and failed to retract.
2. A primer that is either inadequately seated or overly sensitive.
3. A weak or broken firing pin retaining spring which fails to overcome the

inertia of motion imparted to the firing pin during closure, thereby allowing the firing pin to strike the primer with sufficient force to cause discharge.

4. A firearm with inadequate headspace.

#### **Sodium Rhodizonate Test**

A method of detecting primer and lead bullet residue.

#### **Stripper Clip**

A clip which may hold from five to ten cartridges and is used to load the magazine of a pistol or rifle. In the case of some rifles, there are clip guides machined into the receiver to guide the clip into the proper position. Also called STRIPPER or CHARGER. See CLIP.

#### **Subclass Characteristics**

Discernible surface features of an object which are more restrictive than CLASS CHARACTERISTICS in that they are:

- Produced incidental to manufacture.
- Are significant in that they relate to a smaller group source (a subset of the class to which they belong).
- Can arise from a source which changes over time.
- Examples would include: bunter marks, extrusion marks on pipe, etc.

[Caution should be exercised in distinguishing subclass characteristics from INDIVIDUAL CHARACTERISTICS.]

#### **Sub-Machine Gun**

An automatic or selective fire firearm chambered for a pistol cartridge. These firearms are normally compact, and intended to be used at close combat ranges.

#### **Test-Firing**

The term used to designate the actual firing of a firearm in a laboratory to obtain representative bullets and cartridge cases for comparison or analysis.

#### **Theory of Identification as it Relates to Toolmarks**

1. The theory of identification as it pertains to the comparison of toolmarks enables opinions of common origin to be made when the unique surface contours of two toolmarks are in "sufficient agreement."
2. This "sufficient agreement" is related to the significant duplication of random toolmarks as evidenced by the correspondence of a pattern or combination of patterns of surface contours. Significance is determined by the comparative examination of two or more sets of surface contour patterns comprised of individual peaks, ridges and furrows. Specifically, the relative height or depth,

width, curvature and spatial relationship of the individual peaks, ridges and furrows within one set of surface contours are defined and compared to the corresponding features in the second set of surface contours. Agreement is significant when it exceeds the best agreement demonstrated between toolmarks known to have been produced by different tools and is consistent with agreement demonstrated by toolmarks known to have been produced by the same tool. The statement that "sufficient agreement" exists between two toolmarks means that the agreement is of a quantity and quality that the likelihood another tool could have made the mark is so remote as to be considered a practical impossibility.

3. Currently the interpretation of individualization/identification is subjective in nature, founded on scientific principles and based on the examiner's training and experience.

**Trigger Pull**

The amount of force which must be applied to the trigger of a firearm to cause sear release. It is measured with hanging weights or an appropriate scale touching the trigger at a point where the trigger finger would normally rest, and with the force applied approximately parallel to the bore axis.

**Trigger, Hair**

- A slang term for a trigger requiring very low force to actuate. Sometimes used to describe the light pull of a second trigger in a double set trigger mechanism.

### Acronym Finder [AF]

<b>A &amp; D Book</b>	Acquisitions and Dispositions record [federal]
<b>AFTE</b>	Association of Firearm and Toolmark Examiners
<b>BFS</b>	Bureau of Forensic Services - that part of the CA Department of Justice [DOJ], Division of Law Enforcement [DLE] which administers forensic services.
<b>DROS</b>	Dealers Record of Sale [state]
<b>FFL</b>	Federal firearms license or licensee
<b>Form 4473</b>	Federal firearm sale form
<b>NFA</b>	National Firearms Act [federal]
<b>NICS</b>	National Instant Background Check System [federal]

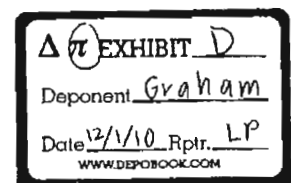
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### Legal Terms not having Definitions in the AFTE Glossary

<b>Assault Weapon</b>	"assault weapon," which incorporates assault rifles, assault shotguns and assault pistols, is defined in both statute (Penal Code sections 12276, 12276.1) and regulation, (Cal. Code Regs., tit. 11, sec. 5499.)
<b>Large Capacity Magazine</b>	"large-capacity magazine" is defined in Penal Code sections 12020, subd. (c)(25), and 12276.1, subd. (d)(2).



DATE	CALIBER	CALIBER COUNT
2006	45	34,233
2006	9	32,597
2006	40	26,820
2006	22	17,297
2006	357	14,890
2006	38	11,223
2006	44	5,905
2006	380	5,013
2006	454	3,987
2006	32	2,830
2006	10	1,464
2006	5728	907
2006	25	900
2006	460	688
2006	500	560
2006	50	501
2006	0	460
2006	763	429
2006	41	357
2006	17	221
2006	765	135
2006	30	134
2006	762	134
2006	223	117
2006	3220	116
2006	475	71
2006	8	69
2006	480	53
2006	4570	48
2006	375	40
2006	7	29
2006	455	28
2006	735	26
2006	308	24
2006	8888	21
2006	35	20
2006	444	19
2006	635	18
2006	222	16
2006	221	15
2006	4	14
2006	243	12
2006	270	11
2006	36	8
2006	54	8
2006	730	8
2006	556	5
2006	13	4
2006	250	4
2006	256	4
2006	358	4



2006	445	4
2006	6	3
2006	11	2
2006	257	2
2006	260	2
2006	31	2
2007	45	35,742
2007	9	35,205
2007	40	31,084
2007	22	17,746
2007	357	15,155
2007	38	12,104
2007	44	5,778
2007	380	5,222
2007	454	4,428
2007	32	2,690
2007	10	1,690
2007	25	852
2007	5728	680
2007	460	675
2007	763	493
2007	500	480
2007	50	388
2007	0	380
2007	41	312
2007	762	176
2007	17	167
2007	765	133
2007	223	126
2007	30	120
2007	8	87
2007	3220	84
2007	475	60
2007	4570	51
2007	375	49
2007	455	40
2007	7	40
2007	8888	36
2007	308	30
2007	480	30
2007	735	29
2007	222	27
2007	635	26
2007	4	22
2007	35	19
2007	221	18
2007	270	13
2007	556	13
2007	243	12
2007	36	12
2007	54	9
2007	444	8

2007	250	5
2007	730	4
2007	13	3
2007	256	3
2007	445	3
2007	260	2
2007	450	2
2007	11	1
2007	31	1
2007	358	1
2007	6	1
2008	9	43,559
2008	45	40,840
2008	40	36,199
2008	22	20,088
2008	357	16,772
2008	38	13,400
2008	380	7,115
2008	44	5,947
2008	454	4,971
2008	32	2,791
2008	10	2,231
2008	25	979
2008	5728	959
2008	0	485
2008	460	473
2008	500	421
2008	763	400
2008	50	380
2008	41	306
2008	17	185
2008	223	171
2008	765	171
2008	30	132
2008	762	123
2008	3220	93
2008	475	75
2008	8	67
2008	4570	53
2008	308	42
2008	375	42
2008	7	40
2008	735	38
2008	455	36
2008	480	25
2008	635	24
2008	222	22
2008	8888	21
2008	556	20
2008	221	19
2008	4	17
2008	35	15

2008	243	13
2008	730	12
2008	327	11
2008	444	9
2008	270	6
2008	445	6
2008	6	5
2008	13	4
2008	31	4
2008	36	4
2008	256	3
2008	54	3
2008	12	2
2008	250	2
2008	260	1
2008	356	1
2008	450	1
2009	9	51,137
2009	45	42,097
2009	40	38,557
2009	22	22,458
2009	357	18,156
2009	38	15,041
2009	380	9,216
2009	44	5,599
2009	454	5,158
2009	10	2,540
2009	32	2,445
2009	25	1,051
2009	5728	1,029
2009	763	736
2009	0	629
2009	460	432
2009	50	341
2009	223	340
2009	500	303
2009	41	292
2009	762	288
2009	765	166
2009	17	146
2009	30	138
2009	556	136
2009	327	106
2009	475	93
2009	8	90
2009	3220	74
2009	4570	52
2009	480	44
2009	735	42
2009	375	35
2009	8888	33
2009	635	31

2009	222	29
2009	7	26
2009	308	22
2009	455	22
2009	221	18
2009	444	17
2009	35	15
2009	4	13
2009	54	8
2009	243	6
2009	270	6
2009	36	6
2009	730	6
2009	6	3
2009	250	2
2009	257	2
2009	260	2
2009	445	2
2009	256	1
2009	264	1
2009	303	1
2009	31	1
2009	358	1
2010	9	46,319
2010	45	35,146
2010	40	30,334
2010	22	19,651
2010	357	13,799
2010	38	12,798
2010	380	8,899
2010	44	4,461
2010	454	2,891
2010	32	2,150
2010	10	1,867
2010	5728	984
2010	25	872
2010	762	672
2010	0	569
2010	763	322
2010	327	311
2010	500	272
2010	50	254
2010	41	251
2010	556	237
2010	223	235
2010	460	234
2010	765	223
2010	17	135
2010	93	116
2010	30	100
2010	3220	82
2010	8	79

2010	475	52
2010	4440	42
2010	4570	40
2010	308	38
2010	455	36
2010	480	35
2010	635	32
2010	7	32
2010	8888	31
2010	375	28
2010	735	25
2010	222	20
2010	35	14
2010	444	13
2010	12	8
2010	221	8
2010	3840	8
2010	445	8
2010	1015	7
2010	75	6
2010	243	5
2010	256	5
2010	4	5
2010	320	4
2010	204	3
2010	218	3
2010	270	3
2010	36	3
2010	3855	3
2010	98	3
2010	104	2
2010	31	2
2010	410	2
2010	450	2
2010	6	2
2010	60	2
2010	68	2
2010	11	1
2010	13	1
2010	225	1
2010	250	1
2010	300	1
2010	356	1
2010	400	1
2010	54	1
2010	545	1
2010	65	1
2010	730	1
2010	77	1
2010	859	1

**EXHIBIT “58”**



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2

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20 UPON ITS COMPLETION.

21           FURTHER EXAMINATION BY MR. DALE

22 Q           Good morning, Mr. Graham. My name's Josh Dale.  
23 You heard me speak a couple times yesterday, but I'm going  
24 to be conducting a portion of this deposition today on  
25 behalf of Plaintiffs.

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14 anything. I don't think there's anything super secret  
15 that we need to keep the lid on. He's pretty much  
16 identified what we talked about.

17 MR. DALE: Okay. With that representation,  
18 Mr. -- I'm going to do this again -- Mr. Krause. My  
19 apologies. With that representation, I think we're okay  
20 on that issue. I don't see a need to go any further on  
21 that.

22 Let's go ahead and --

23 MR. KRAUSE: Can I ask you one question?

24 MR. DALE: Yeah.

25 MR. KRAUSE: I sent Clint an e-mail this morning.

7

1 One thing Mr. Graham did do was go back and find the  
2 answer key, if you will, to the DROS listing.

3 MR. DALE: Yes. Do you have a copy of that in  
4 front of you, Mr. Krause?

5 MR. KRAUSE: I do.

6 MR. DALE: Let's go ahead and mark that as  
7 Exhibit E so we can have it as an exhibit.

8 MR. KRAUSE: Okay. Did you -- so you got it from  
9 Mr. Monfort?

10 MR. DALE: I did.

11 MR. KRAUSE: Okay.

12 MR. DALE: And this will be a document that, at  
13 the top, says "AFS Gun Caliber Table" with a date of  
14 July 23, 2010; is that right?

15 MR. KRAUSE: Yes.

16 THE WITNESS: Correct.

17 MR. DALE: Let's go ahead and mark that as  
18 Exhibit E, and we'll attach that to the record.

19 MR. KRAUSE: Okay. Okay. There's one for the  
20 court reporter.

21 Do you have a copy?

22 THE WITNESS: I don't have a copy with me, no.

23 MR. KRAUSE: Okay.

24 MR. DALE: Well, you know what. I don't plan to  
25 ask any questions about that right away. I just want to

8

1 make sure that we're keeping all our ducks in a row, so if  
2 we want to get a copy of that a little later today, that's  
3 fine.

4 MR. KRAUSE: Okay.

5 MR. DALE: We'll take care of it as part of  
6 housekeeping matters.

7 MR. KRAUSE: Okay.

8 Q BY MR. DALE: Okay. Mr. Blake (sic), yesterday,  
9 as you pointed out, you were asked a lot of questions  
10 about different cartridges and calibers. One of the  
11 things you testified about was the method you used in  
12 order to establish the calibers and what we've now  
13 transitioned to is cartridges that you were including as  
14 part of what we've termed the DOJ caliber list?

15 Do you remember that testimony?

16 A Yes.

17 Q Okay. And I believe you said you used Exhibit D,  
18 the DROS records, as sort of a starting point for helping

19 to compile that list; correct?

20 A Yes.

21 Q And then you moved on and you used a book called  
22 Cartridges of the World; correct?

23 A Correct.

24 Q Okay. And -- and do you have that -- a copy of  
25 that book in front of you?

9

1 A I do.

2 Q Okay. And I want to make sure we're working  
3 under the same edition.

4 What edition do you have in front of you?

5 A It says the 12th edition.

6 Q The 12th edition. Okay. Very good.

7 Now, after you went -- let's talk a little bit  
8 about how you went through the DROS records.

9 So you went through the DROS records and you  
10 looked for calibers as they're listed in the DROS records.  
11 Specific types of weapons that had been purchased --  
12 specific types of handguns; is that correct?

13 MR. KRAUSE: Objection. Mischaracterizes the  
14 witness's prior testimony.

15 MR. DALE: Well, let's back up and make sure we  
16 have this right.

17 Q You went through the DROS records and the DROS  
18 records list either specific calibers or, in some  
19 instances, specific cartridges used by handguns that were  
20 the subject of this DROS records; is that correct?

21 A That sounds pretty -- pretty close to the -- you  
22 know --

23 Q In other words, yesterday, we -- we had this  
24 discussion about whether caliber was appropriate or  
25 cartridges was appropriate, and one of the things I

10

1 believe you testified to was that in some instances, the  
2 DROS records would list sales by caliber, and in other  
3 instances they would have listings which would indicate a  
4 particular cartridge that was used with that handgun sold;  
5 is that right?

6 MR. KRAUSE: Objection. Mischaracterizes the  
7 witness's prior testimony.

8 THE WITNESS: The DROS -- the -- the -- what  
9 that -- the -- I forget. It's Exhibit D. If I can look  
10 at it right now, I'll be able to answer your question a  
11 little better.

12 MR. DALE: Go right ahead.

13 THE REPORTER: I have it. Just one moment.

14 THE WITNESS: Okay.

15 Okay. So I'll try to summarize what this  
16 document provides some information on just so we start  
17 fresh on the new day with what I believe I said yesterday  
18 and what I would continue to say now, is this document  
19 shows handgun transactions, meaning sales or transfers,  
20 between individuals in specific calibers and cartridges,  
21 in some case -- cases. That -- the specific numbers --  
22 you know, it's broken down by year and then the count of  
23 the individual transactions on those handguns.

24 Q BY MR. MONFORT: Yeah, let me see if I can't  
25 short circuit this.

11

1 Do you have what we have now -- oh, you don't.

2 You don't have Exhibit E in front of you.

3 Mr. Krause, would it be a problem to go ahead and  
4 get Exhibit E? I think we'll probably -- we'll use it to  
5 kind of shorten up this portion of the testimony.

6 MR. KRAUSE: Exhibit E being the thing that was  
7 produced this morning?

8 MR. DALE: Correct.

9 MR. KRAUSE: Yeah, we have it.

10 MR. DALE: Oh, it was the AFS gun caliber table,  
11 yes.

12 MR. KRAUSE: Yeah, we have that.

13 MR. DALE: Okay. Go ahead and, if you could, put  
14 that in front of Mr. Graham side by side with the Exhibit  
15 D.

16 MR. KRAUSE: It's in front of him.

17 MR. DALE: Perfect.

18 Q If you look on the first page of Exhibit E, one  
19 of the gun caliber codes on the left-hand side is .45?

20 Do you see that, Mr. Graham?

21 A Yes.

22 Q And next to that under what's called gun caliber  
23 description or DESC, there's a listing, it looks like, of  
24 four different cartridges of what would be .45 caliber  
25 ammunition; is that correct?

1 A Yes.

2 Q Okay. So we have .45 ACP, .45 Auto Rim, .45

3 Short/Long Colt, and .45 Winchester Mag, right?

4 A Correct.

5 Q And on the DROS records on Exhibit D, all of the

6 sales of weapons which used those cartridges are just

7 listed under .45; correct?

8 A Correct.

9 Q Okay. But, for example, if you then move down to

10 55, the -- on Exhibit E under gun caliber, it says 55.

11 And then you look next to it. There's only one cartridge

12 listed. That's the 5.5-millimeter Velo Dog; correct?

13 A Correct.

14 Q Would it be fair to say that, in some instances,

15 the codes that are listed in the DROS records in Exhibit D

16 will refer to more than one cartridge within a given

17 ammunition, and in other instances, those codes will just

18 refer to a gun that uses one type of cartridge?

19 MR. KRAUSE: Objection. Calls for speculation.

20 THE WITNESS: The -- yeah, the breakdown here,

21 again, is for dealers to make the entries and it's -- it's

22 something to -- makes it a little simpler for them to

23 identify the type of weapon that they're selling to a

24 particular person. You know, the reason that there are

25 multiples under some of the caliber listing is just to



1 give some sample rounds that are out there that would fit  
2 into that same block of rounds, if that makes sense.

3 Q BY MR. DALE: Okay. So -- well, let me --  
4 actually, I'll be frank with you, Mr. Graham. I'm not a  
5 gun guy, so it -- I'm going to need a little clarification  
6 here?

7 Under the .45 ACP, if I -- is this what you're  
8 testifying to, that -- well, let me withdraw that  
9 question. I'm going to restate it.

10 Under the .45 gun caliber listing on the AFS gun  
11 caliber table, are you saying that the .45 ACP, the .45  
12 Auto Rim, the .45 Short/Long Colt and the .45 Winchester  
13 Mag would all fit in the same .45 caliber weapons? In  
14 other words, they're interchangeable?

15 MR. KRAUSE: Objection. Calls for speculation.

16 Q BY MR. DALE: If you know.

17 A They wouldn't necessarily fit because of, you  
18 know, head space issues, so the -- you know, again, it's  
19 going to depend upon gun by gun by gun, so the -- again,  
20 this is a list that's used for guns. It's not necessarily  
21 created to be exact and specific down to a scientific  
22 level for ammunition. So there's -- again, this was a  
23 starting point just to have a place to start from.

24 Q Correct. I -- and I understand that. I just  
25 want to make sure we're all operating off the same

1 understanding.

2           So just to be clear, when the DROS records say  
3 a .45 caliber weapon was brought, that could be one of  
4 several cartridges. Specifically, that particular weapon  
5 could take one of the four cartridges that's listed under  
6 45 on Exhibit E; is that correct?

7           MR. KRAUSE: Objection. Vague and ambiguous.  
8 Calls for speculation. Lacks foundation.

9           THE WITNESS: The dealers are able to pick, you  
10 know, the appropriate -- what they think the appropriate  
11 caliber for the specific weapon that they're selling based  
12 on this list, and they might have others that they feel --  
13 that aren't listed that would have -- you know, be  
14 applicable. And this is not an all inclusive --  
15 obviously, there's -- there are many more cartridges out  
16 there, and this is just meant to help the dealers fill out  
17 the -- the computer screen and to get their customers out  
18 the door in a timely manner. It's not an absolute, you  
19 know, this is everything that's out there type of list.

20 Q           BY MR. DALE: Okay. So if I understand your  
21 testimony correctly, your understanding of Exhibit D is  
22 that it's essentially a list that the dealers helped  
23 generate based on their understanding of the type of  
24 weapon they're selling to the customer; is that correct?

25           MR. KRAUSE: Objection. Mischaracterizes the

1 witness's testimony.

2           THE WITNESS: We were just talking about Exhibit  
3 E, and then you just said Exhibit D, so I want to make  
4 sure I answer it correctly, sir.

10 Exhibit E?

11 A Yes. They were -- they were listed there as a  
12 way to help further identify cartridges for the dealers  
13 that --

14 Q I see. Okay. Thank you I appreciate --

15 MR. KRAUSE: He wasn't finished answering. Could  
16 you --

17 MR. DALE: I apologize. Go ahead.

18 THE WITNESS: Yeah, I thought I'd actually  
19 already answered this, I guess, over the last ten minutes  
20 or so, but I -- that's the purpose of this, is just to  
21 help the dealers identify the guns so that -- can go into  
22 the DROS system which then hits the automated firearms  
23 system.

24 Q BY MR. DALE: I see. Well, thank you for  
25 clearing it up. As Mr. Krause will tell you, for some

18

1 people, these are all widget. So this is -- these are all  
2 widgets to me. I appreciate that.

3 So in other words, the dealers, when they are  
4 going to classify a sale in the DROS system, they can pull  
5 up this drop-down menu and it will list these four  
6 examples of cartridges within handguns they sell which  
7 might be appropriate for that particular classification;  
8 is that correct?

9 MR. KRAUSE: Objection. Mischaracterizes the  
10 witness's testimony.

11 THE WITNESS: I think as I previously testified,

12 I itself's basically a guideline to help them, you know,  
 13 put the information into the system as they're required to  
 14 do. And if they find something that's -- they think is  
 15 similar but maybe not listed, they might call and verify,  
 16 hey, what should I put this in as? Or they're going to  
 17 click the appropriate box on the drop-down menu to  
 18 populate that field.

19 Q BY MR. DALE: I see. So -- I just want to make  
 20 sure. I think we're on the same page, but -- but again, I  
 21 keep getting objections that I'm not quite getting this  
 22 right, so I want to make sure we are?

23 So these are listings that dealers may select,  
 24 but they don't necessarily have to select when they're  
 25 help -- when they're filling out electronically the DROS

19

1 form as part of ringing up a customer sale?

2 MR. KRAUSE: Objection. Mischaracterizes the  
 3 witness's prior testimony.

4 I don't think he testified that -- that they can  
 5 drop down any of these calibers -- drop down any of those  
 6 particular cartridges on the DROS system, but I could be  
 7 wrong.

8 THE WITNESS: Yeah, the way it happens is if they  
 9 pick 45, it's any one of those 45 or other 45s would be  
 10 lumped in there. It's not -- like I said, it's not a  
 11 scientific down to each individual cartridge. It's --

12 MR. KRAUSE: Based on the gun?

13 THE WITNESS: It's based on the gun and can --  
 14 can the -- what's the most accurate thing available, given

15 the field length in the system and, you know, there are  
16 limitations due to the programming, as I understand and  
17 have been told; that, you know, we can't have 1,500  
18 versions of the 45 listed here for the dealer to put the  
19 exact cartridge in just because of space concerns in the  
20 computer programming.

21 Q BY MR. DALE: Okay. So would it be fair to say,  
22 then, in this example in Exhibit E of cartridges which  
23 would fall under a particular caliber, there are some  
24 cartridges that might fall under a particular caliber that  
25 aren't listed simply due to space reasons?

20

1 MR. KRAUSE: Objection. Asked and answered. If  
2 there's anything else you can add --

3 THE WITNESS: Nothing new. I have answered that.

4 MR. DALE: Madame Court Reporter, can you go  
5 ahead and read back that question? I don't know that I  
6 got a yes or a no to it, and I'd really like a yes or no  
7 to it.

8 THE REPORTER: Sure.

9 (The following was read back as requested:

10 Question: Okay. So would it be fair to  
11 say, then, in this example in Exhibit E  
12 of cartridges which would fall under a  
13 particular caliber, there are some  
14 cartridges that might fall under a  
15 particular caliber that aren't listed  
16 simply due to space reasons?)

17 MR. KRAUSE: He -- I believe the witness  
18 explained in great deal three or four times what the --  
19 Exhibit E shows. If there's anything he can add, it's not  
20 a yes or a no question.

21 MR. DALE: Okay. Are you instructing your --  
22 your witness not to answer, Mr. Krause?

23 MR. KRAUSE: No, I'm not. I'm instructing him to  
24 answer to the extent he has any additional information  
25 that hasn't been provided three times already.

21

1 MR. DALE: Okay. Well, it sounds like you're  
2 testifying on his behalf, and I'd really appreciate if you  
3 wouldn't do that.

4 I -- all I would like is a simple yes or no  
5 answer. It is, in fact, a yes or no question. It  
6 requires an affirmation or a declination of an  
7 affirmation, and so I'm going to have the court reporter  
8 read it back one more time and either he can give me a yes  
9 or a no or I don't know or -- you know, those would be  
10 appropriate responses.

11 So Madame Court Reporter, can you go ahead and  
12 read that question back, please?

13 THE REPORTER: Yes.

14 (The following was read back as requested:

15 Question: Okay. So would it be fair to

16 say, then, in this example in Exhibit E

17 of cartridges which would fall under a

18 particular caliber, there are some

19 cartridges that might fall under a



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20 particular caliber that aren't listed

21 simply due to space reasons?)

22 MR. KRAUSE: Same objections.

23 To the extent you can add anything to your prior  
24 answers...

25 THE WITNESS: Mr. Dale, my answer is such -- as I

22

1 believe I've previously testified, space was a concern in  
2 this field, and there was -- there just wasn't enough  
3 space to list out every single cartridge pertinent to the  
4 numbers on the left side in the first column.

5 Q BY MR. DALE: Okay. So would it be fair, the  
6 thing I said, would it be fair to characterize it that way  
7 or would it not be fair to characterize it that way?

8 A I think I just answered that. Yes. It's --  
9 there's not enough space.

10 Q Okay. Terrific. And that's all I was looking  
11 for. And hopefully if we come upon these issues again in  
12 the future, maybe we can kind of short circuit the  
13 process. And again, I'm not trying to belabor this  
14 process or make it any longer, so I will move forward now  
15 that I've gotten that answer.

16 All right. So you, at some point, pulled up the  
17 DROS list and got -- and among the listings and, in fact,  
18 one of the top listings for 2006 was the .45 caliber,  
19 correct, Mr. Graham?

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



22 Go ahead.

23 THE WITNESS: Looking at Exhibit D, page one, the  
24 top line, 45 has the highest sale amount.

25 Q BY MR. DALE: For 2006; correct?

23

1 A Yes, sir.

2 Q Okay. And so I want to walk you through the  
3 process that you went to then make a determination that  
4 this is -- this particular type of ammunition indicated by  
5 the 45 is principally used in handguns, so I'm not trying  
6 to trick you here. I just want to walk you through the  
7 process.

8 So at the point, then, that you used the DROS  
9 list as a starting point, for example, the 45, what was  
10 the next step that you took, then, to try to determine  
11 whether or not the ammunition for that particular caliber  
12 weapon was principally used in handgun?

13 A Basically, I went to the Cartridges of the World  
14 reference manual, reviewed the -- you know, the entries  
15 for some of the 45 rounds and read the round descriptions  
16 in there, coupled that with the personal experience with  
17 firearms over the years and, you know, that's -- that was  
18 kind of the second phase, if you will.

19 Q Okay. Let's talk about that second phase a  
20 little bit. We'll kind of do this in two parts.

21 You said you coupled that with your personal  
22 experience. Let's talk a little bit about your personal  
23 experience with .45 caliber handguns.

24 And let me ask you this. Are there any .45  
Page 22

25 caliber rifles that you're aware of?

24

1 A Yes, I think you guys have been provided with  
2 a -- kind of a short list of some .45 caliber nonhandguns  
3 that I identified during the course of the research.

4 Q Would that be the Cheaper Than Dirt Web site  
5 printout?

6 A No. It's -- let's see. One, two, three -- about  
7 an hour page document. The very first, I guess,  
8 identifier on it would be .45 ACP and there's a two next  
9 to it.

10 Do you see that?

11 Q Taking a look here. I apologize. I've got a lot  
12 of papers in front of me. I -- you know, I do not see  
13 that. Hold on one moment.

14 I'm sorry. Can you tell me what the top of that  
15 particular document reads?

16 MR. KRAUSE: There -- it was provided along with  
17 all the other documents he relied on. It's, as he  
18 mentioned, a four page document. On the very first page,  
19 there's three column headings, .45 ACP, nine-millimeter  
20 and ten-millimeter. There's only text at the very top  
21 quarter of the document. The rest of the first page is  
22 blank. You can recognize it by all the blank space.

23 MR. DALE: Okay. Like lots of the paper we  
24 generate, there's not much -- a lot of it goes to waste,  
25 is that right, Mr. Krause?

1 A Well, there's -- yeah. Are you speaking of  
2 the .45 ACP or what specific --

3 Q I'm talking about any type of .45 caliber  
4 cartridge.

5 A Yes, there are multiple -- you know, multiple  
6 firearms out there that are not handguns that use a .45  
7 caliber round.

8 Q Okay. So based on your -- let's get back to the  
9 personal experience that you used as part of step two.

10 Based on your personal experience it sounds like,  
11 and you can either confirm or deny this, that your  
12 understanding is there are a lot more 45 handguns than  
13 there are 45 rifles; is that correct?

14 MR. KRAUSE: Objection. Vague and ambiguous.

15 Q BY MR. DALE: Well, let's break it down, then.

16 You said that you used your personal experience  
17 based upon your understanding of the use of both the .45  
18 caliber in general and then we're talking specific  
19 cartridges like .45 ACP.

20 What's your experience with regard to handguns  
21 that shoot .45 ACP? I mean, how many handguns of those  
22 have you, for instance, yourself, fired in your  
23 experience? And I'm talking about different models.

24 A Different models of handguns that shoot the 45.  
25 Well, several variants of the 1911 style pistol. I

27

1 carried an H & K USP for a few years, so I fired that  
2 extensively. I own a Kimber 45. You know, I -- an exact

3 number, I don't know. Around ten.

4 Q Okay. Okay. And what is your -- the personal  
5 experience that you used to help you as the second step  
6 that you've testified to, was part of that personal  
7 experience your actual use in and firing of .45 caliber  
8 handguns?

9 A Yes.

10 Q Okay. What additional parts of your personal  
11 experience did you use to help inform you about whether or  
12 not .45 caliber ammunition handguns -- or I'm sorry, .45  
13 caliber ammunition would be appropriately included on the  
14 DOJ's caliber list?

15 A Basically, weapons that I have seized; other  
16 members of the Department of Justice have seized during  
17 the course of, you know, criminal investigations; weapons  
18 that I've seen for sale at gun shows, gun stores; I read,  
19 you know, various gun magazines which detail, you know,  
20 different types of firearms and ammunition used in those  
21 weapons. That type of stuff.

22 Q So would it be fair to say that all of these  
23 personal experiences that you've just described helped  
24 inform your choice as part of the second step of  
25 determining whether .45 caliber ammunition was properly

28

1 included on the DOJ's list?

2 A Yes.

3 Q Okay. Let's talk a little bit about weapons for  
4 sale. You said you've observed weapons for sale.

5 Approximately -- again, I want your best  
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6 estimate. I don't want a guess.

7 How many .45 caliber handguns have you personally  
8 observed for sale in your experience?

9 MR. KRAUSE: Don't guess. Just give your best  
10 estimate.

11 THE WITNESS: An estimate, I mean, between the  
12 gun shows, the gun stores, online where I've seen Web  
13 sites trying to sell, you know, various handguns, probably  
14 in the thousands.

15 Q BY MR. DALE: Thousands. Okay. Are we  
16 talking -- are we talking five figures here? Would it be  
17 more than 10,000?

18 A Well, I mean, I don't know if -- if I've gone to  
19 a particular gun show and then I saw, six months later,  
20 the same gun dealer at the same show, I can't say for sure  
21 it was a different gun. It might have been the same exact  
22 gun with -- you know, based on the serial number on the  
23 weapon, so I'm just -- I'm trying to give you a number  
24 here. And again, typically on Web sites, you're not privy  
25 to the serial number of a particular weapon.

29

1 Q Okay. Okay. So we're talking about both guns  
2 that you observed for sale, which may be the same gun, but  
3 also could be a different gun, at both gun shows and on  
4 Web sites; is that correct?

5 A Gun shows, gun stores and, yeah, Web sites that  
6 offer firearms for sale.

7 Q Okay. So to the best of your recollection, and

13 Q BY MR. DALE: Yes.

14 A Okay. Guns and Weapons For Law Enforcement, Guns

15 and Ammo. There's a few others that I peruse, but I --

16 off the top of my head, those are the two that I recall.

17 Q Okay. Now, at some point, you were asked by the

18 DOJ to help actually put together the answers that were --

19 ended up being verified as Exhibit B; correct?

20 A Exhibit B? Let me flip to Exhibit B. Stand by.

21 Is it here in this stack or --

22 Q It's the special interrogatories. Let me know

23 when you have them.

24 A Okay, sir.

25 Q Okay. Now -- so at some point, you were asked to

32

1 help review and verify the responses that ended up being

2 produced here as Exhibit B; correct?

3 A Yes.

4 Q Okay. How long ago were you asked to do that?

5 MR. KRAUSE: Objection. Vague and ambiguous.

6 Q BY MR. DALE: Was it six months ago? Three

7 months ago? One month ago?

8 A No, I would say -- the final verification took

9 place on November 23rd, the day I signed it.

10 Q Okay. And prior to that, did you do any research

11 or investigation to help inform your answer in verifying

12 that? In other words, did you go back and look at

13 Cartridges of the World or Web sites or anything like that

14 to help formulate that answer?

15 MR. KRAUSE: Objection. Vague and ambiguous.

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16 What answer are we talking about?

17 MR. DALE: I'm talking about any and all answers  
18 within Exhibit B.

19 MR. KRAUSE: Oh.

20 MR. DALE: That he helped -- that he helped  
21 prepare or otherwise helped you prepare on behalf of the  
22 DOJ.

23 THE WITNESS: Yeah, I've -- I've -- I mean, I've  
24 looked at the -- this is the second version of Cartridges  
25 of the World that I've had, so I've looked at that over

33

1 the last, I don't know, year or so just because of other  
2 projects within the DOJ that had nothing to do with this  
3 particular lawsuit.

4 Q BY MR. DALE: Okay.

5 A You know, I -- I continually try to look at  
6 different ammunition and handguns and other firearms just  
7 to further educate myself because of the job that I do.

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

13 MR. KRAUSE: Objection. Vague and ambiguous.

14 THE WITNESS: I guess -- I'm not sure what you  
15 mean by them.

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



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

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

23 A Specific gun magazines? I don't recall looking  
24 at a magazine. I think we would have produced something  
25 like that to you if -- if I had. I don't remember doing

34

1 any -- doing that.

2 Q Okay. So from the time period you were asked to  
3 help verify the accuracy of the responses in Exhibit B up  
4 till today, is -- is there any specific magazine that you  
5 can recall reviewing to help -- to help you verify those  
6 responses?

7 MR. KRAUSE: Objection. Asked and answered.

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

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

14 A No.

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

18 A I may have reviewed a magazine that had that  
19 information in it, but I don't recall -- you know, it's  
20 not something that I made a notation on or, you know,



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21 stored it away for -- you know, for that particular  
22 reason. I get magazines in the mail and I'll read them.  
23 I have one on my desk that's unopened I got this  
24 morning -- or got sometime yesterday. It's still sealed  
25 in a little mailing package.

35

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

7 A That is correct.

8 Q Okay. And within the past year, you can't recall  
9 any specific article by publication name or by author name  
10 or by date of publication that specifically listed popular  
11 types of ammunition that were being sold or bought; is  
12 that correct?

13 A Yes.

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

20 MR. KRAUSE: Objection. Vague and ambiguous.  
21 Misstates the witness's prior testimony.

22 THE WITNESS: I don't know that -- how that

23 question is different than the last one, sir.

24 Q BY MR. DALE: Well, whether you understand are

25 not, is that true? That you can't point to me a

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1 particular magazine article that you used to help you as

2 part of formulating your opinion regarding whether .45

3 caliber ammunition is appropriately included on the DOJ's

4 caliber list?

5 A I believe I've already answered this, but I -- I

6 can't recall any specific magazine articles that I used.

7 Q Okay. Very good. I appreciate that.

8 And then one of the things you said you looked at

9 are various gun Web sites and your counsel was kind enough

10 to produce some of them.

11 One of those was Cheaper Than Dirt; is that

12 correct?

13 A Yes.

14 Q Okay. And can we --

15 Mr. Krause, do you have a copy of that that we

16 could, perhaps, mark as an exhibit?

17 MR. KRAUSE: Yes.

18 MR. DALE: Let's go ahead and mark the one that

19 has the November 30, 2010. It's a two-page document. Oh,

20 they all have November 30, 2010. Okay. Let's --

21 MR. KRAUSE: Yeah, I have them all bundled as

22 one.

23 MR. DALE: Let's go ahead and mark them as one

24 exhibit, then. That will hopefully help make it a little

25 easier. And we'll mark it as Exhibit F.

1 THE WITNESS: Okay. Mr. Dale, can we pause for a  
2 second? The -- I don't think we have, actually, a number  
3 E marked -- or letter E marked yet and I don't want to  
4 get --

5 MR. KRAUSE: The court reporter hasn't had time  
6 to do it yet.

7 THE WITNESS: Yeah. Can we take just a second to  
8 do that and we can move on?

9 MR. DALE: Yeah, absolutely. No problem. And by  
10 the way, if anybody on that side of the line, including  
11 the witness, needs time to take a break, just please let  
12 me know. I'm happy to do it.

13 THE WITNESS: Okay. I'm happy to continue, I  
14 just want to get the markings of the items --

15 MR. DALE: No, and I appreciate that. I  
16 appreciate your diligence.

17 THE WITNESS: E will be the AFS gun caliber  
18 table, correct, Mr. Dale?

19 MR. DALE: Correct.

20 THE WITNESS: Okay. And then the Cheaper Than  
21 Dirt stack, that's going to be F, as in Frank?

22 MR. DALE: I'm sorry. I understand you were  
23 asking a question. I stepped out for a second. Go ahead  
24 a repeat your question, please.

25 THE WITNESS: I was just confirming that you want

1 the Cheaper Than Dirt stack of papers labeled letter F.  
2 MR. DALE: That is correct.  
3 THE WITNESS: Okay.  
4 MR. DALE: Thank you very much.  
5 THE WITNESS: Okay. The court reporter's been  
6 provided a copy of both, and then I've got working copies  
7 or, you know, same thing over here.  
8 Q BY MR. DALE: Okay. Well, if you're ready to  
9 proceed, then, I'll ask you some questions regarding  
10 Exhibit F.  
11 A One question, sir. Did -- did you guys ever find  
12 the -- just so I don't -- we don't skip ahead, the --  
13 MR. KRAUSE: Oh, that's not E.  
14 THE WITNESS: There's the Excel spreadsheet that  
15 has the .45 ACP and then the different calibers going from  
16 left to right. It's about four pages long.  
17 Did you guys ask for that to be marked? Because  
18 I don't think we ever marked it and I don't remember you  
19 guys --  
20 Q BY MR. DALE: Yeah. Yeah, we did find it. I  
21 will go ahead and probably mark it as a later exhibit.  
22 A Okay. Thank you. I'll --  
23 Q Since we didn't do any specific questions about  
24 it, I'll go ahead and wait.  
25 A I'll set that aside, then.

1 Q Thank you. I appreciate that.  
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2 A Okay. Now we're on to F, so...

3 Q So my understanding of Exhibit F, and I want to  
4 make sure you guys have the same one we have. There's two  
5 different printouts from the Cheaper Than Dirt Web site,  
6 both of which are dated at the bottom right-hand corner  
7 November 30th, 2010.

8 Is that what you have in front of you,  
9 Mr. Graham?

10 A Yes, it looks that way.

11 Q Okay. And so Cheaper Than Dirt was one of the  
12 Web sites that you used to help inform this second step  
13 that you took to determine whether .45 ammunition was  
14 appropriately included on the DOJ's caliber list; correct?

15 A Yes.

16 Q In fact, the Web pages that are represented on  
17 the printouts that are Exhibit F are, in fact, the exact  
18 Web pages that you went to to help inform that opinion;  
19 correct?

20 A They are representative of the date that I caused  
21 these to be printed just to be able to provide you with  
22 something, per your request.

23 Q Okay. But -- but at some point within the last,  
24 let's say, month or so, as part of your -- helping inform  
25 your opinion, you went to these two particular Web pages,

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1 right? Notwithstanding number --

2 A Not withstanding what?

3 Q The November 30th date that's on the lower

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4 right-hand corner. Sometime prior to that, you went to  
5 the two Web site pages that are -- that your counsel has  
6 produced as -- and we've now marked as Exhibit F in order  
7 to help inform your opinion?

8 A Yes.

9 Q Okay. Thank you. I apologize. That was a  
10 little convoluted. Thank you for sticking with me there,  
11 Mr. Graham.

12 A Okay.

13 Q Based on your review of those Web sites at that  
14 time and looking at Exhibit F now, is there anything on  
15 Exhibit F that pops out at you that looks different from  
16 what you reviewed back when you viewed these Web sites in  
17 order to help inform the opinions you're giving today?

18 A You know, I can't say for sure nothing has been  
19 changed because I know Web sites may fluctuate. They  
20 might change a price or something like that, but in  
21 general, it looks similar.

22 Q Okay. It looks similar. All right.

23 Well, then -- so were there any other Web  
24 sites -- well, let me -- I don't want to ask that  
25 question. Let me go through some of the other exhibits

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1 that your counsel produced.

2 Do you have in front of you a document -- and it  
3 may already be marked as part of Exhibit F, so I want to  
4 confirm it -- something that says Cabela's Ammunition at  
5 the top?

6 A Yes, I see that.

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7 MR. DALE: Okay. Mr. Krause, is that already  
8 marked as part of Exhibit F.  
9 MR. KRAUSE: Yes, it's all one big bundle.  
10 MR. DALE: Terrific.  
11 Q And then do you have something in front of you  
12 that says at the top "Ammunition/Shop Premium and Discount  
13 Ammunition at Midway USA"?  
14 A Yes, sir.  
15 Q Okay. And then I just want to confirm, I don't  
16 have any other Web site printouts that were produced by  
17 your counsel in front of me.  
18 Mr. Krause, were these all the Web site printouts  
19 that you produced?  
20 MR. KRAUSE: I don't have it in front of me. No,  
21 it looks like there's one more, J & G Sales.  
22 MR. DALE: Yes, I actually do have that. My  
23 apologies.  
24 Q Okay. So Mr. Graham, in front of you, do you  
25 have a document which says ammo for handguns on top? And

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1 then in the -- sort of the title bar blow that, it says  
2 J & G Sales firearms/ammunition/accessories?  
3 A Yes, sir.  
4 Q Okay. So all of these documents that we've just  
5 discussed, the J & G Sales, the Cabela's, the midway USA  
6 document and the Cheaper Than Dirt, these were all Web  
7 sites that you used to help you as part of this second  
8 step of confirming that .45 caliber ammunition was



9 properly included in the DOJ's caliber list; is that  
10 correct?

11 A Yes.

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

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

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

19 Q I'm limiting my question to any Web sites that  
20 would be accessible to the public that you used in helping  
21 form this second step. So, again, I'm not trying to trick  
22 you. I'm just trying to make sure I'm covering all of  
23 them?

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

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1 Q Okay. All right. And let me ask you, what  
2 particular information on these Web sites -- and you can  
3 go ahead and take a look at Exhibit F -- did you rely upon  
4 to help make your determination that .45 caliber  
5 ammunition was properly included on the DOJ's caliber  
6 list?

7 A Some of the -- basically, some of the calibers  
8 and cartridges listed here on the Cheaper Than Dirt -- it  
9 says page one of two, so I'm speaking about the one that  
10 says most popular handgun ammunition is kind of a second  
11 column or block of rounds below that. The .45 ACP is



12 listed in the most popular section. Down a little bit  
13 farther down is the .45 Long Colt. You know, that type of  
14 information there. The 45 GAP.

15 Q Okay. Did you, at any point, contact the  
16 administrators of this Web site or the owners of the  
17 Cheaper Than Dirt Web site to find out what they meant  
18 about most popular?

19 A No.

20 Q No.

21 Did you do any other type of independent  
22 investigation to determine whether or not Cheaper Than  
23 Dirt's representation of what the most popular ammunition  
24 they sold was an accurate representation?

25 A Did I contact other Web sites? Is that what your

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1 question was?

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

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

10 Q Okay. And then let's look at the J & G Sales.  
11 What part of this particular Web site did you  
12 rely upon to help formulate your opinion that .45 caliber  
13 ammunition was appropriately included on the DOJ's caliber

14 list?

15 A The section here that says ammo for handguns and  
16 it gives a listing of various rounds, there's a portion of  
17 it that says .45 ACP, 45 GAP and 45 LC, which I understand  
18 to be long Colt.

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

23 A Correct.

24 Q Okay. And would it be fair to say that,  
25 similarly true, you didn't contact the proprietors of

45

1 Cabela's or midway USA to determine how they ended up  
2 listing those calibers on their Web sites?

3 A That's correct.

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

6 Is that a correct representation?

7 A Yeah, I don't -- I didn't see anything like that  
8 when I was perusing the sites and I don't think there's  
9 that type of information at least on any site I've seen in  
10 the past.

11 Q Okay. So would it be fair to say that you don't  
12 know, even though they're characterizing this stuff as  
13 popular, exactly how much of each ammunition they're  
14 selling?

15 A Yeah, based on their Web sites, I can't tell you  
16 an exact round count.

17 Q Okay. Now, let's go back and take a look at the  
18 Cheaper Than Dirt Web site printout that's part of Exhibit  
19 F. And specifically, looking under handgun ammunition,  
20 that's the page that you previously testified to that has  
21 most popular and below that has handgun ammunition.

22 Do you see that Web page?

23 A Yes, sir.

24 Q Okay. And one of the handgun ammunitions listed  
25 is .45 Long Colt; correct?

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1 A Yes.

2 Q Okay. Now, .45 Long Colt, I guess, is fired in  
3 a .45 caliber handgun; is that right?

4 A Correct.

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

6 A I believe so.

7 Q Okay. Did you ever contact anybody to find out  
8 why .45 Long Colt was being included on the Cheaper Than  
9 Dirt's handgun ammunition listing if it could be fired in  
10 both a handgun and a rifle?

11 A No.

12 Q Okay. And did you ever find out if, for example,  
13 Cheaper Than Dirt sells more .45 Long Colt ammunition for  
14 firing in rifles than it does for firing in handguns?

15 A No.

16 Q Okay. And then let's go down below that because  
17 I want to ask you a question.

18 Nine by 23-millimeter Winchester, that's

19 ammunition that's fired in a nine-millimeter pistol;

20 correct?

21 A Yes.

22 Q Okay. Let me ask you. You testified previously

23 that you used an MP5 machine gun as part of the weapons

24 that you've been issued through the DOJ; is that right?

25 A Yes, submachine gun.

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1 Q Okay. Does that take a nine by 23 round or does

2 that take a different round?

3 A Takes a different round.

4 Q What type of nine-millimeter round does it take?

5 A It takes a nine by 19 Luger or Parabellum is

6 another way to say it.

7 Q Okay. But that's being fired out of your pub

8 machine gun, right? Not a pistol?

9 A It can be fired in a pistol.

10 Q Right, but when you're firing it, you're firing

11 it out of a submachine gun mostly; correct?

12 MR. KRAUSE: Objection. Misstates the witness's

13 testimony. Vague and ambiguous.

14 MR. DALE: You're absolutely right, Mr. Krause.

15 I'll withdraw that and re-ask it.

16 Q When you were firing that particular cartridge of

17 ammunition out of your MP5, that MP5 you were firing it

18 out of was a submachine gun, not a pistol; correct?

19 A Yes.

20 Q Okay. Now, I note at the top of the Cheaper Than

21 Dirt Web site under the most popular that you previously

20 were aware that some police and law enforcement agencies  
21 use the MP5; correct?

22 A Yes.

23 Q Okay. Did you ever go out and find out how many  
24 MP fives had been issued to law enforcement agencies?

25 A No, sir.

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1 Q Okay. And did you find out how many rounds that  
2 law enforcement agencies may fire out of their MP fives as  
3 part of tactical operations or training?

4 A No, sir.

5 Q Okay. And did you consider the fact that MP5  
6 uses nine-millimeter handgun ammunition to be a factor  
7 that would suggest that it was appropriately included on  
8 the DOJ's caliber list?

9 MR. KRAUSE: Objection. Vague and ambiguous.

10 THE WITNESS: Yeah, can you rephrase that,  
11 please?

12 Q BY MR. DALE: Yeah. Yeah. What I want to find  
13 out is whether or not the fact that what you've classified  
14 as handgun ammunition is used in a submachine gun was any  
15 sort of factor in you determining that the nine-millimeter  
16 caliber should not be included on the DOJ's caliber list?

17 MR. KRAUSE: Objection. Vague and ambiguous.

18 THE WITNESS: And I think I've already stated  
19 that I considered that weapon and the fact that it fired  
20 the -- the nine-millimeter round as part of my evaluation.

21 Q BY MR. DALE: Okay. But -- but if I understand  
22 your testimony correctly, you didn't find out how many of

23 those weapons were out there firing that round as part of  
24 making your determination; is that correct?

25 A Yes, that's correct.

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1 Q And you didn't find out how many rounds were  
2 being fired out of that weapon as part of your  
3 determination; correct?

4 A Correct.

5 Q Okay. Let's take a look -- I want to kind of  
6 transition here. Let's take a look at the statute.

7 Have you had an opportunity to review the statute  
8 that's at issue in this lawsuit?

9 MR. KRAUSE: Objection. Vague and ambiguous.  
10 Which statute are you talking about?

11 MR. DALE: I'm sorry. Specifically, Penal Code  
12 section 12060.

13 THE WITNESS: Yes, sir.

14 Q BY MR. DALE: Okay. We'll go ahead and pull it.  
15 And just so we're operating on the same page here, it  
16 says -- okay. It says handgun ammunition -- hold on one  
17 sec.

18 Do you know what subdivision this is? Okay.  
19 This is A? Okay. All right. Hold on one sec.

20 (Off-the-record discussion.)

21 Q BY MR. DALE: All right. I'm getting a copy of  
22 that. I apologize. So let's move on to another issue so  
23 we don't waste time here. And I apologize for the delay.  
24 Let's go back to Exhibit F for a second.

25 One of the listings on the Cheaper Than Dirt Web

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1 site under the handgun ammunition, can you go ahead and  
2 turn to that page for me?

3 A Yes, sir.

4 Q Okay. One of the listings on there is .30 Luger.  
5 Do you see that?

6 A Yes.

7 Q Okay. Now, if I understand your prior testimony  
8 correctly, part of the method that you undertook to  
9 determine whether or not a particular caliber of  
10 ammunition was properly included on the DOJ's caliber list  
11 was to look at the various Web sites.

12 What, if any, factor in you forming your opinion  
13 regarding the appropriate caliber listings on the Web site  
14 listing of the .30 Luger on this particular Web site have  
15 on formulating that opinion, if any?

16 A You know, it -- it didn't really factor into  
17 my -- I guess, my evaluation. It's not something that I  
18 tend to see in the field. It's not, you know, something  
19 I -- we tend to, you know, seize. I don't see it sold or  
20 being offered for sale a whole lot at shows and gun  
21 stores. I think that's the best way to surmise that.

22 Q Okay. So let me walk you back through the steps  
23 here.

24 You go to the DROS list as part of your initial  
25 step to see what the popular handguns being sold are.



1 Then you go to the second step, where you use your  
2 personal experience and your review of literature and your  
3 review of Web sites to further help you determine what  
4 appropriate caliber ammunitions are included on the list;  
5 correct?

6 A Correct.

7 Q Okay. And when we were talking about the 45  
8 before, one of the factors that made 45 appropriately  
9 included based -- in your opinion, was the fact that it  
10 was listed as popular on Web sites; correct?

11 MR. KRAUSE: Objection. Mischaracterizes the  
12 witness's prior testimony.

13 THE WITNESS: It was listed as handgun ammunition  
14 on the Web sites. You know, this particular Cheaper Than  
15 Dirt article that you've previously mentioned as part of  
16 Exhibit F calls it most popular.

17 Q BY MR. DALE: Okay. So -- so to your mind, then,  
18 any of these Web sites which listed this -- these calibers  
19 of ammunition as popular, you didn't give any mind or any  
20 weight to the fact that they may have listed it as most  
21 popular on their Web site; is that correct?

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

24 THE WITNESS: I gave it the most -- the most  
25 important thing that it was listed and broken down for



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1 consumers as handgun ammunition. A particular Web site,  
2 you know, however they're going to classify a particular  
3 type of caliber or cartridge as most popular, you know,  
4 that's how they wanted to list it. That's fine. It was  
5 most important that it was considered handgun ammunition  
6 to me.

7 Q BY MR. DALE: Okay. Well, let me make sure I  
8 understand.

9 So you gave some weight, but not a lot of weight,  
10 to how the Web site classified the popularity of that  
11 ammunition.

12 Is that a correct statement?

13 A I would say some, but it was not everything. It  
14 was more of a -- you know, a lesser factor than the actual  
15 delineation that it was handgun ammunition versus another  
16 type of ammunition.

17 Q Okay. So getting back, then, to the .30 Luger,  
18 given that it was listed as a handgun ammunition, what  
19 caused you, then, to discount its listing on the Web sites  
20 as a handgun ammunition from formulating your opinion that  
21 it shouldn't be included on the DOJ's caliber list?

22 MR. KRAUSE: Objection. Misstates the witness's  
23 prior testimony. Compound. Vague and ambiguous.

24 MR. DALE: Let me go ahead and break it down.

25 We'll go back because I want to make sure you understand

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1 the question.

2 Q You testified that you gave some weight, but not  
3 a lot of weight, to the fact that a particular type of

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4 ammunition may be listed as popular on the Web sites you  
5 reviewed.

6 Is that a correct statement?

7 A Yes.

8 Q Okay. But you gave more weight to the fact that  
9 the ammunition was listed as handgun ammunition at all on  
10 the Web site.

11 Is that a correct statement?

12 A Yes.

13 Q Okay. And then going back to Exhibit F, here we  
14 have a listing of .30 Luger.

15 So based on your prior testimony, did you give  
16 some weight to the fact that .30 Luger, as listed on this  
17 particular Web site as handgun ammunition, as part of  
18 forming your opinion as to whether or not it was properly  
19 included on the DOJ's caliber list?

20 A Yes.

21 Q Okay. So what other factors did you consider in  
22 then coming up with your ultimate opinion that it wasn't  
23 properly included on the DOJ's caliber list?

24 A The -- I think I've already said the factors  
25 that -- it's not something I'm -- I see here in the field.

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1 I don't see it in -- you know, meaning we're not  
2 seizing .30 Lugers. We're not -- I don't see a lot of  
3 these offered for sale here. The -- you know, and also  
4 given the amount of time that was allowed for research,  
5 the -- the ones that were listed out were, in my

6 experience and, you know, based on my knowledge, they were  
7 the most appropriate -- not to exclude others that might  
8 be also fitting this bill, but this is what was the  
9 best -- the best available at the time.

10 Q Okay. So I -- and I think you've testified to  
11 this before. Part of your analysis in formulating your  
12 opinions was influenced by the fact that you had a limited  
13 amount of time to help the DOJ formulate this list.

14 Isn't that correct?

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

17 THE WITNESS: Well, I think within the last, I  
18 don't know, two weeks or so, there's been somewhat of a  
19 rush with this particular case, and, you know, that's --  
20 that's the best way I can say it.

21 Q BY MR. DALE: If you had more time, would you go  
22 and investigate additional calibers and additional  
23 cartridges that weren't listed on the list produced in  
24 order to determine whether or not they should be included  
25 or shouldn't be included on any future list?

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1 A I think that would be common sense.

2 Q Okay. But obviously you don't have the time to  
3 do it right now because we have a trial coming up;  
4 correct?

5 A Correct. And I've been here talking with you for  
6 quite awhile, so it's obvious that there's -- you know,  
7 cartridges and calibers are not synonymous, so it's -- you  
8 know, the more time would be -- you know, be a better

9 accurate list, I guess.

10 Q Okay. So with regard to the 30 Luger cartridge,  
11 is there a rifle that fires that particular cartridge?

12 A I don't know, sir.

13 Q You don't know.

14 Are you aware that there's a handgun that fires  
15 that particular cartridge?

16 A Yes. I believe it's a German handgun. I don't  
17 know the model off the top of my head, though.

18 Q Okay. And as you sit here today, you have no  
19 knowledge whether or not the .30 Luger is fired more from  
20 a handgun than it is from a rifle.

21 Is that a fair statement?

22 A Correct. Because, again, I didn't have  
23 sufficient time to do the research on every single, you  
24 know, cartridge out there.

25 Q Okay. And so if the .30 Luger -- if you did more

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1 research and it turned out that it was fired more from  
2 that -- for example, that german handgun or any other  
3 handgun than it is from a rifle, based on your  
4 understanding of the law, it would have to be included on  
5 the list as principally fired or -- or principally used in  
6 a handgun; is that correct?

7 MR. KRAUSE: Objection. Compound. Calls for a  
8 legal conclusion. Vague and ambiguous.

9 Q BY MR. DALE: Okay. Well, let's step back and  
10 make sure that we don't have you opining on legal matters

16 A Yes.

17 Q And can you read that for me? Just subdivision  
18 B, please?

19 A Sure. "Handgun ammunition means handgun  
20 ammunition as defined in subdivision A of subdivision  
21 12323, but excluding ammunition designed and intended to  
22 be used in an antique firearm as designed in section  
23 921(a)(16) of Title 18 of United States Code. Handgun  
24 ammunition does not include blanks."  
25 Q Okay. Now, let me ask you, in terms of assisting

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1 the DOJ in formulating the caliber list, what efforts did  
2 you take, if any, to determine whether or not a particular  
3 caliber or cartridge of ammunition was designed and  
4 intended to be used in an antique firearm as defined by  
5 the referenced section of the U.S. code?

6 A Basically, my experience, the Cartridges of the  
7 World reference manual. Basically, those two -- those two  
8 things.

9 Q Okay. And in terms of your experience, what did  
10 your experience -- what specific parts of your experience  
11 helped you make a determination as to whether any  
12 particular type of ammunition was ammunition designed and  
13 intended to be used in an antique firearm?

14 MR. KRAUSE: Objection. Vague and ambiguous.

15 MR. DALE: Okay. Well, let's go back. I want to  
16 make sure I have this straight.

17 Q Is it true that you used your personal experience  
18 as one of the factors in helping you determine whether a

19 particular caliber of ammunition was or was not designed  
20 and intended to be used in an antique firearm, as it  
21 states in 12060? Is that a correct statement?

22 A Could you -- could you please repeat that one?

23 Q Yeah. Yeah. Let me see if I can't break it down  
24 a little further.

25 You understood that part of the list that you

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1 were putting together, you were not supposed to include  
2 ammunition designed and intended to be used in an antique  
3 firearm as part of that list; is that correct?

4 A Yes.

5 Q Okay. And I think you just testified that you  
6 used your personal experience. That was one of the  
7 factors you used in helping you determine whether or not  
8 the ammunition that you were attempting to provide an  
9 opinion on fell within that definition; is that correct?

10 A Yes.

11 Q Okay. And then the other thing that I think you  
12 said is you used Cartridges of the World to also help you  
13 make that determination?

14 A Right.

15 Q Okay. Were there any other resources or methods  
16 that you used to help you make that particular  
17 determination?

18 A Regarding antique weapons?

19 Q No, regarding ammunition that's designed and  
20 intended to be used in an antique firearm.

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21 A No, I don't believe so. I think that -- that  
22 limits the -- that's the limit of them.

23 Q Okay. And at any point during the process where  
24 you were attempting to make a determination as to whether  
25 ammunition didn't fall within that definition, did you

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1 ever consult the referenced section of the U.S. code, 18  
2 USC Section 921(a)(16)?

3 A I don't think I looked it up in the last two  
4 weeks, if that's what you're referring to.

5 Q Okay. Did you look it up at any point prior to  
6 helping the DOJ formulate its list after you were asked by  
7 the DOJ to help formulate its list?

8 MR. KRAUSE: And this is just his -- just whether  
9 he has looked at it?

10 MR. DALE: Whether he did, yes.

11 THE WITNESS: I don't recall looking at it  
12 because I've grown accustomed and familiar with what an  
13 antique firearm is.

14 Q BY MR. DALE: Okay. What's your understanding of  
15 an antique firearm?

16 A Basically it's a firearm that's produced prior to  
17 1898 and it's going to fire, you know, in general terms,  
18 not a modern firearm round.

19 Q Okay. To your knowledge and expertise, what  
20 calibers of weapons were produced prior to 1898? Was a 22  
21 produced prior to 1898?

22 A I don't recall, sir.

23 Q Okay. How about a 45? Was that produced prior  
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24 to 1898? Did they make any weapon that fired that round?

25 MR. KRAUSE: Objection. Vague and ambiguous.

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1 THE WITNESS: The .45 ACP, I believe, came after  
2 that date as opposed to any particular cartridge, there  
3 may be, but I -- I don't have particular opinion on that.

4 Q BY MR. DALE: Okay. Well, let me kind of ask  
5 broader.

6 Do you have any information as to whether or not  
7 any weapon which fired a .45 caliber round was produced  
8 prior to 1898?

9 MR. KRAUSE: Objection. Vague and ambiguous.

10 Q BY MR. DALE: Mr. Graham, do you understand what  
11 I mean by .45 caliber round? I think -- I don't want to  
12 have to go through all the testimony we had establishing  
13 cartridges and stuff.

14 You understand what a .45 caliber round is;  
15 correct?

16 A Correct. I think there are some rifles that  
17 carry that denomination.

18 Q Okay. Did the fact or your understanding that  
19 there may be some rifles that carry that denomination  
20 factor at all into the opinions that you formed in helping  
21 formulate the DOJ's caliber list?

22 MR. KRAUSE: Objection. Vague and ambiguous.

23 Are you talking only about antique rifles or --  
24 or any rifles?

25 MR. DALE: Yeah, let me go back.



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10 MR. KRAUSE: Objection. Misstates the witness's  
11 prior testimony. Argumentative.

12 THE WITNESS: I don't know it to be available at  
13 this time. There may be a source out there that I'm  
14 unaware of, sir.

15 Q BY MR. DALE: Okay. Well, I appreciate that.

16 Let me ask you, I want to get back -- kind of get  
17 back to the definition of your understanding of what you  
18 were defining as principally used.

19 We talked earlier about how the MP5 fires more  
20 rounds per minute in our hypothetical than the  
21 semiautomatic nine-millimeter pistol.

22 MR. KRAUSE: Objection. Misstates --

23 Q BY MR. DALE: In determining whether an  
24 ammunition was principally used in a handgun, did you give  
25 any consideration to whether or not more rounds of that

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1 ammunition may be fired from a particular weapon based on  
2 the speed that that particular weapon fires or the  
3 popularity of its use in one configuration, let's say a  
4 rifle, versus another configuration, a handgun?

5 MR. KRAUSE: Objection. Compound. Incomplete  
6 hypothetical. Misstates the witness's prior testimony.

7 THE WITNESS: Could you rephrase that, sir?

8 Q BY MR. DALE: Yeah. I just want to find out, is  
9 the amount of ammunition that any particular weapon can  
10 fire, was that a factor in whether or not you determined  
11 that ammunition should be included as principally used by

12 a handgun on the DOJ's caliber list?

13 A When you say the amount that it can fire, are you  
14 speaking in terms of, like, a rate of fire?

15 Q I'm talking about total number of rounds that a  
16 particular weapon fires. So in other words, in our  
17 prior -- and I'm -- I want to make sure we're all on the  
18 same page.

19 You previously testified that an MP5 has the  
20 capacity to fire more rounds per minute than a  
21 semiautomatic handgun, even though in our hypothetical,  
22 that semiautomatic handgun is firing the same cartridge as  
23 the MP5.

24 Do you recall that line of questioning?

25 A Yes.

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1 Q Okay. Is the fact that the use of certain  
2 cartridges or calibers of ammunition may be fired at  
3 different rates from different types of weapons, was that  
4 a factor at all in you making your determination as to  
5 whether a particular ammunition should be included on the  
6 DOJ's caliber list?

7 MR. KRAUSE: Objection. Vague and ambiguous.

8 THE WITNESS: The -- I would say not much of a  
9 factor because principally for use really deals with the  
10 kind of firearm it's going to go into, in my -- in my  
11 est- -- in my understanding, so if you have one weapon  
12 that can shoot a million rounds a second and then you have  
13 500,000 rounds -- or handguns out there that shoot ten  
14 rounds a minute, that weapon is actually -- or the

15 ammunition is principally for use in the larger pool of --  
16 of weapons.

17 Q BY MR. DALE: Okay. How did you come to the  
18 understanding that that is how you define principally used  
19 as handgun ammunition?

20 MR. KRAUSE: Objection. Vague and ambiguous.  
21 How does he -- what are you referring to?

22 MR. DALE: I'm referring -- he just testified  
23 that the total number of rounds fired wasn't his  
24 understanding of the definition of principally used in  
25 handguns for purposes of the opinions he formed and the

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1 analysis he made. I'm just trying to find out what he  
2 based his definition that doesn't include capacity or  
3 rounds fired as part of his opinion.

4 MR. KRAUSE: Objection. Vague and ambiguous.  
5 I -- if you understand his question, please --

6 THE WITNESS: Yeah. Based on my understand- --  
7 experience and expertise, the number of handguns out there  
8 that shoot, let's say nine-millimeter, for example, far  
9 exceed the H & K MP fives or the other, you know,  
10 nonhandgun firearms out there that also happen to be  
11 chambered in the nine-millimeter.

12 Q BY MR. DALE: Okay. Are you talking about total  
13 number of weapons in circulation in California?

14 A Yeah. I mean, it's kind of a common sense thing.  
15 I mean, it's -- there's just -- I don't see a lot of MP  
16 fives for sale at gun shows or out there or licensed.

17 It's even somewhat of an exclusive weapon in police  
 18 agencies. It's not -- you know, the full automatic  
 19 versions that we're speaking of, a lot of times, just --  
 20 you know, the swat team or parts of the swat team might  
 21 have that specific weapon. It's -- it's not a -- a weapon  
 22 that you see every day. You know, you're going to see  
 23 many, many, many more nine-millimeter handguns out there  
 24 than you're going to come across, you know, the MP fives.  
 25 Q Okay. Well, let me ask you this:

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1 In terms of the nine-millimeter Luger cartridge,  
 2 did you do a comparative analysis prior to forming your  
 3 opinion as to whether there are more nine-millimeter  
 4 handguns that fire that particular cartridge or there are  
 5 more submachine guns that fire that particular cartridge  
 6 in circulation?

7 MR. KRAUSE: Objection. I think it's been asked  
 8 and answered and it's vague and ambiguous, but I'll let  
 9 you answer again.

10 THE WITNESS: Yeah, just given my experience with  
 11 the weapons that I see in the course of my duties and that  
 12 I have seen in the past at shows, at gun stores, online,  
 13 et cetera, the nine-millimeter round is principally for  
 14 use in handguns.

15 Q BY MR. DALE: Okay. But if I asked you, for  
 16 example, to cite to me a specific number of  
 17 nine-millimeter semiautomatic pistols that use the  
 18 nine-millimeter Luger cartridge, you wouldn't be able to  
 19 give me a number, as we sit here today; correct?

1 MR. KRAUSE: Objection. Misstates the witness's  
2 prior testimony.

3 THE WITNESS: There was a -- basically, there is  
4 a breakdown that -- like there's a nine-millimeter rim  
5 fire shotgun cartridge out there, and that's obviously not  
6 going to be for a handgun.

7 Q BY MR. DALE: Right. So that wouldn't be  
8 included as part -- based on your understanding, as  
9 ammunition principally used in handguns?

10 MR. KRAUSE: Objection.

11 THE WITNESS: What would be, sir?

12 Q BY MR. DALE: What nine-millimeter rim fire you  
13 just described.

14 A No, I said it would not be, because it's a  
15 shotgun round. If I was asked at some point by somebody,  
16 hey, is the nine-millimeter rim fire shotgun cartridge  
17 principally for use in handguns, I would probably come to  
18 the conclusion, no, it's not, A, because it's from a  
19 shotgun. I don't know of any other, you know, way to  
20 answer that question.

21 Q Yeah. And for example, the nine by 57-millimeter  
22 cartridge, is it your opinion that that's principally for  
23 use in a handgun?

24 A Nine by 57?

25 Q Yeah.

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1 A I don't recall giving previous testimony on that  
2 round, sir.

3 Q Okay. Do you -- have you ever heard of the nine  
4 by 57-millimeter cartridge?

5 A I may have, but given all the cartridges we've  
6 gone through in the last day and a half, it's somewhat  
7 muddy in my brain right now.

8 Q I understand.

9 Now, do you have any idea as to where that  
10 automated firearms list that you would review -- that you  
11 have reviewed, whether you would be able to determine  
12 whether or not a firearm sold that was listed as  
13 nine-millimeter on that list would have taken a nine by  
14 57-millimeter cartridge as opposed to a nine-millimeter  
15 Luger?

16 MR. KRAUSE: Objection. Compound. Vague and  
17 ambiguous.

18 THE WITNESS: Again, the dealers can put what --  
19 you know, if they had a particular weapon in there that  
20 they classified as a handgun that was also a  
21 nine-millimeter of some sort, it's theoretically possible  
22 that that -- there could be a -- you know, a certain  
23 percentage of the data reflected regarding that kind of a  
24 firearm in this --

25 Q BY MR. DALE: Based on your experience, is it

1 possible the nine-millimeter rim fire could have also been  
2 included on that list?

3 A Nine-millimeter rim fire shotgun round?

4 Q Yes.

5 A Yes, it's there available for the dealers to

6 put -- put into the system. So it's possible, yes.

7 Q Okay. So the automated firearms systems  
8 information that you used to determine how many  
9 nine-millimeter guns there are out there, it could have  
10 included nine-millimeter Luger, it could have included  
11 nine-millimeter rim fire, it could have included nine by  
12 57 millimeter.

13 Is that my understanding of your testimony?

14 MR. KRAUSE: Objection. Misstates the witness's  
15 prior testimony and vague and ambiguous.

16 THE WITNESS: The numbers that -- from Exhibit D,  
17 again, have reflected handgun specific data, so if the  
18 dealer, for some reason, checked the box as a handgun and  
19 then they also checked the nine-millimeter, they would  
20 have made an erroneous entry. If it was a shotgun, they  
21 should have put this in as a long gun, which wouldn't have  
22 populated the list in exhibit did.

23 Q BY MR. DALE: I see. Okay.

24 A So I'm relying upon the information the dealers  
25 provided to, again, just have a basis and a starting point

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1 of calibers and cartridges to consider for this list for  
2 your question on interrogatory number five.

3 Q Okay.

4 MR. KRAUSE: Which, as we've discussed, is not  
5 the clearest interrogatory on the planet.

6 Q BY MR. DALE: Let me ask you, Mr. Graham, are you  
7 aware of any database which identifies the number of long

8 gun sales?  
 9 MR. KRAUSE: Objection. Asked and answered  
 10 yesterday.  
 11 THE WITNESS: Yeah, we're not allowed to track  
 12 that information, sir. And I --  
 13 Q BY MR. DALE: What about the bureau of alcohol,  
 14 tobacco and firearms? Do they keep a list of certain long  
 15 gun sales?  
 16 MR. KRAUSE: Objection. Calls for speculation.  
 17 Q BY MR. DALE: Well, let me ask you this:  
 18 Are you aware if they keep a list of  
 19 manufacturers' totals regarding long gun sales?  
 20 A I'm not aware of that, sir. If they do, I -- I  
 21 don't recall learning of that. It would be nice to know,  
 22 I'm sure, for some other projects unrelated to this issue  
 23 to be able to query that system, but I don't have  
 24 knowledge of that now.  
 25 Q Okay. So would it be fair to say that, prior to

1 forming your opinions, you did not review a report titled  
 2 "Annual Firearms Manufacturing and Export Report" that's  
 3 published by the BATFE?  
 4 A Correct.  
 5 Q Okay.  
 6 MR. KRAUSE: Is that something you want to mark  
 7 as an exhibit.  
 8 MR. DALE: No. In fact, I don't even have a copy  
 9 of it.  
 10 Q But I do want to ask this:



11           As a hypothetical, Mr. Graham, if there were a  
12 report out there that identified manufacturer's total  
13 sales by state of particular types of long guns, would  
14 that have been a helpful report for you to review in  
15 forming the opinions that have been expressed in the DOJ's  
16 caliber list?

17           MR. KRAUSE: Objection. Vague and ambiguous.  
18 Incomplete hypothetical. Calls for speculation. I mean,  
19 without seeing a report --

20           THE WITNESS: Yeah, assuming something like that  
21 existed, I would at least review it. I don't know that it  
22 would be -- how much benefit it would have, but I would --  
23 I would consider it.

24 Q           BY MR. DALE: Okay. Well, if I understand your  
25 methodology, your initial methodology of determining

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1 whether a particular ammunition's appropriate involved  
2 determining how many handguns were issued that fire that  
3 particular caliber cartridge.

4           Is that a correct statement of your initial  
5 methodology with the DROS report?

6           MR. KRAUSE: Objection. Misstates the witness's  
7 prior testimony.

8           THE WITNESS: Yes, I attempted to use the DROS  
9 and AFS systems to just get a starting point to identify  
10 the most commonly sold firearms here in California over  
11 the last five years or so. And -- well, I think that  
12 answers your question.

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13 Q BY MR. DALE: Okay. Would it have been helpful  
14 to you in forming your opinion if you had a similar list  
15 of rifles and other long guns which used the same calibers  
16 as the handguns you referenced in the DROS list? Would  
17 that help you in forming your opinion?

18 MR. KRAUSE: Objection. Vague and ambiguous.  
19 Calls for speculation.

20 THE WITNESS: It may.

21 Q BY MR. DALE: It may. But obviously you  
22 didn't -- you don't have that report, and so -- I'm going  
23 to withdraw that.

24 Can we take a five-minute break? Do you folks  
25 mind?

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1 MR. KRAUSE: No. How is the timing looking?

2 MR. DALE: I think -- I apologize. I'm not going  
3 to get it done this hour, but I think I'm going to get it  
4 done -- I'll get it done before our drop deadline. That I  
5 promise you.

6 MR. KRAUSE: Okay.

7 THE WITNESS: Sir, just to confirm, what's your  
8 interpretation of the drop deadline? I do have another  
9 meeting at 1:30 I need to be to, and I've got to drive --

10 MR. DALE: Oh, I'm talking about the middle of  
11 the noon hour.

12 MR. KRAUSE: Like 12:45?

13 MR. DALE: Yeah.

14 MR. KRAUSE: Okay. Five-minute break.

15 MR. DALE: Five minutes.

16 (Recess taken.)

17 Q BY MR. DALE: I'm going to go ahead and, if  
18 Mr. Graham is ready, ask him to pick up the copy of  
19 Cartridges of the World 12th edition that he has in front  
20 of him?

21 MR. KRAUSE: Actually, I was thumbing through it  
22 for grins and giggles.

23 MR. DALE: I know. It's interesting reading,  
24 huh?

25 MR. KRAUSE: It is.

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1 MR. DALE: You know, for a guy who deals in  
2 widgets, I could get some pretty good sleep reading this.

3 MR. KRAUSE: Now, we-- I don't know how -- the  
4 pages you're going to reference, I'll have to copy them  
5 afterwards and --

6 MR. DALE: Well, you know, I have an idea.

7 Are you willing to stipulate that we consider  
8 Cartridges of the World a treatise that's relied upon by  
9 experts in this particular field?

10 MR. KRAUSE: Yeah.

11 MR. DALE: Yeah, I think given that, I don't want  
12 to attach a copy of the pages. I think we can just -- we  
13 know that we're using the 12th edition and we have  
14 references there. And that way, we don't have to worry  
15 about copying pages.

16 MR. KRAUSE: Okay. That sounds good to me.

17 MR. DALE: Okay. All right.

1 see a dash after a particular caliber, it indicates the  
2 powder grains in there. And typically, those are  
3 associated with rifles. This one, based on the general  
4 comments here, states that it's a rifle cartridge.

5 Q Okay. Well, but you note in the general  
6 comments, I think you just read it, that although it was  
7 designed as a rifle cartridge, according to Cartridges of  
8 the World, it became very popular as a revolver cartridge.

9 Do you see that?

10 A Yes.

11 Q Did that particular statement in Cartridges of  
12 the World have any influence on whether or not you were  
13 going to form an opinion regarding .32-20 cartridge  
14 ammunition?

15 MR. KRAUSE: Objection. Vague and ambiguous.

16 THE WITNESS: That statement on page 285, I can  
17 want say that it had any particular relevance to my  
18 evaluation.

19 Q BY MR. DALE: Okay. Well, let me ask you this:

20 Based on your understanding of what you were to  
21 give opinions regarding, specifically, whether ammunition  
22 was principally used in a handgun, was it your  
23 understanding that if you came to learn and formed the  
24 opinion that a cartridge that had previously been used as  
25 a rifle cartridge was now principally used in a handgun,

1 that it should be included on the DOJ's caliber list?

2 MR. KRAUSE: Objection. Vague and ambiguous.

3 Compound. Calls for speculation.

4 THE WITNESS: Could you just repeat the question,  
5 sir?

6 Q BY MR. DALE: Yeah. I want to know that -- you  
7 know, notwithstanding you just testified that your  
8 understanding is that if it's got a pended number after  
9 it, it's probably a rifle cartridge.

10 Was it your understanding that if something that  
11 was previously a rifle cartridge had become popular as  
12 handgun ammunition that you would need to include it on  
13 the list of DOJ -- I'm sorry, on the DOJ caliber list?

14 MR. KRAUSE: Objection. Vague and ambiguous.

15 THE WITNESS: Popular doesn't necessarily equate  
16 to principally for the use in, so, you know, they're two  
17 separate issues.

18 Q BY MR. DALE: Okay. Well, let me ask you, what  
19 would you do and what methodology did you use in order to  
20 delineate between popular versus principally used in  
21 handguns?

22 MR. KRAUSE: Objection. Misstates the witness's  
23 prior testimony. Vague and ambiguous.

24 MR. DALE: Well, let's clarify. Did you do  
25 any -- I'm sorry. I stepped on your objection. Go ahead,

2 MR. KRAUSE: I also objected on grounds that it's  
3 vague and ambiguous.

4 MR. DALE: Okay. I apologize.

5 Q Did you, Mr. Graham, do anything to delineate  
6 between popular ammunition and ammunition which is  
7 principally used in handguns?

8 MR. KRAUSE: Objection. Vague and ambiguous as  
9 to the word popular.

10 MR. DALE: Well, let's go back.

11 Q You just, right now, Mr. Graham, testified that  
12 there's a difference between popular ammunition and  
13 ammunition that's principally used in handguns. You made  
14 that delineation as part of your testimony.

15 So what, in your opinion, is the difference  
16 between popular versus principally designed for use in a  
17 handguns?

18 MR. KRAUSE: Objection. Misstates the witness's  
19 prior testimony.

20 THE WITNESS: Sir, the difference that I would  
21 see is that there might be -- let's see there's a rifle  
22 chambered in a specific cartridge that's been around for  
23 ten years and then all of a sudden there's a handgun  
24 created in the same cartridge. That, for some reason,  
25 generates interest with firearms enthusiasts and perhaps

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1 that cartridge sees an upswing in purchases, so that might  
2 cause it to become labeled as popular by a particular  
3 ammunition Web site, for example.

4 Q BY MR. DALE: Okay. So it may -- it may gain  
5 some popularity in terms of customers wanting to buy it.

6 Based on your understanding of what you've just  
7 talked about, your understanding of popular, and your  
8 understanding of what you were looking for in terms of  
9 principally designed for handguns in the situation, the  
10 hypothetical you just described, based on your  
11 methodology, when would that popular handgun -- what  
12 factors would it take for it to become principally used in  
13 handguns, in your opinion?

14 MR. KRAUSE: Objection. Vague and ambiguous.  
15 Compound.

16 THE WITNESS: You know, potential things you're  
17 going to consider would be different manufacturers that  
18 might make a firearm that chambers a certain cartridge,  
19 number of sales in a particular gun, if a particular  
20 caliber is, you know, considered obsolete or -- or at  
21 least obscure. Those types of things.

22 Q BY MR. DALE: Okay. So getting back to the  
23 .32-20, which we've noted from the Cartridges of the  
24 World, started out as a rifle cartridge, but became  
25 popular as a revolver cartridge, according to the

1 treatise.

2 A Right.

3 Q What steps, if any, did you undertake to  
4 determine whether or not that popularity had sort of  
5 crossed that threshold we've described as making it  
6 principally used in handguns?

7 MR. KRAUSE: Objection. Vague and ambiguous.

8 Calls for speculation.

9 Q BY MR. DALE: Did you undertake any -- did you  
10 undertake any effort to make that determination?

11 A With respect to the .32-30, no, sir, I did not.  
12 I did not consider it a -- given the amount of time I had,  
13 it wasn't one that I see here in California at gun shows  
14 or gun stores, and that's -- you know, I basically had a  
15 limited amount of time and had to concentrate on the --  
16 the ones I felt comfortable testifying today about.

17 Q Okay. So would it be fair to say, as you sit  
18 here today, you have no opinion as to whether the .32-30  
19 (sic) cartridge is ammunition principally used in a  
20 handgun?

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

23 Q BY MR. DALE: Okay. Do you have an opinion as to  
24 whether the .32-20 cartridge is one principally used in  
25 handguns?

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1 A I don't have enough information to determine if  
2 that particular cartridge is principally for use. It  
3 sounds like it's used in both rifles and handguns, but  
4 like many other calibers and cartridges that we've  
5 discussed over the last day and a half, this was not  
6 included on the list.

7 Q Okay. If you had more time, I'm going to give  
8 you a hypothetical here, if you had more time to research



9 the issue, we didn't have this time constraint of the  
10 trial, what method would you undertake to determine  
11 whether a .32-20 was principally used in handguns?

12 A I might take a poll of over available experts in  
13 the field. I might interview manufacturers of, you know,  
14 various firearms and ammunition, you know, those types of  
15 things.

16 Q You said you'd take a poll of other experts in  
17 the field.

18 As you sit here today, can you give me the names  
19 of some of the experts you might poll or -- or, no, let me  
20 step back.

21 As you sit here today, please name for me other  
22 experts in the field whose identities that you're aware  
23 of, whom you consider experts?

24 MR. KRAUSE: Objection. Vague and ambiguous as  
25 to -- what field, exactly, are you talking about?

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1 MR. DALE: Okay. Well, let's step back.

2 Q Mr. Graham, you just mentioned that you would  
3 take a poll of other experts in the field if you had the  
4 time to do so.

5 What field were you speaking about when you made  
6 that statement?

7 A I would probably say firearms and ammunition.  
8 Those types of -- those areas.

9 Q And who do you consider to be experts within the  
10 firearms and ammunition field whom you would talk to in  
11 order to form an opinion if you had further time?

12 A           Probably members of the Department of Justice  
13 bureau of forensic services. There are criminal lists  
14 that are in the DOJ labs up and down the state. I would  
15 probably ask them. They see a lot of firearms on an  
16 evidentiary scale and they have a great number -- or a  
17 great amount of experience.

18 Q           Okay. Who -- who are those members of the  
19 Department of Justice bureau of forensic services whom you  
20 would consult specifically? Do you have names?

21 A           I'd probably go ask Steve Lindley, our chief, to  
22 contact the chief of the bureau of forensic services for  
23 some kind of a list, because I haven't personally met, you  
24 know, all the people in all the labs out there.

25 Q           Okay. Who else, specifically, can you think of

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1 within the bureau of forensic services whom you know, whom  
2 you have spoken to before or interacted with that you  
3 would consult?

4 A           There's a gentleman by the name of Mike Giusto.  
5 I'll try to spell his last name. It's G- -- I think it's  
6 G-i-u-s-t-o. He's in Sacramento here. And, let's see.  
7 Robert Wilson. He's someone I deal with at the Sacramento  
8 crime lab.

9 Q           Anyone else?

10 A           I probably -- again, I'd probably go through the  
11 chief of BFS if I could and have recommendations from that  
12 person.

13 Q           Let me ask you, among those people whom you would

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14 consult with as experts if you had more time. Is Torrey  
15 Johnson, is he one of those people?

16 A He's another member of the bureau of forensic  
17 services.

18 Q Okay. All right. So I want to ask you a  
19 question about your methodology.

20 At the point in which you were forming opinions,  
21 did you give any consideration at all to use of handguns  
22 or use of rifles by members of the military in -- in  
23 California?

24 A Well, I considered -- I guess I considered the --  
25 in the sense the use of the machine guns that I've spoken

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1 about. Like, you know, law enforcement uses MP5s. I --  
2 it did actually pop into my head that certain -- you know,  
3 like Navy Seals, they're pretty well known to use the MP5.  
4 We do have those here in California. So in that sense, I  
5 did consider some of the weapons that they would, you  
6 know, use. They also use -- the military members use  
7 Beretta pistols 19-millimeter.

8 Q Okay. Did you undertake to determine how many of  
9 each type of weapon the military uses as part of  
10 formulating your opinion?

11 A No, sir, I -- I -- again, given the time I had, I  
12 don't believe that -- I'm not even sure that they would  
13 release that information, but I -- I didn't do that.

14 Q Okay. Let's see. Did you ever undertake to  
15 determine how many rounds of a particular cartridge of  
16 ammunition are fired by the military located within the

17 State of California as part of their training exercises?

18 A No, sir.

19 Q Okay. Was one of the factors that you used in  
20 determining whether or not a particular ammunition was  
21 primarily used for handgun ammunition a -- did it include  
22 whether or not the military was using that ammunition  
23 principally in their handguns?

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

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1 THE WITNESS: The -- the fact that the -- I know  
2 the military to carry nine-millimeter Beretta handguns and  
3 some members of the United States marine corps using 1911  
4 style .45 ACP handguns, that factored in, but, again, I  
5 don't have any specific numbers that -- of weapons that  
6 they have or rounds -- numbers of rounds that they fire on  
7 an annual basis.

8 Q BY MR. DALE: Okay. So as you sit here today,  
9 you don't know exactly how many handguns are currently  
10 used as service weapons in military installations in the  
11 State of California; correct?

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

14 THE WITNESS: I do not, sir.

15 Q BY MR. DALE: Okay. So you didn't use that  
16 information, the number of handguns currently used by  
17 service members stationed in California, as part of  
18 forming your opinions regarding which ammunition should be

19 included on the DOJ's caliber list; is that a correct  
20 statement?

21 MR. KRAUSE: Objection. Vague and ambiguous.

22 THE WITNESS: I don't see the difference in that  
23 question versus the last question you asked.

24 Q BY MR. DALE: Well, and I appreciate that,  
25 nonetheless, but I would like to know, you didn't use any

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1 information regarding the number of handguns used by  
2 service members stationed in California as part of your  
3 forming your opinion regarding whether a particular  
4 ammunition should be on the DOJ's caliber list; is that  
5 correct?

6 MR. KRAUSE: Objection. Lacks foundation.  
7 Compound. Vague and ambiguous. Calls for speculation.

8 THE WITNESS: Again, those numbers are not  
9 available to me, sir, so I could not use whatever numbers  
10 those are.

11 Q BY MR. DALE: Okay. As you sit here today, do  
12 you know -- do you have any basis for knowing whether or  
13 not the number of handguns that are used by members of the  
14 military stationed in California exceeds the numbers that  
15 are in circulation in the general population?

16 MR. KRAUSE: Objection. Vague and ambiguous.  
17 Calls for speculation.

18 MR. DALE: I'm sorry.

19 Q Mr. Graham, do you understand what I'm asking?

20 A I think you're asking if members -- well, if the  
21 United States military, in all of its branches, have in  
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22 their inventories, whether they're issued or unissued  
23 status, more guns than the residents of the State of  
24 California have purchased since time began?

25 Q That's correct.

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1 A Okay.

2 MR. KRAUSE: And --

3 THE WITNESS: I don't know that.

4 Q BY MR. DALE: You don't know that?

5 A No.

6 Q Okay. And what about submachine guns? Do you  
7 have any idea whether -- let me -- I'm going to step back.

8 We previously talked about how there are certain  
9 submachine guns, specifically the ones that you've  
10 classified as submachine guns, such as the MP5, that fire  
11 handgun ammunition; correct?

12 A Say that again. What --

13 Q Yeah, there are certain submachine guns that fire  
14 handgun ammunition; correct?

15 A Yes.

16 Q Okay. And do you have any idea how many of those  
17 weapons that you've identified as submachine guns are  
18 currently used by members of the military stationed in  
19 California?

20 MR. KRAUSE: Objection. Misstates the witness's  
21 prior testimony. Vague and ambiguous.

22 THE WITNESS: No, sir, I have no knowledge of how  
23 many submachine guns are in the possession and use by the

24 military in California.

25 Q BY MR. DALE: Okay. Do you know whether the

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1 number of submachine guns that are in possession and use  
2 in the military in California exceeds the number of  
3 handguns in circulation in California in the general  
4 population?

5 A I -- I have no way of knowing that.

6 Q Okay. Let's see. Hopefully we can get this  
7 wrapped up within the next half hour.

8 Let's go back to an area that we didn't finish up  
9 with.

10 You talked about how part of your methodology was  
11 looking through books such as Cartridges of the World,  
12 your own personal experience and looking at Web sites to  
13 help you form an opinion regarding whether ammunition is  
14 principally used in handguns.

15 Do you recall when we went over that testimony?

16 A Yes, sir.

17 Q Okay. What other methods did you use, if any, in  
18 addition to that besides what you've previously testified  
19 to in order to help you form an opinion regarding whether  
20 particular ammunition should be included -- I'm going to  
21 withdraw that.

22 What other methods did you use besides the ones  
23 you've testified to to form your opinions regarding  
24 whether ammunition was principally used in a handgun?

25 MR. KRAUSE: Objection. Vague and ambiguous.

1 Calls for a narrative.

2 THE WITNESS: I think my previous testimony  
3 speaks for itself. I have nothing to change at this time.

4 Q BY MR. DALE: Okay. So let's -- let's make sure  
5 I understand it.

6 You took a look at the DROS list. That was your  
7 first step, right?

8 A Yes, the DROS and AFS list, correct.

9 Q Okay. And -- I'm sorry. Could you repeat that  
10 last acronym?

11 A The DROS and AFS list. Automated firearm systems  
12 and what the AFS stands for.

13 Q Okay. And to your understanding, what is the  
14 difference between the information on the AFS list and the  
15 DROS list?

16 A Well, maybe we should be speaking in terms of the  
17 exhibits just so we're clear. Let me look at the list  
18 here. The AFS list, I'm understanding that to be E.  
19 Correct, sir?

20 Q Well, I understand AFS -- Exhibit E is a portion  
21 of a reference guide from the AFS list; isn't that  
22 correct?

23 A Well, this is a -- it's like a breakdown that the  
24 dealers can see when they make their entries into the DROS  
25 system, which then populates the AFS system.



1 Q I see. Okay. Well, what I'm specifically  
2 talking about is what data you used from the AFS system to  
3 help formulate your opinion.

4 A The data would be, again, as I've already said,  
5 the types of guns that were sold since 2006, as evidenced  
6 in Exhibit D.

7 Q Okay. By the way, based on your review of the  
8 list of weapons sold since 2006, do you have a -- any  
9 understanding of what percentage of the total weapons in  
10 circulation the weapons sold since 2006 comprise?

11 A I don't have that information at this time, sir.  
12 I -- it's -- you know, it may be available, but I don't  
13 have that number in front of me or -- and I don't know it  
14 off the top of my head.

15 Q Okay. Do you have any idea whether -- okay.  
16 You've already answered that. I'm not going to ask you  
17 again.

18 Is there any particular reason you went back to  
19 2006 as opposed to going back, you know, through the time  
20 at least the DOJ has kept automated records?

21 MR. KRAUSE: Objection. Calls for speculation.

22 THE WITNESS: Given the amount of, I guess, time  
23 available and resources available in this -- in this time,  
24 that's the -- the reason I picked five years to go back.  
25 It's possible to go back farther, I'm sure, but given the

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1 time, I -- I just wanted, again, a starting place of what  
2 was happening recently.

3 Q BY MR. DALE: Okay. Okay.  
4 MR. WORLEY: I need to excuse myself, so --  
5 MR. KRAUSE: Okay.  
6 MR. WORLEY: All right. Thanks, guys.  
7 MR. KRAUSE: Thanks for sitting in with us.  
8 Ed is leaving the building.  
9 MR. DALE: Okay.  
10 MR. KRAUSE: Okay. Now we can move on.  
11 MR. DALE: All right.  
12 MR. KRAUSE: Is there a question pending? I  
13 don't know --  
14 MR. DALE: No, there's not.  
15 THE WITNESS: Okay.  
16 MR. DALE: There's not.  
17 Q So if I understand your testimony correctly,  
18 Mr. Graham, the reason you chose 2006 was, in part, based  
19 on the time constraints. You didn't have time to go back  
20 further and look at records older than 2006.  
21 Is that a fair statement?  
22 MR. KRAUSE: Objection. Mischaracterizes the  
23 witness's testimony.  
24 THE WITNESS: The -- yeah, just given the -- the  
25 amount of time I had to pull something together. I just

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1 wanted a place to start. I don't know if -- if any of  
2 this would have changed given more data or less data. It  
3 just -- I just wanted to see, hey, what's a -- what's a --  
4 give me a -- I'd like a count of how popular these things

5 are over a specific time period and that would give me  
6 kind of a starting place to kind of start my evaluation.

7 Q BY MR. DALE: Okay. As you sit here today, do  
8 you have any knowledge as to whether or not handgun sales  
9 within California have been increasing, decreasing or  
10 staying the same over the past decade?

11 A I believe gun sales in general, I would say in  
12 the last two years, have -- have spiked. I think around  
13 20 percent higher, but I can't break it down by caliber --  
14 I'm sorry, by handgun versus long guns. Typically, in  
15 California, handguns are either 49 or 51 percent, and  
16 it -- sometimes it seems to flip-flop year to year on the  
17 breakdown.

18 Q Okay. And I think I already asked you this, but  
19 I just want to make sure.

20 You don't have any understanding, as you sit here  
21 today, or any opinion as to what percentage of handguns  
22 sold within the past five years comprised the total number  
23 of guns that are currently in circulation in California;  
24 correct?

25 MR. KRAUSE: Objection. Vague and ambiguous.

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1 THE WITNESS: I think you asked this question  
2 earlier and --

3 Q BY MR. DALE: Yeah, let me ask it an easier way.  
4 You don't know whether or not the guns sold in  
5 the last five years comprise five percent of the total  
6 guns in circulation or 75 percent, right?

7 A No --

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

10 A No, sir. Not at this time.

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

15 A Yeah. Obviously, given more information, one's  
16 opinion can change over time with more information  
17 available, but given what I had available to me, I -- I  
18 chose to list certain calibers. That's all.

19 Q Okay. Okay. As part of your methodology, at any  
20 point, did you attempt to identify research studies that  
21 might have examined what the most popular or the most  
22 prevalently used types of ammunition are?

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

25 Q Okay. As you sit here today, are you aware of

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1 any research studies that attempt to identify things such  
2 as the popularity of a particular type of gun or  
3 particular type of ammunition?

4 MR. KRAUSE: Objection. Vague and ambiguous.  
5 What do you mean by type of ammunition?

6 MR. DALE: Okay. We'll go back and do this step  
7 by step.

8 MR. KRAUSE: All I want you to do is identify  
9 what you mean by type.



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

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

20 Q BY MR. DALE: Okay. As part of your methodology,  
21 did you attempt to see if there were any polls out there  
22 which had been taken to determine if a particular type of  
23 cartridge was more popular than any other type of  
24 cartridge in the State of California?

25 MR. KRAUSE: Objection. Vague and ambiguous.

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1 Argumentative.

2 THE WITNESS: I think I've explained my  
3 methodology at this point. Beyond that, I don't think I  
4 have anything to add.

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

8 A No.

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

12 MR. KRAUSE: Objection. Vague and ambiguous.

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

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

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

22 Q Okay. And as you observe -- as you have attended  
23 these gun shows and watched people buying certain  
24 calibers, did you take any notes regarding what particular  
25 calibers were selling particularly well and which ones

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1 weren't?

2 MR. KRAUSE: Objection. Vague and ambiguous.

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

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

12 MR. KRAUSE: Objection. Misstates the witness's  
13 testimony.

14 MR. DALE: Okay. Look, I'm not trying to lock

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

22 MR. KRAUSE: I just don't know that that was  
23 actually his testimony.

24 MR. DALE: Okay. Well, I -- I want to find out.  
25 Did he --

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

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

10 Q Okay. So this was all based on your personal  
11 observation?

12 MR. KRAUSE: Vague and ambiguous.

13 Q BY MR. DALE: Mr. Graham, do you understand what  
14 I mean by personal observation?

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

17 Q Okay. The testimony you're giving regarding your  
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25 regarding the number of rounds sold to help form your

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1 opinion regarding ammunition primarily used in -- I'm  
2 sorry, principally used in handguns?

3 A No.

4 Q Okay. And I'm sorry, what was the third one  
5 again? I apologize.

6 A It's called gun traders guide.

7 Q Okay. Would it be fair to say that gun traders  
8 guide doesn't have a listing of the number of rounds of a  
9 particular cartridge sold in it in any given year?

10 A I didn't note that it did, so I -- but I cannot  
11 say that it does not, though.

12 Q Okay. Okay. Well, as you sit here today, do you  
13 have any specific recollection of using information  
14 regarding the number of rounds sold that you got out of  
15 that particular book in order to form your opinion?

16 A No.

17 Q Okay.

18 Okay. Why don't we -- I -- I think we're close  
19 to getting this wrapped up. Why don't we take about a  
20 five-minute break so I can sort of figure out some of my  
21 final questions and we'll go from there.

22 MR. KRAUSE: That sounds wonderful.

23 MR. DALE: Perfect.

24 MR. KRAUSE: Thank you.

25 THE WITNESS: Back in -- 12:20? I guess they're

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1 off.

2 MR. DALE: Yep. That works.

3 THE WITNESS: Okay.

4 (Recess taken.)

5 Q BY MR. DALE: Mr. Graham, have you ever heard of  
6 a cartridge called a five by 54 FN round?

7 A 554 FN?

8 Q Five by 54.

9 A I don't recall that off the top of my head.

10 Q Okay. Because I want to try to clarify something  
11 here. I'm a little unclear as to -- we've talked about  
12 how your definition of principally used in a handgun  
13 means -- part of it means majority, and I'm trying to  
14 figure out what that majority is, so I want to give you --  
15 I'm going to give you a hypothetical to find out where  
16 this would fall in your methodology.

17 A Okay.

18 Q If there was a particular cartridge and there was  
19 one model of handgun and three models of rifles, but there  
20 were more individual copies of the handgun in circulation  
21 than there were of the three rifles, for the purposes of  
22 the definition that you used to form your opinions, would  
23 you consider that hypothetical gun to be -- have a  
24 cartridge -- strike that.

25 Would you consider that cartridge used in both

1 the rifle and the gun to be principally used as handgun  
2 ammunition?

3 MR. KRAUSE: Objection.

4 Q BY MR. DALE: And if you need clarification, let  
5 me know.

6 MR. KRAUSE: Objection. Incomplete hypothetical.  
7 Compound and vague and ambiguous.

8 Q BY MR. DALE: Yeah. Let me -- what I'm trying to  
9 find out is, are we -- in your coming to your opinions as  
10 what's principally used as handgun ammunition, were you  
11 counting the numerosity of total weapons? Were you  
12 counting numerosity of total models that use that  
13 particular cartridge? How did you make that  
14 determination?

15 MR. KRAUSE: Objection. I think this has been  
16 covered. Asked and answered, but if you can answer.

17 THE WITNESS: Given the available information in  
18 the amount of time I had, I tried to compare the number of  
19 manufacturers that may have produced a weapon in a  
20 particular caliber, the number of models that each  
21 manufacturer used in that caliber, and then, perhaps, the  
22 length of time that a particular gun has been available in  
23 a particular caliber and then also factored in are there,  
24 you know -- are there rifles in that caliber. Are  
25 there -- or is it strictly a handgun issue.

1 Q BY MR. DALE: Okay. What information did you use  
2 to determine if there were rifles that used a particular  
3 cartridge that you also identified as being used in a

4 handgun?

5 A           Probably my experience and, you know, Rifles of  
6 the World. That's one of the -- there's some pages at the  
7 back of the book. I've you've been provided with the  
8 information. The gun traders guide. That lists, you  
9 know, weapons in there and their calibers and cartridges  
10 that are applicable.

11 Q           Okay. Now, let me -- let me clarify.

12           Cartridges of the World, even though it lists all  
13 the cartridges and it lists that they may be used in  
14 rifles and in handguns, it doesn't actually list which  
15 weapons are chambered with that particular cartridge  
16 that's listed in that book; is that correct?

17           MR. KRAUSE: Objection. Vague and ambiguous.

18           THE WITNESS: There are -- within the pages of --  
19 when it's broken down by handgun, by rifle, and then  
20 there's a rim fire section too, and then I think a shotgun  
21 section, there's usually a little synopsis about the round  
22 itself. And depending on the author's, I guess,  
23 information he had available, it appears he put in certain  
24 information about weapons in there when he either wanted  
25 to or had that information available.

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1 Q           BY MR. DALE: Okay. But am I correct in  
2 understanding that if you look at, for example, the .32-20  
3 Winchester listing we previously talked about, it's not  
4 going to list all particular weapons that chamber that  
5 round underneath that listing in Cartridges of the World?

1 cartridges that are used?

2 MR. KRAUSE: Vague and ambiguous. Objection.

3 THE WITNESS: When you say --

4 Q BY MR. DALE: Okay. And did you attempt to speak

5 to the rangemaster at all to help inform your opinions

6 regarding ammunition that's principally used in handguns?

7 A Who is the rangemaster you're speaking of?

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

9 A We have approximately, I don't know, several

10 hundred agents throughout the state. There's range

11 masters in -- in different -- you know, there's four or

12 five different bureaus, multiple range masters within each

13 bureau. I'm a rangemaster myself.

14 Q Okay. Did you speak to any of the other range

15 masters prior to formulating your opinion?

16 MR. KRAUSE: Objection. Vague and ambiguous.

17 Did --

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

19 range masters at any of the other DOJ facilities in the

20 State of California in order to get information to help

21 you form the opinions you're expressing today?

22 A I can't recall specifically asking them, after

23 being given this assignment, to -- you know, in answer to

24 your question, no.

25 Q Okay. And I'm assuming you did not receive any

1 written materials from any of the range masters at any of  
2 the DOJ facilities regarding their observations as to  
3 types of ammunition used at the ranges or cartridges or  
4 calibers or any information of that sort?

5 A I didn't receive any information, but I know that  
6 we all shoot the same caliber weapons and there is a  
7 standardization throughout the Department of Justice, if  
8 that -- are you getting -- is that what you're asking.

9 Q Yes.

10 A Okay.

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

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

16 A Yes.

17 Q Okay. And then your second step was you looked  
18 at the Web sites we've identified, the books we've  
19 identified and then called upon your personal knowledge in  
20 order to augment that first step; is that correct?

21 A Yes.

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

24 MR. KRAUSE: Objection. Vague and ambiguous.

25 THE WITNESS: I -- I did not poll members of the

1 general public, which was what I think you asked earlier

2 today.

3 Q BY MR. DALE: Right. Did you poll any firearms  
4 dealers?

5 A No.

6 Q No. Okay.

7 So were there any other sources of information  
8 that you used other than what we just went over to help  
9 inform your opinion regarding which ammunition is  
10 principally used in handguns?

11 A Other than the document that I prepared here  
12 breaking down nonhandguns that use handgun ammunition.  
13 And again, that's something that I just created then I  
14 was, you know, trying to think of weapons that fired these  
15 calibers.

16 Q Okay. All right. And nothing besides that  
17 document which you generated and the other items which we  
18 just discussed were used by you to help you formulate your  
19 opinion; is that correct?

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

25 Q Okay. Hold on one sec.

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