

Case No. 19-56004

In the United States Court of Appeals
for the Ninth Circuit

STEVEN RUPP, et al.,
Plaintiffs-Appellants,

v.

XAVIER BECERRA,
in his official capacity as Attorney General of the State of California,
Defendant-Appellee.

On Appeal from the United States District Court
for the Central District of California
Case No. 8:17-cv-00746-JLS-JDE

**APPELLANTS' EXCERPTS OF RECORD
VOLUME VII OF XXII**

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January 27, 2020

Under Federal Rules of Appellate Procedure for the Ninth Circuit, rule 30-1, Plaintiffs-Appellants Steven Rupp, Steven Dember, Cheryl Johnson, Michael Jones, Christopher Seifert, Alfonso Valencia, Troy Willis, Dennis Martin, and California Rifle & Pistol Association, Incorporated, by and through their attorney of record, confirm to the contents and form of Appellants' Excerpts of Record.

Date: January 27, 2020

MICHEL & ASSOCIATES, P.C.

s/ Sean A. Brady

Sean A. Brady

Attorneys for Plaintiffs/ Appellants

Steven Rupp, et al.

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CERTIFICATE OF SERVICE

I hereby certify that on January 27, 2020, an electronic PDF of APPELLANTS' EXCERPTS OF RECORD, VOLUME VII OF XXII was uploaded to the Court's CM/ECF system, which will automatically generate and send by electronic mail a Notice of Docket Activity to all registered attorneys participating in the case. Such notice constitutes service on those registered attorneys.

Date: January 27, 2020

MICHEL & ASSOCIATES, P.C.

s/ Sean A. Brady

Sean A. Brady

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Steven Rupp, et al.

EXHIBIT 56

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
SOUTHERN DIVISION

STEVEN RUPP, et al.,

Plaintiffs,

VS.

) Case No.:

XAVIER BECERRA, in his official) 8:17-cv-00746-JLS-JDE
capacity as Attorney General of)
the State of California,)

Defendant.

DEPOSITION OF BLAKE GRAHAM
Sacramento, California
Wednesday, December 19, 2018
Volume I

Reported by:

Kaitlyn B. Houston, CSR No. 14170

Job No. 3135718

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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
SOUTHERN DIVISION

STEVEN RUPP, et al.,

Plaintiffs,

vs.

XAVIER BECERRA, in his official
capacity as Attorney General of
the State of California,

Defendant.

Case No.:

8:17-cv-00746-JLS-JDE

Deposition of BLAKE GRAHAM, Volume I, taken on behalf of
Plaintiffs, at 1300 I Street, Sacramento, California,
beginning at 10:53 a.m. and ending at 5:57 p.m. on
Wednesday, December 19, 2018, before Kaitlyn B. Houston,
Certified Shorthand Reporter No. 14170.

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1 Sacramento, California; Wednesday, December 19th, 2018

2 10:53 a.m.

3 BLAKE GRAHAM,

4 having been administered an oath, was examined and
5 testified as follows:

6 (Whereupon Exhibit 95 was premarked for
7 identification.)

8 EXAMINATION BY MR. BRADY

9 Q. Good morning, Mr. Graham.

10 A. Good morning.

11 Q. I believe you recall who I am, but in case you
12 don't, my name is Sean Brady. I am an attorney for the
13 plaintiffs in the matter of Rupp v Becerra, which you are
14 here designated as an expert witness on behalf of the
15 defendant, Attorney General Xavier Becerra.

16 Is that your understanding?

17 A. Yes, sir.

18 Q. Good morning, by the way.

19 A. Good morning.

20 Q. I have marked as Exhibit 95 a document entitled
21 Plaintiff's Amended Notice of Deposition of Defendant's
22 Expert Witness Blake Graham.

23 Have you seen this document?

24 A. Let me look at the date.

25 (Pause on the record.)

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1 THE WITNESS: I'm not sure if I've seen this
2 before.

3 BY MR. BRADY:

4 Q. Okay. So if you turn to page 3, it says
5 Attachment A, and there's a request for production.

6 Do you see that?

7 A. Yes.

8 Q. Have you not seen this document before?

9 A. Honestly, I don't recall. I've -- there's been
10 a lot of documents with multiple lawsuits over the last
11 year or so, so I don't remember this specific one.

12 Q. Did you -- do you recall producing any documents
13 in response for this -- for this deposition?

14 A. Yeah. I don't recall, unless you want me to
15 confer with the department's attorney.

16 Q. If you need to.

17 A. Yeah. I mean, is that --

18 MR. CHANG: Sean, everything that -- we're not
19 withholding any documents on the basis of any objection
20 to these requests. I think everything that -- as
21 indicated in the previous e-mail, everything Agent Graham
22 has that he relied on or cited in his report have either
23 been produced or the internet link was provided for that
24 material.

25 ///

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1 BY MR. BRADY:

2 Q. Okay. So if there's not an internet link in
3 your report, then there is no document that you relied on
4 for your report that was -- is that accurate?

5 A. So basically past experiences in my career, I
6 rely upon those. I think I've provided a curriculum
7 vitae to basically the -- the package. That would have
8 been a document sort of responsive to this conversation.
9 I believe we have an attachment -- possibly Attachment A
10 -- that might have been attached to an expert report
11 somewhere in this process. That was basically the
12 assault weapon registration terms. I believe that was
13 disclosed. There may have been footnotes in my expert
14 report and possibly the rebuttal to the other experts.

15 So a footnote might be a reference to something
16 that isn't necessarily an internet URL or link as you
17 asked in the question.

18 Q. Okay. So is it fair to say that you have no
19 documents that you relied on that are not cited in your
20 report referring to a link of some sort?

21 A. Yeah. I mean, the Penal Code, obviously. I
22 didn't -- I don't know if I specifically called that out,
23 but the Penal Code is part of this conversation. We have
24 an assault weapons guide, and that's sort of in the back
25 of my mind occasionally when dealing with assault

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1 weapons. You know, matters like this. I've got various
2 court criminal cases going forward that I'm an expert in,
3 for example, that are not listed on my CV because I have
4 not yet given expert testimony on; but I plan to be
5 unless the case settles. So those kinds of things are
6 generally in my head.

7 Q. Okay. I appreciate that. I just want to know
8 whether there was any documents that you might --

9 A. Not really, other than what we've given you.
10 Would you like this back?

11 Q. No. She will be keeping that. If any of us
12 remove that, we're in big trouble.

13 MR. CHANG: You can also keep it beside you if
14 you need to refer to it.

15 THE WITNESS: Okay. I'll just keep it here in a
16 pile if that's all right.

17 MR. BRADY: Okay. You mentioned your CV. I'd
18 like to mark that as Exhibit 96.

19 (Whereupon Exhibit 96 was marked for
20 identification.)

21 MR. BRADY: And while we're at it, we will also
22 mark your report in this matter as Exhibit 97.

23 (Whereupon Exhibit 97 was marked for
24 identification.)

25 ///

1 BY MR. BRADY:

2 Q. Okay. Do you have your Exhibit 96, your CV, in
3 front of you?

4 A. I can.

5 Q. You should probably keep Exhibit 97 handy for
6 the duration. It's probably going to be the majority of
7 what we're talking about today.

8 A. Understood.

9 Q. So starting out with Exhibit 97, your report,
10 you list under "Background and Qualifications" a lot
11 of -- your background and qualifications that you deem
12 relevant for this -- this matter.

13 Is that fair to say?

14 A. Yes.

15 Q. Under paragraph 5, you say as a special agent
16 for DOJ, that you investigated violent crimes. And that
17 was between 1999 and 2002; is that right?

18 A. Yes. Yes.

19 Q. What sort of violent crimes did you investigate?

20 A. So as part of that unit, the Violence
21 Suppression Program, it was targeted at assisting local
22 agencies with arrest of fugitives, which would include
23 attempted murder, murderers. We did -- initiated a
24 wiretap on the suspected murderer of a police officer.
25 We have investigations on parolees that were in

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1 possession of weapons. Those types of things.

2 Q. So you were dealing with real bad, violent guys?

3 A. Yes.

4 Q. Okay. Were assault weapons a common feature of
5 those investigations? Did you come across them often in
6 those investigations?

7 A. I would say they were present, but I don't know
8 if I've ever tried to -- you know, capture -- that was
9 several years ago. If they had -- half of the guys that
10 we arrested or investigated had them or -- I don't really
11 know. I know that some of them did, but I would probably
12 have, I think, trouble putting down a number of, you
13 know, five of these guys per year did or didn't have it
14 or, you know, something like that.

15 Q. Okay. So you can't really say whether assault
16 weapons were common in those investigations? Commonly
17 come across in those investigations?

18 MR. CHANG: Objection. Vague and ambiguous as
19 to "assault weapons" and as to timing.

20 BY MR. BRADY:

21 Q. During your investigations between 1999 and
22 2002, would you say it was common for you to come across
23 rifles defined as assault weapons in your investigations
24 of violent crimes?

25 MR. CHANG: Objection. Vague and ambiguous as

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1 to "common" and also as to the timing of the definition
2 of "assault weapons."

3 THE WITNESS: I'm still allowed to answer,
4 correct?

5 MR. CHANG: Please.

6 THE WITNESS: Just so I don't get ahead of
7 myself. So after all that back and forth, can you repeat
8 the question? Sorry.

9 MR. BRADY: Can you read it back?

10 (Whereupon the record was read back.)

11 MR. CHANG: Same objections.

12 THE WITNESS: Understood. Okay.

13 I can say that assault weapons were present to
14 some degree. Firearms were -- the generic term of
15 firearms would be the most common factor. Some of which
16 -- some of those firearms would have met the definition
17 of an assault weapon under 30510 because of the time in
18 early '99, that would have been the only game in town as
19 far as state law.

20 Later on in that period of time that you spoke
21 of, we had the three -- what are now called the 30515
22 generic characteristics sort of standards. At the time,
23 it was 12276 and 12276.1 in that window of time.

24 BY MR. BRADY:

25 Q. Would you say that rifles meeting the definition

1 of assault weapon under Penal Code Section 30515 now were
2 -- commonly come across in your investigations of violent
3 crime during the period of 1999 to 2002?

4 A. To some degree, yes.

5 Q. You also say as a special agent during that
6 period, you worked on various violations occurring at
7 California gun shows.

8 How many gun shows were you attending during
9 that period?

10 A. Good question. Probably somewhere in the
11 neighborhood of one a month. Maybe one every other
12 month. I had a particular region, so that's why it's a
13 little bit vague. I had from the San Jose area and then
14 some of the Bay area -- I'm sorry, the North Bay.
15 Depending on what gun shows were on calendar, it might
16 vary.

17 Q. Were rifles that meet the definition of assault
18 weapon prevalent at these gun shows?

19 A. In 1999, they would have been -- probably --
20 actually, in '99, we wouldn't have been doing a ton of
21 gun shows because the gun show stuff sort of picked up
22 probably late 2000 or 2001. So starting in 2000, there
23 was a registration window for the Category 3 or, at the
24 time, the 12276.1 identified weapons. So they were
25 controlled. There shouldn't have been a lot of them out

1 there unless somebody was selling something they
2 shouldn't have been selling.

3 I'm aware of investigations that the department
4 did that involved those happening at gun shows, and
5 occasionally we would find somebody wandering around with
6 an assault weapon basically trying to sell it to random,
7 you know, gun show attendees.

8 Q. So were AR-15 platform rifles not prevalent at
9 these gun shows during the period of 1999 to 2002?

10 A. So depending on the makeup of the weapon, there
11 may have been some that were a .22 caliber, let's say,
12 that may not have triggered particular definitions in
13 play at the time. That would have been very possible to
14 have been present in the shows. There would have been
15 gun stores that have dangerous weapons permits that were
16 allowed to sell to police. They could have been selling
17 their wares or something to sell the attendees of the
18 shows that happened to be cops. Magazines, ammunition,
19 that was very common. Normal handguns. Pump shotguns.
20 Because of the Senate Bill 23 change in the law from
21 1999, by the time I started going to the shows quite a
22 bit, I would say that they were less common than before
23 that, if that's responsive to you.

24 Q. So you're saying that the amount of AR platform
25 rifles increased later -- after this period of 1999 to

1 2002?

2 A. No. Not necessarily. I would say that the --
3 that the AR platform is a broad platform because you --
4 depending on the caliber, it may or may not fall into an
5 assault weapon status. Depending on various features, it
6 may or may not fall into that status.

7 Q. Just to be clear, I'm not necessarily asking
8 about an AR platform rifle that would meet the assault
9 weapon definition.

10 A. Okay.

11 Q. For example, during that time period, if an AR
12 platform rifle had a bullet button on it, it would be
13 legal to sell, correct?

14 A. Hypothetically, absent any prohibited markings
15 on the gun -- meaning a 30510-identified weapon or
16 something like that -- hypothetically, probably, yes. It
17 would be legal for sale. But I don't believe bullet
18 buttons really came into play until maybe 2004 or 2005.

19 Q. Okay. So that was my question. So 2004, 2005,
20 whenever bullet buttons came into play, did you notice an
21 increase in the prevalence of AR platform rifles at these
22 gun shows?

23 A. Yes. And just so I -- we're all on the same
24 page, when you say "AR platform," I won't be assuming
25 you're talking about assault weapons unless you tell me

1 you mean AR assault weapons.

2 Q. I think that's fair. As a matter of fact, let's
3 get some definitions squared away at the outset just
4 so -- I think you and I will understand each other, but
5 the normal human beings reading this probably will not --
6 no offense to you -- but, you know, the nature of the
7 game is such, right?

8 A. Yes.

9 Q. So Category 1 -- Cat 1 assault weapons, are
10 those listed in California Penal Code Section 30510?
11 Right?

12 A. Yes.

13 Q. And that is they are assault weapons based on
14 their make and model, correct?

15 A. Correct.

16 Q. Okay. And then there are Cat 2 assault weapons,
17 which are listed in the California Code of Regulations,
18 which were subsequently added to be considered series
19 assault weapons; is that fair to say?

20 A. Yes.

21 Q. Okay. And then Cat -- Category 3, Cat 3 assault
22 weapons are those that meet the definition based on
23 having certain features in California Penal Code
24 Section 30515; is that correct?

25 A. Yes. Correct.

1 Q. Okay. Okay. So I will choose either one of
2 those if I'm trying to be specific to one of those. If I
3 say "AR platform rifle," I'll try to clarify that I'm not
4 limiting it to those. But if I say that, I'm probably
5 not limiting it to that. But, please, if you want
6 clarification because it makes a difference, just say,
7 "Can you please clarify?" because we do need clarity on
8 that.

9 A. Thank you. I'll try to do the same if I'm
10 speaking about a group of weapons and if I'm speaking
11 about the group as a whole or the subset of assault
12 weapons within that large group.

13 Q. Got it. Okay. So moving on to paragraph 6.

14 You say that from 2002 to the present, you've
15 been a special agent and special agent supervisor for the
16 DOJ's Bureau of Firearms; is that correct?

17 A. Yes.

18 Q. And in that capacity, you've been assigned to
19 recover firearms from prohibited individuals, monitor gun
20 shows for illegal activities, conduct surveillance on gun
21 dealers suspected of illegal activity, and investigate
22 illegal trafficking of firearms, manufacturing of assault
23 weapons, machine guns and illegal possession of various
24 magazines and ammunition; is that right?

25 A. Yes.

1 Q. Okay. How many recoveries from prohibit --
2 firearm recoveries from prohibited individuals have you
3 participated in?

4 A. I'd say an attempted recovery -- that's how I'm
5 going to answer your question -- we might go out on an
6 APPS enforcement operation and have perhaps 10, 12 people
7 on the list that day, and not in every case would we
8 actually find the person to talk to, and then also after
9 finding the person, make a recovery, so I don't know.

10 Maybe -- I'm going to guess 20 percent of the
11 time we actually go out looking for 10 people might we
12 find somebody and then make a seizure of some kind.

13 Q. And when you say "APPS," you're referring to the
14 Armed & Prohibited Persons System?

15 A. Correct.

16 Q. And that is a program for the DOJ Bureau of
17 Firearms whereby agents confirm that an individual has a
18 firearm registered to them in the automated firearm
19 system and that they are also a prohibited person and
20 then go to determine whether that individual still
21 possesses that firearm illegally?

22 A. In general terms, yes. The data that we have on
23 the person is a registration of an assault weapon to that
24 person and/or just generic ownership information, like a
25 dealer record of sale or a voluntarily reported batch of

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1 data on some guns. Maybe they moved here from out of
2 state. They're required to tell DOJ about that. That
3 information is in there, too.

4 Q. Okay. And of those recoveries, when the -- you
5 said about 20 percent of the time you go attempt to
6 recover firearms, you do indeed recover them.

7 What percentage, more or less of those, are
8 assault weapons that you recover?

9 A. I'm going to guess that we recover between 3-
10 and 4,000 guns a year as a bureau, and I haven't looked
11 at the stats lately to give you a real good answer, but
12 perhaps -- I don't know. Over the last few years, maybe
13 10 percent of those are assault weapons. Some of which
14 would be known to us being in the system and some of
15 which would be unknown to us. They either failed to
16 register, or they manufactured it clandestinely or --
17 yeah, that pretty much covers the group.

18 Q. And when you say "assault weapons," would --
19 would that 10 percent -- your estimated 10 percent change
20 if you only were talking about rifles that meet the
21 assault weapon definition?

22 A. Not a whole lot. Assault pistols and assault
23 shotguns are, I would say, a tiny fraction of the overall
24 assault weapon numbers. The assault rifles within that
25 group of three types is easily the lion's share.

1 Probably at least 80 percent would be assault rifles.

2 Q. So removing the non-rifle assault weapons from
3 the mix of what you seize, you would still stick with the
4 10 percent of the firearms --

5 A. Yeah.

6 Q. -- that are generally assault rifles?

7 A. I'd say that's pretty fair. It's very rare that
8 we get an assault pistol or an assault shotgun whether
9 one is known or unknown to us. The most common type of
10 assault weapon that we get is probably a Category 3
11 assault weapon of some kind. Rarely they'll have a Cat 1
12 or a Cat 2 marking on it, but generally the default is
13 the Category 3 stuff.

14 Q. And when we say -- both you and I use the term
15 "assault rifle," we're using that as shorthand for a
16 rifle that meets the definition of an assault weapon
17 under the AWCA; is that correct?

18 A. Yes. If I'm trying to speak about federal law,
19 I'll try to call that out. And unless you ask me to go
20 into that, I'm not going to bring it up here.

21 Q. Okay. So it says you also monitor gun shows for
22 illegal activities.

23 How often do those illegal activities involve
24 assault weapons?

25 A. Probably about 40 percent of the time that we

1 make an arrest that's sort of gun show related, the
2 person is either a prohibited person or a non-prohibited
3 person and they have bought something at the show that
4 caused us to make a contact, maybe a traffic stop or do a
5 later search warrant on them. And we will probably find
6 an assault weapon of some kind involving -- in those
7 events.

8 I would say more recently since 2012 to present,
9 we're getting more people assembling guns because of the
10 knowledge of how to do that with YouTube and other
11 things. It's just more prevalent. And the home-built
12 guns now, those are getting easier and easier for people
13 to make again with, you know, social media if you include
14 YouTube in there. The internet has various step-by-step
15 guides. People can build stuff.

16 Q. So do you see the parts that are used to build
17 AR platform rifles at gun shows fairly frequently?

18 A. Oh, yeah.

19 Q. And in California gun shows -- because you
20 attend both California and Nevada gun shows, correct?

21 A. Mostly California. Maybe once or twice a year
22 do we go to an out-of-state show.

23 Q. Okay.

24 A. And it's getting less and less common that we go
25 to the out-of-state shows.

1 Q. Got it. Prior to the recent -- the most recent
2 change to the assault weapon act -- the Assault Weapon
3 Control Act, essentially making bullet-button rifles into
4 assault weapons, were you -- were bullet-button AR-15
5 rifles fairly prevalent at these gun shows?

6 A. Yes.

7 Q. Would -- what percentage -- or rather than
8 percentages, because that's kind of hard to do, I admit.
9 If you were to rank the most common firearms at these gun
10 shows going around looking at all the booths, you know,
11 your hunting shotguns or your bolt-action rifles,
12 handguns, AR platform rifles, what have you, what would
13 you think if you had to -- based on your experience, what
14 would you say is the most prevalent, most ubiquitous
15 firearm at these gun shows?

16 A. My answer is going to be based on Northern
17 California shows. I don't get to a lot of Southern
18 California shows. I'd say the most common two groups
19 that we would have seen since 2004 or '05 would have been
20 a semiautomatic handgun or probably an AR platform of
21 some kind.

22 Q. Okay.

23 A. And when I say the platform, it might just be a
24 lower receiver sitting there. Because you'll see
25 sometimes dozens of those available for sale, and then at

1 the various accessories so somebody could build up their
2 own, you know, version of whatever they want.

3 Q. Got it. And at the Nevada shows, same or
4 different?

5 A. I'd say at the Nevada shows we see a lot more of
6 the curio and relic antiques, lever-action, bolt-action,
7 pump-action. There seems to be a big collector market.
8 I know a lot of California residents will go up there and
9 find stuff that they can't find here for whatever reason.
10 I think part of it is because a lot of the gun show
11 promoters are on a circuit, so they'll bring -- the
12 vendors also are kind of on the same circuit. They'll
13 bring weapons from other states.

14 And Reno, specifically where we work a lot or
15 used to, that's sort of a hub for different guns to, you
16 know, kind of get in one spot and people from various
17 states can come to.

18 Q. Okay. So you were noticing that those shows
19 were more focused on collectible guns or older guns more
20 so than the modern stuff?

21 A. No, the modern stuff is present. But I'd say a
22 -- if I had to, like, put a percentage on it, there's
23 definitely more tables for sure. The shows are bigger
24 over there than in Northern California right now, and I
25 would say a higher percentage of non-assault weapons and

1 non-AR platforms over there.

2 See, it's kind of the same with the number of
3 handguns at the Reno shows. There's certainly the
4 older -- older technology, bolt-action, lever-action,
5 etcetera, here at the California shows. But it's just a
6 little bit different feel when you're at one of these
7 shows.

8 Q. So it next says that you conduct surveillance of
9 gun dealers suspected of illegal activity.

10 Do these -- obviously without divulging
11 specifics about, you know, specific investigations or
12 your tactics, how often do these -- this surveillance
13 involve assault weapons?

14 A. Speaking broadly over the -- I guess the current
15 part of my career within firearms, the most -- I would
16 say the most common -- one of the two most common crimes
17 we're investigating is possession or manufacturer of
18 assault weapons when it applies to a dealer.

19 The other side of what we do with a dealer is if
20 they're basically doing phoney paperwork, you know, not
21 filling out the stuff correctly and fudging intentionally
22 the data on this stuff, which then goes into the
23 databases.

24 So it's sort of maybe like a half and half on
25 the type of crime in general that we're looking at on the

1 dealer. The California dealer is what I'm speaking of.
2 Not an out-of-state or something.

3 Q. When you say "half and half," it's half and half
4 of that type of crime or half and half involved assault
5 weapons?

6 A. I'd say, like, 50/50. It's the -- the guns
7 specifically that we're seizing are more likely than not
8 -- an unregistered assault weapon and a dealer doesn't
9 have a dangerous weapons permit, so there's no way that
10 they can legally be in possession of it. And then we
11 have paperwork violations, which might involve perjury or
12 something else on behalf of the dealer. That kind of
13 thing.

14 Q. Are you inspecting gun stores generally? Not
15 just those that are suspected of illegal activity, but
16 going in and monitoring -- checking -- doing check-ups on
17 gun stores?

18 A. I personally do not get involved in the
19 day-to-day inspection process. There are times when the
20 folks that do the inspections will say, "Hey. We think
21 we have a problem at this store. Would you mind coming
22 along?" In those cases, I will come out. But that's, I
23 would say, very rare.

24 Q. Do you have a reason to go into gun stores
25 throughout California or in your region for other

1 reasons? Do you find yourself in gun stores often?

2 A. For a noncriminal investigation, meaning; or
3 what do you mean?

4 Q. In any capacity. Whether it's professional or
5 personal, do you find yourself in gun stores frequently?

6 A. Yes. Yes, I do.

7 Q. Okay. The same one or two, or various ones?

8 A. Various.

9 Q. Okay. And prior to this change in the law,
10 change in the definition of assault weapon to include
11 bullet-button rifles, at those gun stores that you
12 frequented, were AR-15 platform rifles, non-assault
13 weapons at that time, bullet-button rifles, prevalent at
14 those gun stores?

15 A. Yes.

16 Q. Would you say it would be more likely than not
17 that if you were to go into a random gun store, there
18 would be AR platform rifles?

19 MR. CHANG: Objection. Calls for speculation.

20 BY MR. BRADY:

21 Q. At that time?

22 MR. CHANG: Same objection.

23 THE WITNESS: When you say "at that time" --

24 BY MR. BRADY:

25 Q. Just so we're clear -- because I'm going to ask

1 you in a second -- maybe there's a not a distinction --
2 or let me ask you now. Let me rephrase. Sorry.

3 The -- at that time, I was referring to prior to
4 the new law changing. So when bullet-button rifles could
5 be sold with all the other features, okay?

6 Now, right, it's changed so that you have -- you
7 have to have a bullet button and no features, right?
8 Or -- or no bullet button and no features?

9 A. So -- yeah. After Senate Bill 880 or Assembly
10 Bill 1135, as soon as that changed, there was a shift in
11 the marketplace as far as what -- how weapons could be
12 configured if it was an AR platform and some of the other
13 platforms, too.

14 There are still AR platform weapons being sold
15 in California. I would say if you go to a corporate
16 store -- Big 5 or maybe some of the other chains --
17 you're less likely to see the AR platforms unless it's
18 maybe like a .22 version or something. Turners, which is
19 down south, I think you're more likely to -- you're not
20 more likely. But there's a greater chance than a Big 5
21 that you're going to see a centerfire version of some
22 kind down there.

23 The -- I would say, like, the mom-and-pop kind
24 of stuff where there's one or two dealerships owned by
25 the same person or couple of people, that's where you're

1 going to find the prevalent -- the prevalence of the AR
2 family, if you will.

3 Q. And that's still happening today post SB880
4 you're talking about?

5 A. Yes.

6 Q. And now, prior to SB880, were there more or less
7 AR platform rifles than there are now in these gun stores
8 you frequent?

9 A. I would say towards the end of 2016, there was a
10 huge surge. So I don't know if that was a true -- or if
11 you just notice, that's a spike. The numbers that -- of
12 the guns in the stores now, I would say overall, all gun
13 sales have dipped a little bit. I'm not sure by what
14 percentage, but I'm just hearing people talk around the
15 office. There's less DROSes happening right now -- maybe
16 10 percent less or something like that -- than before
17 that spike. Late 2016.

18 So we might be back at a time where maybe we're
19 mirroring the numbers from 2014, 2015 possibly, and I
20 haven't done a -- any kind of analysis on, like,
21 large-sale DROS numbers or anything like that, but
22 typically we notice that handguns are about 50 percent of
23 the sales and long guns are about 50 percent of the
24 sales. AR platforms are typically rifles. And over a
25 long period of time, those 50/50 numbers have held true.

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1 I don't know what's -- what we're on pace for this year,
2 though, for example.

3 Q. Okay. But prior to SB880, is it fair to say
4 that you would see AR platform rifles at gun stores
5 frequently?

6 A. Yes.

7 Q. Moving onto paragraph 8 of your report. So we
8 already talked about gun shows. You said you've attended
9 at least 40.

10 Would it be less than 100?

11 A. Honestly, I stopped counting after about 40. No
12 one really asks me, "Hey. How many have you been to?"
13 At some point doing some mental math in my career, I came
14 up with, oh, at least 40 at some point, and then I just
15 didn't see any reason to keep counting after that.

16 As far as 100 or less, it could be close to
17 the -- to that number, maybe. Close to 100.

18 Q. So let's -- actually, before we go on to your
19 training, I want to ask you about back in paragraph 6,
20 you talk about what you're doing today. You're
21 investigating the illegal trafficking of firearms,
22 manufacturing of assault weapons.

23 Do you do any investigation of the violent use
24 of firearms?

25 A. Are you speaking about like do I work involved

1 in murder cases right now, or...

2 Q. So, for example, it looks like these crimes that
3 you are investigating are violations of the AWCA such as
4 illegal possession, making, importing, of an assault
5 weapon; is that right?

6 A. For the most part, yes. But also like 29800,
7 which is felony possession. It doesn't necessarily just
8 limit to the AWCA. There are other statutes in play.

9 Q. So -- but it's enforcement of illegal possession
10 statutes, right?

11 A. Possession, manufacture, or trafficking, or
12 sales. I don't typically get involved in -- me
13 personally. Our bureau might have -- depending on the
14 month, might have some involvement in a home invasion, or
15 we might provide expertise about, you know, something to
16 someone else's case.

17 Q. So you don't get involved in shooting crimes?

18 A. I personally do not. We have, overtime, gotten
19 involved in someone that was making statements about
20 wanting to shoot -- shoot up a school, that kind of
21 thing.

22 Q. Uh-huh.

23 A. I -- and I can say I personally have been
24 involved in two of those in the last year.

25 Q. Okay. Moving on, then, to your training.

1 And before I move on, just so you know,
2 whenever -- if you need a break or anything, or if Madam
3 Court Reporter needs a break, all you have to do is just
4 ask. And, you know, transitions like this are obviously
5 good times.

6 A. Sure. I'm okay for now.

7 Q. Great.

8 All right. So paragraph 9, you talk about what
9 you've been trained and qualified on to -- to -- the
10 firearms you've been trained and qualified for to carry
11 on duty.

12 Am I wrong in saying that there are no assault
13 rifles on there?

14 A. You are correct. These are either semiautomatic
15 handguns or machine guns. We do have assault weapons
16 that are seized guns that we use for training aids, but
17 my duty use is pretty much here listed on this page.

18 Q. So paragraph 9 says, "I have been trained and
19 qualified to carry several different types of firearms
20 including" -- and it lists guns.

21 You have not been trained or qualified to carry
22 an -- a rifle meeting the assault weapon definition?

23 A. No. My M4 is a machine gun, so it's not an
24 assault weapon under the AWCA.

25 Q. And your M4 is an AR platform rifle that is

1 select fire, meaning a machine gun, correct?

2 A. Yes.

3 Q. So it has a pistol grip?

4 A. Yes.

5 Q. It has a flash suppressor?

6 A. Yes.

7 Q. It has an adjustable stock?

8 A. Yes. Just to point out, the number nine, that's
9 over the course of my career. So there's only two guns
10 I'm currently qualified to use. This is a -- just sort
11 of a historical paragraph, if that makes sense.

12 Q. Thank you. I was hoping you weren't carrying
13 all these things, for your sake, at the same time.

14 A. No. No.

15 Q. Although, you know, you never know, right?

16 A. Yeah.

17 Q. So moving on to paragraph 10. You say,
18 "Throughout my career, I've conducted training programs
19 in the identification and handling of firearms. I have
20 also trained other special agents of BOF on assault
21 weapons and firearms identification."

22 What did that training involve?

23 A. Basically we will use the previously seized
24 weapons that we've captured and, you know, retained for
25 training purposes, and we will show them what those

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1 various features on the various guns equate to.
2 Sometimes that's a pistol grip or, you know, grenade
3 launcher or flare launcher. The various types of 30515
4 characteristics. It might be going through showing
5 weapons that are identified in 30510 because of their
6 make and mark -- make and model markings.

7 Q. Okay. So moving to Exhibit 96, which is your
8 CV. Under "Training," the second item listed is -- says
9 you completed a 32-hour class in entry weapons.

10 What exactly are entry weapons?

11 A. So the department -- when you complete this
12 particular class, the department gives you a certificate,
13 and the word "entry weapons" are -- is on that particular
14 certificate.

15 The nuts and bolts version of that is it's a
16 weapon that is a long gun that you're going to be used to
17 deploy during a search warrant or probation search or
18 parole search. Typically, it's going to be
19 select-fire MP5 or an M4.

20 The -- the shotgun stuff, that could be factored
21 in, but usually there's a dedicated shotgun class for,
22 like, the people that are going to be doing that. So
23 it's basically how to clear rooms with the additional
24 length of weapons instead of just a handgun. So it
25 factors that in. Weapon retention, weapon take-aways if

1 someone is trying to get your long gun from you, and just
2 a lot of repetitive moving through buildings, how to use
3 those select fire weapons within policy, etcetera.

4 Q. So you're -- you've been trained to enter
5 building with long guns? With rifles?

6 A. Yes.

7 Q. Okay. Why -- what does this training say as to
8 when it is appropriate to enter a building with a rifle?

9 A. Generally, you go to this --

10 MR. CHANG: Objection. Vague and ambiguous.

11 You can answer.

12 THE WITNESS: Okay. Generally, you would be
13 assigned to go to this particular training class once you
14 had worked for the department for a little bit, and --
15 maybe a year or two -- and you're off probation, and you
16 seem to be tactically sound with a handgun, then this was
17 sort of a step up as far as the -- the weapons that the
18 department felt you were ready to start carrying for
19 other -- you know, for enforcement activities, and it's
20 usually up to the supervisor on a particular team to
21 designate which member is going to have what role in a
22 search warrant, let's say.

23 Someone is going to have to be ready with the
24 battering ram. Someone is going to do knock notice.
25 Someone is going to be, you know, the No. 1, No. 2,

1 etcetera. They may say, "All right. We're going to
2 alternate. You've got a long gun. The next person in
3 line is a handgun," or they're going to say, "Everybody
4 has got long guns." It's really up to the supervisor to
5 sort of call out the need for a particular weapon system
6 depending on the operation we're conducting.

7 BY MR. BRADY:

8 Q. So why would you enter a building with a rifle
9 instead of a handgun?

10 A. If we were doing -- back in this period of time,
11 I'll speak to it then. A lot of it was narcotics raids.
12 So meth labs and marijuana grows. The trainings -- the
13 very next entry down -- sorry. Three days later, you see
14 on my list here the training. 3/19/2000.

15 Q. Yes.

16 A. Advanced tactical operations. So that sort of
17 pulled in some of the stuff from above and just
18 reiterated, again, and did some rural patrolling and --
19 because there are marijuana grows out there we have to
20 deal with -- or used to -- on a larger scale, and it
21 tries to incorporate the things you learn in entry school
22 and what your weapon system is good for.

23 An M4 has a greater range than an MP5, so you
24 might be assigned -- if you just have an MP5, the
25 supervisor may or may not have you use it for that

1 particular mission. You might have to have some other
2 function. You may be in charge of carrying a fire
3 extinguisher in case there's pit bulls. You may have to
4 just be that, and then you're going to have your handgun
5 available to deal with it that way.

6 Q. During this training, is -- are the buildings
7 that you're entering generally close quarters?

8 A. Yes.

9 MR. CHANG: Objection. Vague and ambiguous.
10 BY MR. BRADY:

11 Q. Would you say that, generally, it's within
12 handgun range? Every -- every -- wall to wall? Would
13 you ever enter a building where the wall furthest away
14 from you was beyond effective handgun range?

15 A. In -- during the training class or in reality?

16 Q. Let's start with the training class.

17 A. In the training classes, it would be rare for us
18 to have access to a facility that would be some kind of a
19 giant warehouse, let's say, where it's just a big shell
20 and no smaller walls, you know, dividing up in between
21 those exterior four walls. Maybe like -- I mean, I had
22 to think about, like, what you -- what you meant like
23 that, but I'm going to say like an airplane hanger where
24 it's just a giant empty box.

25 Q. Sure.

1 A. Something like that, that might be a scenario in
2 the real world where we have to go for some reason.
3 Maybe there's a marijuana grow in the hanger. It's just
4 a great place to grow weed. That might be a reality, but
5 we probably wouldn't have a lot of access to something
6 like that, but it might be a reality, but...

7 Q. I was just -- so -- but when they're training
8 you, it is to do entry weapons training. Is it generally
9 within walls that are confined to effective handgun
10 range?

11 A. Typically, yes. But part of that same school is
12 how do you approach the building first, which you might
13 start a hundred yards down a dirt road, walk up to that
14 facility that you're going to, in a sense, assault
15 because of a search warrant, and the -- this training
16 class usually incorporates the simulation of a breacher
17 that's going to break the door, and then the first -- you
18 know, basically all the team will flow in and conduct the
19 search of those rooms inside the location.

20 So there are plenty of times where you have to
21 get from your vehicles up to the building and there's
22 long distances where a handgun would not be a great -- a
23 great weapon if that's your only weapon.

24 Q. Did this course train you that when entering a
25 house or a similar structure, when you're entering with a

1 rifle, to continue with the rifle or to put the rifle
2 away and retrieve a handgun?

3 A. If there was a malfunction of the long gun,
4 we're trained to transition to our handgun. If there's a
5 scenario in which the long gun is too -- too long, pardon
6 the pun, but if it's too cumbersome to use in a tight
7 space, we're trained to transition to a handgun.
8 Sometimes on staircases, it's best to incorporate a
9 handgun and a long gun. Sometimes going around corners,
10 it's easier to use a handgun than a long gun in some
11 instances. Going into an attic, for example.

12 Q. But entering a home necessarily does not mean
13 transition to a handgun, right?

14 A. No. No.

15 Q. Two items down, you say on January 20th, 2002,
16 you completed a 24-hour class in assault rifle training.

17 Can you describe what that training was about?

18 A. Yeah. That was -- I believe that was at either
19 Camp Roberts -- I'm trying to think here -- or Fort
20 Hunter Liggett down in maybe like San Luis Obispo area off
21 the Highway 101, and that class was for those people that
22 had an M4 issued to them.

23 It was about basically teaching long distance
24 marksmanship to, like, say, like, 400 yards with iron
25 sights. That kind of stuff. We have access to the

1 military targets, and we were, you know, laying prone,
2 standing, kneeling, all the variations there. And I
3 don't recall there being any full auto fire from any kind
4 of distance. It was just about learning how to use your
5 weapons at distance as opposed to close confines, like
6 the entry school was up close and personal.

7 Q. So moving to the next page, and it will be the
8 third item down on the second page. Third full item,
9 right, because the last item on page 1 bleeds over. So
10 you go one, two, three down.

11 It's September 13th, 2004. It says you were
12 part of a DOJ BOF ballistic texting -- sorry -- testing
13 exercise.

14 A. Yes.

15 Q. Can you describe what that was -- what that
16 involved?

17 A. Sure. Myself and probably four other agents and
18 maybe one supervisor went to a shooting range in
19 Grass Valley, and we'd been asked to test some ammunition
20 to see how it performed against -- well, ballistic
21 gelatin and a couple of car doors that had been acquired
22 from, like, a wrecking yard and just to see what the
23 projectiles looked like after going through the
24 substances. The fragment.

25 Q. What type of ammunition were you using?

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1 A. I believe it was all handgun ammunition. Either
2 9 or .40 caliber, I think.

3 Q. And any more specifics than that as far as
4 grains or --

5 A. No. I don't recall. Yeah, I was just -- I
6 wasn't like the lead on it. So if I was the lead, I
7 might have a little more memory; but I participated in
8 it.

9 Q. So somebody was just giving you ammo, telling
10 you to shoot it, and you just recall you were using a 9
11 or a .40 --

12 A. Our supervisor had said that, "Hey, we're going
13 to go up and do this and test it. Have you guys ever
14 done this before," meaning shooting into ballistic
15 gelatin or fire it into car doors to see how they -- you
16 know, if they will penetrate or not; and none of us had
17 done that sort of stuff. So that was -- it was basically
18 an expertise building event.

19 Q. And I assume by your description of it being
20 handgun ammunition that these were handguns?

21 A. Yes. I think we used either seized weapons or
22 duty weapons. I don't recall at the time.

23 Q. Well, the next one down, it says you completed a
24 16-hour ArmaLite AR-15 rifle armorers course; is that
25 right?

1 A. Yes.

2 Q. What did that involve?

3 A. That was two gentlemen from the ArmaLite
4 corporation came -- I think it was at Folsom prison, and
5 there were several of us in there, possibly 15 to 20 of
6 us. And it was a armorers course, so the AR family of
7 weapons. They brought sample guns that we were able to
8 take apart, put back together many times back and forth,
9 and they showed us ways to diagnose problems with that
10 weapon system. They showed us common mistakes people
11 made when reassembling guns, what to look for, things
12 like that.

13 Q. And ArmaLite is part of the AR acronym; is that
14 your understanding?

15 A. Yes.

16 Q. Did they -- the instructors go over the history
17 of the AR-15 in that course at all?

18 A. To a degree, yes.

19 Q. And do you recall what they discussed about the
20 history of the AR-15?

21 A. They were -- from what I remember, they were
22 fairly sort of proud that their weapon system was now
23 broadly being used and there were other companies making
24 versions of it. Copying them, basically.

25 Q. Did they discuss any of the original features of

1 the AR-15?

2 A. They discussed the features of the weapons in
3 the class and on the various systems. I don't know when
4 you say "original" what you mean by original, though.

5 Q. So is it your understanding that the ArmaLite
6 AR-15 was the original AR platform rifle?

7 A. No. I mean, there were -- the AR-15 is a
8 civilianized version of the M15, if you will, which is a
9 select-fire variant.

10 They discussed lightly the AR-10 which is a
11 different caliber version of this weapon system in that
12 family. We didn't work on any of the AR-10s that I
13 recall. I think they may have had one in the class that
14 they just had there for demo purposes to show us, "Hey,
15 you're going to see a slightly different part. Don't try
16 to install this part on this group of weapons. This one
17 is beefier. It shouldn't fit. Don't try to make it
18 fit." Things like that. They -- nomenclature about the
19 different systems was discussed.

20 The AR-10 variants were typically chambered in,
21 like a .308 or a 7.62 cartridge, and then the AR-15 side
22 of it was more of a 5.56 or .223 caliber round. That
23 was -- back then, that was before a lot of these other
24 calibers were getting widely used. And for our purposes,
25 we cared about the 5.56 because that's what we were

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1 seeing. And for the most part, at that point, either
2 .223 or 5.56 is what a lot of the California residents
3 had, and it's the most common sort of, like, law
4 enforcement round that we were -- you know, we were
5 issued that similar weapons except select-fire versions
6 were cold.

7 Q. I believe you indicated that the ArmaLite folks
8 were proud that others had ripped them off, if you will,
9 for lack of a better term, right?

10 A. In a sense. It was a grudging, "Well, it's such
11 a good weapon that other people are now, you know,
12 copying our product."

13 Q. So they were the first, right, to make this
14 weapon system?

15 A. I mean, Eugene Stoner I think devised it for the
16 military. I don't remember all the backstory if he
17 worked for ArmaLite and then that's where it sort of
18 sprung from, but they -- there may have been submodels
19 that didn't necessarily have the ArmaLite stamp on them.
20 It's been a while. It's been since 2004.

21 Q. Okay. Did they talk about whether that weapon
22 system was designed for particular capacity magazines?

23 A. I believe the discussion about magazines dealt
24 with us having the ability to diagnose problems with the
25 magazines in the guns; meaning, "Hey, the shoulders of

1 the magazines are -- if they're alluminum and you drop
2 them on concrete, it might bend the shoulder, and you may
3 have malfunctions, you know, so look for that. If you
4 have a bent magazine in that area, just throw it away.
5 Destroy it. Don't let it get back out because it might
6 cause a problem for one of your teammates." That kind of
7 thing. So diagnosing problems with mags.

8 Discussion would have been dealing with 20- and
9 30-round magazines typically were what was discussed. If
10 you're dealing with AR-10, I believe there was some
11 discussion about 10- and 20-round magazines for that
12 weapon system being the most ubiquitous, to use the word
13 you used earlier.

14 Q. Got it. So moving down to May 11th, 2006. You
15 completed a 24-hour firearms rifle instructor update
16 class.

17 What type of rifles were involved in that
18 particular event?

19 A. My weapon at that time and still is the same
20 weapon, actually. It's a Colt M4. Other attendees at
21 the class had variants of the AR. There may have been
22 somebody there that had a Ruger Mini-14 possibly, as
23 well.

24 Q. So people were bringing their own rifles to this
25 event?

1 A. No. That was an issued weapon from his agency,
2 if I recall. It was another agency that wasn't allowed
3 to have assault weapons per the Penal Code, so that law
4 enforcement agency had, I think, issued him a Mini-14, if
5 I remember.

6 Q. Okay. But they -- every individual officer who
7 was attending this was bringing their issued rifle?

8 A. Yes.

9 Q. And yours is a Colt M4 as you indicated?

10 A. Yes.

11 Q. And that is a select-fire weapon?

12 A. Yes.

13 Q. In paragraph 11 of your report, which is
14 Exhibit 97, the first sentence -- it's on page 2 --

15 A. Thanks.

16 Q. -- says, "I have also completed as least 15
17 firearms training courses since 1994."

18 Are these training courses that you mention
19 including the ones that we just talked about in your CV?

20 A. Yes.

21 Q. Okay. So other than the ones we just talked
22 about, did any of these involve assault rifles? Any of
23 these training courses?

24 A. Let me look at my CV. So that's going to be
25 No. 96. Exhibit.

1 So on page 2 of my CV, September 18th, 2003,
2 there was a 24-hour class on the Heckler & Koch MP5
3 trigger group and USP pistols. There's a variant of the
4 USP that has a threaded barrel, so that would be an
5 assault pistol.

6 Q. What about if we could just limit to assault
7 rifles?

8 A. Oh, I'm sorry.

9 Q. No, it's okay. I don't know if I was clear.
10 I'm just clarifying.

11 A. Okay. Sure. So on 5/14/2004, there's an
12 eight-hour class that I attended that BTF has put on.
13 And in this class, they had full auto AK-47s. They had
14 semiauto AK-47s, and then the SKSs were a mixture of, if
15 I remember right, the detached mag variants and the fixed
16 ten-round mag versions. So some of those from both
17 groups would have been assault weapons.

18 The ArmaLite class, those were semiauto. So
19 those would have been assault weapons that we've already
20 talked about. January 17th, 2007, there was another
21 class put on involving a semiauto AK-47. 3/28/2007 was a
22 tech -- oh. That's a pistol. Sorry. That SKS was a
23 fixed mag version, so I won't go down there.

24 So November 4th through -- sorry.
25 November 4th, 2013, through November 6, 2013, is the

1 bottom of that page I've just been talking about. This
2 class had several different firearms that were modified
3 from normal semiautomatic weapons up until full auto. So
4 there was discussion about in that class, "Hey, if you
5 see this part in the weapon, it's been modified to fire
6 full auto." That type of thing. "And if it didn't have
7 this part and it had the original part, it would be
8 semiautomatic."

9 Some of those guns absent the full auto parts in
10 them would have been machine guns -- or I'm sorry --
11 semiautomatic assault weapons, so there was some
12 discussion during the class about that.

13 On 9/11/2014, there was a trafficking class in
14 Dublin, California. The trafficking techniques dealt
15 with a variety of different weapons that would have been
16 trafficked. It was sort of a mostly nationwide
17 successful techniques that have been used to interdict
18 trafficked guns.

19 Q. And in that specific event, were they focused on
20 any particular types of firearms as being the most
21 commonly trafficked?

22 A. I don't know. I mean, they were more like case
23 studies, so they would basically talk about, "Hey, in
24 New Orleans, this is what we saw. This kind of stuff was
25 happening," and they would list off, you know, "These

1 were the weapons," and they would have slides showing
2 that type of data about those specific people that got
3 indicted for, you know, these guns.

4 Q. Do you recall whether assault rifles were of
5 particular concern in that training or class?

6 A. So what I recall is -- this was a Federal Task
7 Force Officer training and some of just the federal ATF
8 agents that were there. Federally, there is no assault
9 weapon law anymore, so they were less concerned about
10 trying to tie into California State Penal Code sections.

11 But some of the weapons that were trafficked,
12 based on my training and experience, were assault weapons
13 based on speaking with the presenters after the classes,
14 and -- but it wasn't in every single case that was
15 demonstrated here.

16 Q. What I'm asking is was there a focus on --
17 granted there's no -- as you said, these rifles would be
18 defined as assault weapons under California law, not
19 under federal law. Probably not under any of the other
20 states that were involved, but they could still -- ATF or
21 people from other states could still say, you know,
22 "We're having a big problem with AR or AK platform
23 rifles."

24 Do you recall that being part of this class?

25 A. I don't recall them calling out a specific

1 family of weapons. It was just more about -- because
2 these presenters are from all over the United States.
3 And there was less concern about a label placed on a gun
4 as opposed to what they actually bought through an
5 informant or they got on a search warrant and put a case
6 on somebody.

7 Q. Got it. Moving down the page to -- on -- let's
8 see. Page 3 of Exhibit 96. You have your expert
9 testimony.

10 A. Yes.

11 Q. You say that you qualified as an expert witness.
12 Can you explain what that means?

13 A. Yes. That means that the -- the judge in each
14 of these cases deemed me to be an expert on the various
15 categories of expertise. The categories are broken up by
16 the commas. So assault weapon identification would be
17 one. Registration is a separate sort of subsubject.
18 Subsubject, that's not right. It's a different sort of
19 sub --

20 Q. Category?

21 A. Category. Thank you.

22 And then there was a lot of questions in this
23 particular case about the automated firearm system, so he
24 made a fairly broad ruling in this case, the Fajardo
25 case, I could speak to this, this, and this as depicted

1 here on this item.

2 Q. Did he do an evaluation of you to make -- the
3 judge, did he make an evaluation of you to determine that
4 you were an expert witness?

5 A. As I recall -- again, this was 11 years ago.
6 Each of the judges in the 15 or -- I guess 16 items in
7 this long list of my expertise, they -- they did question
8 me. Sometimes it was the defense attorney. Sometimes it
9 was the prosecutor going through my curriculum vitae to
10 verify that they were comfortable with the idea that I
11 had enough expertise to speak on a particular matter.

12 Q. So there is a process to qualify you as an
13 expert witness?

14 A. Yes.

15 Q. Got it. And in the first entry under "Expert
16 Testimony," it says that you were qualified as an expert
17 witness on assault weapons identification, right?

18 A. Uh-huh.

19 Q. Do you consider yourself an expert on assault
20 weapons identification?

21 A. Yes.

22 Q. It says next that you were qualified as an
23 expert on assault weapons registration.

24 Would you consider yourself an expert on assault
25 weapons registration?

1 A. Yes.

2 Q. And what would that entail?

3 A. At the time in 2007, it would be being able to
4 competently explain to the jury what the process would
5 have been for a person to lawfully register a weapon.
6 That would include a civilian registering a particular
7 weapon system by mailing in the proper form with a check,
8 getting a response letter back from the department
9 indicating that their registration was successful. Those
10 types of things. That would be sort of outlined how a
11 person should have done it.

12 Depending on the line of questioning, I would
13 also speak to how peace officers can have an exemption to
14 the normal process for a civilian. Civilians are usually
15 locked down to a date range of a window based on
16 legislation or something like that that they have to
17 register in a certain time. Peace officers have a -- in
18 a sense, they don't have a time limit. They just have to
19 get a letter from their head of agency if they're working
20 for a particular permitted group of agencies, and they
21 can avoid that time frame sort of hurdle, and I would be
22 able to speak to that.

23 And how you check the system both through CLETS
24 -- the California Law Enforcement Telecommunications
25 System -- and what you should expect to see if there's a

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1 properly registered gun as opposed to what a dealer
2 record of sale type of entry would show versus an
3 evidence entry and all the various subentry types there
4 within AFS.

5 Q. And AFS is Automated Firearms System, right?

6 A. Yes.

7 Q. And you also qualified as an expert witness for
8 that, as well? AFS, correct?

9 A. Yes. In that case on that date.

10 Q. And do you still consider yourself an expert on
11 the AFS?

12 A. Usually the expertise threshold is do I know
13 more than the average person about the particular subject
14 matter. I think I do. We -- we now have custodians of
15 record that will typically -- one of their main jobs is
16 to go to court and say, "Hey. This is the information we
17 found in the system at the time." I -- because of the
18 demands of subpoenas upon the department, they've sort of
19 carved out niches, if you will, for custodians on
20 specific subject matters.

21 I'm no longer, like, a custodian in that sense.
22 So if someone asks for that on a current case, I'm going
23 to say, "Hey. You need to subpoena this person over
24 here" --

25 Q. Okay.

1 A. -- "if you want database specific stuff because
2 I'm better at" -- you know, not better, "but my area is
3 this." I keep in my lane, and we have other people that
4 have specific functions to do.

5 Q. Does your lane involve AFS at all?

6 A. Yeah. I mean, I make entries to AFS. I review
7 it as part of various investigations. I can definitely
8 speak to it in court, and I would say that I definitely
9 know more than most citizens, more than most cops. You
10 know, I've -- I would say that I can still speak to that.
11 It just depends on what the purpose of the inquiry is
12 about the data.

13 Q. And for assault weapon registration back in
14 2007, it was a different registration than is today,
15 correct?

16 A. The current registration -- or the most recent,
17 I would say, is the Senate Bill 880. It's a totally
18 different process. The older process that I would have
19 been speaking back to back in 2007 would have been
20 basically involved a form. Did they attach a check? You
21 know, those types of things. It was a much, I guess,
22 simpler process. And I don't know. Hopefully that's
23 responsive to you.

24 Q. Well, it is. But I guess my follow-up question
25 is, I just wanted to confirm that there was indeed a

1 difference between the 2007 version of assault weapon
2 registration versus a -- the registration today, which
3 has been closed, as you indicated. There's a window that
4 closes. The window on the most recent registration has
5 closed, right?

6 A. Correct.

7 Q. But before it closed, that was a different
8 registration scheme than what was in place in 2007,
9 right?

10 A. Yeah. There was really nothing in place in 2007
11 actively being registered unless you were a peace
12 officer.

13 Q. Correct.

14 A. It would have really ended in 2000 for the
15 Category 3 guns, and there was a little bit of bleed
16 over, I think, for the Category 2s that bled over into
17 early 2001, I think.

18 Q. So would you still consider yourself an expert
19 on the most recent assault weapon registration scheme?

20 A. Yes.

21 Q. And on assault weapon identification under the
22 new definition, SB880?

23 A. Yes.

24 Is this a good transition time for a break?

25 MR. BRADY: Yes.

1 THE WITNESS: Would that be okay?

2 MR. BRADY: Yes. Off the record.

3 (Recess from 12:13 p.m. to 1:00 p.m.)

4 BY MR. BRADY:

5 Q. Going back on the record.

6 So coming back from a break, let's pick up with
7 page 4 of your report, which is marked as Exhibit 97.

8 A. Okay.

9 Q. The very first complete sentence states, "While
10 it is not legally necessary for a Category 1 or a
11 Category 2 assault weapon to have certain features, they
12 usually have one more of the features listed in Penal
13 Code Section 30515 (Category 3 definition language)."

14 Is that right?

15 A. Yes.

16 Q. And the Category 1 and Category 2 assault
17 weapons as we previously discussed are those described in
18 Penal Code Section 30510 and the California Code of
19 Regulations, correct?

20 A. Yes.

21 Q. Okay. And the California Code of Regulations --
22 I'm sorry. Penal Code Section 30510 has been marked as
23 Exhibit 2. I will let you look at it if you would like,
24 but I'm sure you probably know the contents of it from
25 your work, right?

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1 A. Yeah. I'm familiar with the code, and...

2 Q. And then the Category 3 assault weapons
3 referenced are those that are defined by their features
4 as assault weapons under Penal Code Section 30515,
5 correct?

6 A. Yes.

7 Q. 30515 has been marked as Exhibit No. 21, so in
8 case you need to reference those. My question about the
9 difference between Category 1 and Category 2 and
10 Category 3 rifles -- is there any functional difference
11 between a Category 1 or Category 2 rifle, meaning the
12 definition of an assault weapon?

13 A. Do you mean "functional" as far as their nature?
14 If they're semiautomatic? Both groups?

15 Q. Sure. So let's say -- for example, let's take
16 the AR series rifles that are described expressly in
17 30510, right?

18 A. Okay.

19 Q. There are also AR platform rifles that are
20 considered Category 2 assault weapons in the California
21 Code of Regulations, correct?

22 A. Yes.

23 Q. Is there any functional difference between those
24 two rifles, assuming they are your standard AR platform
25 rifle?

1 A. Right. So when you say "standard," I'm going to
2 infer that you mean semiautomatic. Both groups. Cat 1
3 and Cat 2.

4 Q. Yes. Yes.

5 A. As to whether -- what other functions, I'm not
6 sure what you're getting at. They're both going to --
7 both groups of weapons should fire in a semiautomatic
8 nature, but I don't know where you want to go from there.

9 Q. Sure. So what I'm trying to get at is these
10 guns that are listed in 30510 in the California Code of
11 Regulations, Cat 1 and Cat 2 assault weapons are listed
12 by make and model, right?

13 A. Yes.

14 Q. Do those makes and models have any functional
15 difference than a Category 3 assault rifle that has --
16 that is semiautomatic centerfire with a detachable
17 magazine and having the features that are restricted in
18 30515?

19 MR. CHANG: Objection. Vague and ambiguous.

20 THE WITNESS: Both groups -- all three groups --
21 Cat 1, Cat 2, Cat 3 -- have to be on the very basic level
22 semiautomatic. The rifles under 30515 have to also be
23 semiautomatic -- I'm sorry -- centerfire.

24 There's no requirement under 30510 or the --
25 basically, it's all 30510 for the Cats 1 and 2s. There's

1 no requirement for a centerfire component to that, so
2 technically you could have a .22 -- I've never seen one
3 for a Cat 1 and Cat 2. But if somebody made one that had
4 the right make and model on it, it might be classified as
5 a Category 1 or 2 but not a Category 3, so I want to make
6 sure that's out there.

7 But for the most part, the ones that I've seen
8 in my career, they're going to be semiautomatic
9 centerfire, and there's probably going to be some common
10 features, meaning physical characteristics between all
11 three groups unless someone has taken something off. But
12 there would be a few rare exceptions probably.

13 BY MR. BRADY:

14 Q. So, for example, in Exhibit 2 which is Penal
15 Code Section 30510, it says Colt AR-15 series, correct?

16 A. Yes.

17 MR. CHANG: And, Sean, do you have a copy for
18 me?

19 MR. BRADY: I don't believe so.

20 MR. CHANG: Okay.

21 THE WITNESS: Can I put it between us and you
22 can look at it that way?

23 MR. BRADY: Yeah. Of course. Of course.

24 BY MR. BRADY:

25 Q. So it says Colt AR-15 series, correct?

1 A. Yes.

2 Q. So does Colt make an AR platform rifle that was
3 sold as a Category 3 assault weapon?

4 A. There are Colts that have been sold since the
5 Category 1 language became part of the Penal Code, but
6 they were sort of submodels, if you will. They may have
7 markings on them that say Colt Commando, Colt M4. Even
8 though it says Colt M4, it's really not the same as my M4
9 because of the select-fire nature.

10 So I would say it's in that same family. It's
11 part of the AR platform that we've discussed off and on
12 today, but because of the factor -- from the factory,
13 Colt makes probably, like, 70-plus variants over the
14 years. And depending on barrel length, the thickness of
15 the barrel, they have different nomenclature changes
16 sometimes stamped on the receiver.

17 Q. Okay. So is there any significant difference
18 functionally from the Colt AR-15 listed in Penal Code
19 Section 30510 and those Colt Category 3 rifles that were
20 made subsequently and allowed to be sold in California?

21 MR. CHANG: Objection. Vague and ambiguous as
22 to functional.

23 THE WITNESS: I would say the biggest change
24 from the guns that were identified in 305- -- that are
25 currently identified in 30510 would be how the magazine

1 was released from the weapon. The more recent ones -- up
2 until the end of 2016, it would have been the
3 bullet-button guns or perhaps somebody had made a weapon
4 that was a featureless weapon. So it still had a
5 push-button style release, but it didn't have other
6 features.

7 Those guns that were sold in California up until
8 the end of 2016 -- to get some of those features legally,
9 you had to have, effectively, the bullet button, which
10 was -- I don't know. There were thousands of those sold.

11 BY MR. BRADY:

12 Q. Thousands? How many thousands do you think?

13 A. I don't know. I'm just guessing annually, there
14 were probably thousands sold, but I don't know what the
15 numbers are. Our system isn't that sophisticated to tell
16 us, like, the magazine style release. It doesn't ask the
17 dealer to send that data to us. Like, I couldn't be
18 accurate. All I can say is about half the guns we sell
19 are long guns, and about half are handguns. It would
20 require a lot of detailed sort of data mining within our
21 AFS system that I've never done.

22 Q. Okay. So -- but correct me if I'm wrong, but
23 you indicated that there were Colt AR platform rifles
24 that met the Category 3 definition, correct? That were
25 sold in California?

1 A. They meet the current version of it. They're
2 basically post -- they're nonfixed mag versions,
3 basically. The bullet-button style. So from maybe '04
4 until 2016, there were some Colt guns sold in California
5 that didn't have, you know, the Colt AR-15 marking on it.
6 They had some variant of it. Like a Commando model or
7 some other spinoff.

8 Q. What year was Penal Code Section 30510
9 implemented?

10 A. That was of sort hatched around 2012. The
11 predecessor to it was 12276. That came out in the
12 Roberti-Roos Assault Weapons Control Act in 1989.

13 Q. 1989?

14 A. Yes.

15 Q. That's when the list of makes and models, Cat
16 1s, was created, correct?

17 A. Yes.

18 Q. Okay. So -- but following 1989, if a rifle was
19 not on the list in 30510, it was not an assault weapon,
20 correct?

21 A. Until the year 2000.

22 Q. Correct.

23 A. Then Senate Bill 23 comes into play. And
24 regardless of the markings, it may have been an assault
25 weapon.

1 Q. Correct. So that's my question is: Those
2 rifles on the list, are they functionally different than
3 the rifles that became known as Category 3 assault
4 weapons, assuming they're the same basic rifle? For
5 example, AR or AK.

6 Is an AR that was restricted under 30510
7 significantly different than an AR that was restricted
8 under 30515?

9 A. So a weapon -- let's say two weapons. One was a
10 1988 version, and then one's a 2015 or '16 version.
11 Semiautomatic -- both are semiauto. They both have
12 pistol grips. The functional difference in my mind would
13 be how does the magazine drop?

14 Q. Okay. I get that, but I'm asking about
15 Category 3. You're asking about bullet-button guns, or
16 you're thinking about bullet-button guns.

17 A. Well, that's part of Category 3. Bullet-button
18 guns are now part of Category 3, right?

19 Q. I don't think so, actually. That's an
20 interesting point. I think that Category -- so let me --
21 I guess now we need to make a Category 4, right? Because
22 the way that Category 3, in my understanding, has always
23 been discussed was the -- the guns that had to be
24 registered by 2000.

25 So let's use -- whether you agree with me or

1 not, just for purposes of this discussion, let's call
2 Category 3 the -- the guns -- the assault weapons that
3 had to be registered by 2000, okay?

4 A. Okay. So push-button style release?

5 Q. Yes. Correct.

6 A. So we're on the same term. Okay.

7 Q. Yes. Exactly. And then the rifles that had to
8 be registered under SB 880, the recent one, let's just
9 call those bullet-button rifles or Category 4 assault
10 weapons.

11 A. I'll try to keep my brain in that path.

12 Q. Okay. I was wondering what the disconnect was.
13 Now I get it.

14 A. Yeah.

15 Q. Okay. So between an AR rifle that's prohibited
16 under Penal Code Section 30510 and one that would become
17 prohibited under Penal Code Section 30515 in 1999 -- you
18 had to register in 2000 -- is there any significant
19 difference between those two rifles?

20 A. No.

21 Q. Okay. So it's merely those were the names of
22 the rifles they knew at the time to restrict in 30510?

23 A. That's my understanding.

24 Q. Okay. So it's just the -- the writing on the
25 receiver that is different between a Category 1 and a

1 Category 3 AR?

2 A. That's generally true, yes.

3 Q. Okay. And if a rifle listed in Penal Code
4 Section 30510 has the features removed -- the features
5 that Penal Code Section 30515 is concerned with -- in
6 other words, if you were to take a Colt AR-15 series
7 rifle in 30510 and remove its pistol grip, remove its
8 adjustable stock, remove its flash suppressor or any
9 other of the prohibited features in 30515, would it still
10 be considered an assault weapon?

11 A. Yes.

12 Q. What about a bare receiver without an upper on
13 it? Without a stock? Just a bare receiver bearing those
14 markings? And when I say "those markings," the markings
15 that are expressly stated as being prohibited in Penal
16 Code Section 30510. Would that be -- would a bare
17 receiver be considered an assault weapon?

18 A. No.

19 Q. Can you explain why not?

20 A. Sure. 30510 -- at the top of Exhibit 2 --

21 Q. Yes.

22 A. -- says, "The following designated semiautomatic
23 firearms." A bare receiver is not semiautomatic. The
24 action type is unknown because there's nothing attached.

25 If you then slide down to 30510(a), all of the

1 following specified rifles. A bare receiver is not
2 necessarily a rifle at that point. It's a firearm, but
3 without a stock attached or a pistol buffer tube or
4 something else to sort of tip the scales, maybe -- if you
5 had a flowchart, for example, you're going to come to a
6 multi-pronged point of that, and there's -- I don't know.
7 The receiver has options to become built out or maybe
8 never built out.

9 Q. Okay. Do you think that there's any argument
10 that a bare receiver is an assault weapon under Penal
11 Code Section 30510?

12 A. I don't understand.

13 MR. CHANG: Objection. Argumentative.

14 BY MR. BRADY:

15 Q. Have you come across anybody in law enforcement
16 who disagrees with your interpretation of 30510 that bare
17 receivers are not assault weapons under 30510?

18 A. Not that I know of.

19 Q. But you would think that that person would be
20 wrong if they believe that a bare receiver would be -- is
21 an assault -- can be an assault weapon under 30510?

22 A. I would ask them why they think that. I'm not
23 going to assume that I'm right all the time. Maybe they
24 have some knowledge about something as to why they think
25 that. Maybe they've got video of the guy shooting it,

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1 disassembling it, and they're trying to charge this
2 person with a semiautomatic assault weapon based on a
3 video that they then saw him take apart and they found a
4 receiver.

5 That might be a scenario where that weapon does,
6 in a sense, get charged as an assault weapon. So that's
7 a -- it'd be an extreme example. But I would go back to
8 what I just did with you and say semiautomatic and rifle,
9 show me how this receiver is either of those, and please
10 convince me.

11 If -- if an agency reached out to us and said,
12 "Hey, we've recovered" -- you know -- "five weapons" --
13 let's say -- "in various states of assembly, and there
14 are a couple of receivers, couple are full working
15 weapons," and I'm going to say, "Okay. These I don't
16 believe are, and I think these over here are because
17 you've got features. Have you guys test fired them?
18 Have you made sure they're semiauto? Do you know that
19 they're rim fire? Do you know that they're centerfire?"
20 Various questions that I would ask.

21 Q. But setting aside specific situations like the
22 one you gave an example of where somebody assembled a
23 lower, and then you were making the case about, you know,
24 that particular individual, if we're talking about solely
25 just the person only has a bare receiver, and it is

1 the -- the individual's view that a bare receiver -- a
2 bare receiver in all circumstances having those markings
3 indicated on Penal Code Section 30510 is an assault
4 weapon, you would disagree with that person?

5 A. Yeah. Unless I had some new information that I
6 don't have as I sit here right now.

7 Q. So it's -- it's not your understanding that the
8 legislature intended to consider those assault weapons
9 just by being receivers?

10 A. I think if they had --

11 MR. CHANG: Objection. Lacks foundation.

12 THE WITNESS: They listed firearms that were in
13 circulation or in California at that time or they felt
14 that were. Right now, with all the changes that have
15 gone on in the industry since 1989, receivers are much
16 more prolific. People build things that they never would
17 have built years ago, so they -- I think they listed
18 rifles, pistols, and shotguns, and then they put
19 "semiautomatic" because that's the way things were back
20 then.

21 Now, we have people that buy 10 lower receivers
22 in one transaction, and they might built them up
23 differently. You can buy a bolt action upper. There are
24 pump action AR uppers. There's, you know, .22s. They
25 might built out one different flavor, you know, or

1 different Cerakote job just because they want to have a
2 different look.

3 BY MR. BRADY:

4 Q. Okay. So let's talk about the Cat 3 features.

5 A. Okay.

6 Q. Which, I guess, are now in Cat -- Cat 3 and Cat
7 4, right? Except for one is a detachable magazine. One
8 is it has to be anything -- it can't be anything but a
9 fixed magazine, right?

10 A. There are even fixed mag assault weapons under
11 30515(2), so it's a little bit of an asterisk on that
12 notation.

13 Q. Okay. So I believe in your report, you say that
14 a pistol grip is probably the most popular -- I don't
15 want to misquote you. I can't find the quote, but you
16 basically say that the pistol grip is the most prominent
17 feature of the features in 30515 on these rifles; is that
18 fair to say?

19 A. I would say probably pistol grip is the most
20 prevalent feature.

21 Q. Okay.

22 A. That if -- and I'm speaking about guns that I've
23 either seen in stores for sale when I'm speaking about
24 bullet-button guns, as well. Or I'm speaking about guns
25 that we've seized over the years as evidence.

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1 It just seems like the pistol grip is the most
2 common feature across the board.

3 Q. Okay. And you define a pistol grip in paragraph
4 19, page 5 of your report, and it says, "A pistol grip
5 that protrudes conspicuously beneath the action of the
6 weapon is a grip that allows for a pistol-style grasp in
7 which the web of the trigger hand between the thumb and
8 index finger can be placed beneath or below the top of
9 the exposed portion of the trigger while firing."

10 Is that right?

11 A. Yes.

12 Q. Where is that definition from?

13 A. I want to say it's part of the regulations --
14 the Assault Weapon Registration Regulations. It was
15 probably attached to my report as a -- here we go.

16 Q. It's, I believe, Exhibit 94.

17 A. So you've already got it in front of me.
18 Exhibit A.

19 Q. Oh, great. I'll give it to --

20 MR. CHANG: Are you entering this as an --

21 MR. BRADY: It's already entered. Yeah. This
22 is Exhibit 94. I think this is what we did yesterday.

23 MR. CHANG: Okay.

24 BY MR. BRADY:

25 Q. So we will find --

1 A. So yeah. Within Exhibit A, page 5, letter Z.

2 Q. Okay. Got it. So that's where you got this?

3 A. Right.

4 Q. Now, going to -- back to the first page of
5 Exhibit 94, which is California Code of Regulations
6 Section 5471. At the top --

7 MR. CHANG: Are we sharing a copy of this?

8 MR. BRADY: I can give you another one. I'm
9 sorry. I thought you had it for Exhibit A.

10 THE WITNESS: Yeah. I just want to make sure if
11 I'm going to -- that I go to the right section.

12 MR. BRADY: Yeah, of course. Of course. There
13 you go.

14 THE WITNESS: All right. Okay.

15 MR. CHANG: Let me give you this one so you know
16 where -- this is Exhibit 94.

17 THE WITNESS: Okay. I'll trade you. Thanks.

18 BY MR. BRADY:

19 Q. So if you look at the very first sentence under
20 the title, it says, "For purposes of Penal Code
21 Section 30900 and Articles 2 and 3 of this chapter, the
22 following definitions shall apply."

23 A. Uh-huh.

24 Q. What does that mean to you?

25 A. 30900 is the section that the legislature has

1 modified over the years that deals with DOJ having to
2 register assault weapons that were submitted to the
3 department.

4 Q. So these definitions apply for registration
5 purposes, right?

6 A. Correct.

7 Q. Do they apply for enforcement of 30515 purposes?

8 A. Not at this time. I believe they're still
9 pending -- I don't know what you would call it -- final
10 acceptance or approval from either our department or the
11 Office of Administrative Law.

12 Q. So there currently are no regulatory definitions
13 for the features -- assault weapon features in Penal Code
14 Section 30515, right?

15 A. The way I understand it is when these regulation
16 -- the registration regulations were pushed through, the
17 department tried to do everything together as one
18 package, but -- I don't know -- the Office of
19 Administrative Law said it can only apply to
20 registration. So the department did a second batch.

21 The same terms as you see for registration, as I
22 understand it, are going to be -- I don't know -- rolled
23 out or whatever you want to call it.

24 Q. So are there any definitions currently for the
25 terms of features in Penal Code Section 30515?

1 A. To my knowledge, these are for registration
2 purposes. And if somebody wanted to use them, they
3 could. This is what I would lean on.

4 Q. So you're basically assuming that the
5 definitions in CCR Section 5471 are relevant for
6 interpreting the -- the same terms in Penal Code
7 Section 30515?

8 A. Yes, and here's why. The original regulations
9 from roughly 2001 that the department did were at least
10 with regards to a pistol grip, which is what we were just
11 talking about. I believe it was possibly word for word.
12 I'm going to look at the definition here.

13 I think the only thing that was added was that
14 last sentence. "This definition includes pistol grips on
15 bullpup firearm designs." I think the rest of that is
16 all consistent with the terms that -- there were, I
17 think, five terms that were, in a sense, in place from
18 2001, let's say, or whatever year it was that they
19 created those and the old regs, so that was the one
20 change.

21 Q. So when we're talking about pistol grips,
22 regardless of what definition officially applies, you're
23 talking about a grip that the shooter wraps their hand
24 around underneath the stock; is that fair to say?

25 A. I mean, that's one -- it's a very broad way of

1 looking at it.

2 Q. I'm just trying to make -- you know, set
3 parameters because have you read -- I assume you read Mr.
4 Helsley's expert report?

5 A. Yes. It's been a while. But, yes, I read it.

6 Q. And you saw how he went through the litany of
7 different pistol grips that are available on rifles?

8 A. Yes.

9 Q. But some of those -- while they are pistol
10 grips, the shooter grasps the rifle -- the grip from
11 above the rifle, right?

12 A. It -- you'd have to show me his report before I
13 can really comment too much.

14 Q. Okay. But in any event, the pistol grips you're
15 referring to are always the shooter's hand is underneath
16 the stock grasping the grip, correct?

17 A. Underneath the action. That's I think the way
18 the definition has always read. Usually the action is --
19 I mean, the action is going to be typically above the --
20 above the trigger and usually in line with the stock, if
21 not on -- in fact, maybe even above the stock.

22 Q. But a shooter with a pistol grip that protrudes
23 conspicuously beneath the action of the weapon as it is
24 -- as the term is defined in 30515, that person would
25 never be grasping the rifle from above the stock, above

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1 the action; is that right?

2 A. I can't think of a scenario like that.

3 Q. So here it is. You say in your experience, this
4 feature is the most prevalent feature of assault rifles
5 prohibited under the AWCA. That's paragraph 19. Okay.

6 You say later in paragraph 19 that a pistol grip
7 on an assault rifle enhances the ergonomics of the
8 weapon. What do you mean by that?

9 A. So ergonomics would be comfort factors, if you
10 will. If I've got to do various things with my weapon,
11 I'm going to have to shoot it, I'm going to have to
12 reload it, I'm going to have to aim with it, in my
13 experience, a pistol grip is a key factor on this style
14 of weapon that I want or maybe even a thumbhole stock.
15 If that's my -- if I want extra weight, then maybe I'll
16 have a thumbhole stock. But you get the same thing with
17 a pistol grip, and you have a little bit less weight.

18 So ergonomically, I'm able to potentially stay
19 up on target as I'm doing a mag exchange; whereas, if I'm
20 holding it more of a traditional rifle-style stock --
21 meaning like a normal Mini 14, there's no pistol grip on
22 it -- I'm going to have a different grip. And it may not
23 be as comfortable or quick to do that mag change.

24 Q. Got it. You know, I think because you brought
25 up the Mini 14, I think it might be helpful for us to

1 really quickly divert to page 9 of your report.

2 A. Okay.

3 Q. And those are two images of a Mini 14, correct?

4 A. Yes.

5 Q. And for simplicity's sake, I'm going to refer to
6 the rifle on top as Rifle A.

7 A. Okay.

8 Q. Okay. And the image of the rifle beneath that
9 is Rifle B. Okay?

10 A. Sure.

11 Q. Rifle A is an example of a Mini 14 that is not
12 an assault weapon, correct?

13 A. Yes.

14 Q. And that is because it lacks any of the features
15 listed in Penal Code Section 30515, correct?

16 A. Yes.

17 Q. And Rifle B is an assault weapon under Penal
18 Code Section 30515, correct?

19 A. Yes.

20 Q. And that's because it has at least an adjustable
21 stock and a pistol grip, and it may or may not have a
22 flash suppressor. We'll just say it does.

23 A. Sure.

24 Q. So when you were talking about a Mini 14
25 traditional, you were talking about the stock on the

1 image of Rifle A, correct?

2 A. Yes.

3 Q. And that's because you grasp the grip behind the
4 action above the rifle rather than below, correct?

5 A. Below the exposed portion of the trigger.

6 Q. Okay. Other than the pistol grip, adjustable
7 stock, and potential flash suppressor on Rifle B, these
8 rifles are functionally identical, correct?

9 MR. CHANG: Objection. Vague and ambiguous.

10 MR. BRADY: Let me ask you this. I'll strike
11 that.

12 BY MR. BRADY:

13 Q. These rifles shoot the same cartridge, correct?

14 A. Assuming it's a Mini 14, yes, because it's going
15 to be probably a .223. If that, for some reason, was a
16 picture of a Mini 30 --

17 Q. Yes.

18 A. -- it would be different.

19 Q. Let's assume that these are both Mini 14s
20 because you did, in fact, say Mini 14. That's why I
21 assume they are .223.

22 A. Yes.

23 Q. So these both shoot .223?

24 A. Right.

25 Q. They're both semiautomatic?

1 A. Right.

2 Q. They both can potentially have the same magazine
3 capacity, correct?

4 A. Yes. They will accept the same magazines.

5 Q. They will accept the same magazines?

6 A. Yes.

7 Q. Okay. So the fact that Rifle B has a larger
8 magazine in the -- in the image is not -- does not mean
9 that Rifle B accepts larger magazines than Rifle A,
10 correct?

11 A. Right. They should be interchangeable. Those
12 mags from A and B should be interchangeable.

13 Q. Got it. Okay.

14 So going back to the discussion on pistol grips.
15 So you said that you like a pistol grip because it gives
16 you control of the firearm. It's ergonomic. Is that
17 what you --

18 A. Yes.

19 MR. CHANG: Objection. Mischaracterizes the
20 witness's testimony.

21 BY MR. BRADY:

22 Q. Go ahead.

23 A. Okay. So it -- in my experience, it increases
24 the ergonomics. It's one of the features that would
25 increase ergonomics on the assault rifle. Because of the

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1 reload, I can keep sight picture. That's the aiming side
2 of it during the reload, and I just like the grip there
3 as opposed to the traditional rifle-style grip when I'm
4 shooting a centerfire semiautomatic rifle.

5 Q. So you find a pistol grip as defined in Penal
6 Code Section 30515 as being helpful to you in operating a
7 semiautomatic rifle?

8 A. Yeah. Specifically the AR-15 sort of family of
9 weapons.

10 Q. Got it. The next line, you say, "A shooter
11 using an assault rifle without a pistol grip may shoot
12 less accurately if the shooter's trigger hand is in an
13 awkward position for a significant amount of time."

14 What do you mean by that?

15 A. So there are certain weapons that are being sold
16 in California now that are being marketed as featureless,
17 and so they will put -- I don't know -- just
18 nontraditional grips onto, let's say, an AR-15. Instead
19 of your thumb being wrapped around a grip that protrudes
20 down below the action, some of these grips make you sort
21 of grip and your thumb is actually pointing up to the
22 sky.

23 There are a few other ones out there, and it
24 just dramatically changes your -- your, like, weapon
25 retention. Maybe even just comfort when you're shooting

1 for long periods of time.

2 Q. Are you referring to grips like the MonsterMan
3 grip?

4 A. That's one of the various products that's out
5 there. Yes.

6 Q. And you're -- you're saying that those grips
7 make it -- make it less controllable for the -- make the
8 rifle less controllable for the shooter?

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

11 THE WITNESS: I'm saying it may. For me, I
12 prefer the grip with a pistol grip.

13 BY MR. BRADY:

14 Q. Okay. And those sorts of grips are attempts to
15 bypass -- get around the assault weapon restrictions,
16 correct?

17 A. Yes.

18 Q. They have no market in states where there is no
19 assault weapon law to your knowledge, is there?

20 MR. CHANG: Objection. Calls for speculation.

21 THE WITNESS: Based on my sort of study of this
22 area, there are often -- you know, I've seen them called
23 New York and California style compliant grips or
24 something like that. So those are -- you know, here and
25 New York, we have assault weapon laws; and they wouldn't

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1 have really much, I guess, marketplace in the other 48
2 states unless maybe -- I don't know if Maryland, I think
3 they might have a law now, as well.

4 BY MR. BRADY:

5 Q. And that's because those grips are inferior to a
6 traditional AR pistol grip, right?

7 A. I don't know about inferior. They're different,
8 and people take a while to get used to a particular --
9 maybe an ergonomic change like that.

10 Q. And it could potentially make the -- those grips
11 can potentially make the shooter shoot less accurately is
12 what you're saying?

13 A. I've experienced several of these grips as they
14 come out. I don't find it comfortable to have my thumb
15 pointing up in the sky when I'm trying to retain hold of
16 the weapon.

17 Q. Okay. The next line, you state, "An assault
18 rifle lacking a pistol grip would not necessarily be less
19 accurate than an assault rifle with a pistol grip."

20 What exactly do you mean there?

21 A. So what I mean there is you could have a -- a
22 weapon that does not have a pistol grip, but it has
23 another feature somewhere on it that would trigger 30515
24 standards, too. Maybe it's a flash suppressor, maybe
25 it's another -- a folding stock or something like that.

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1 By in and of itself, you could probably -- with
2 a lot of training, you could probably overcome like my --
3 if I train a lot with one -- like you brought up the
4 MonsterMan. If I trained a ton and that's all I used, I
5 could probably get to the point where I'd be comfortable
6 with it and it wouldn't affect my score if I was shooting
7 on a paper target.

8 But what I've used since -- I don't know -- the
9 year 2000 is a pistol grip, so that's what I'm most
10 comfortable with. I believe my score would drop if I had
11 to use that only.

12 Q. Do you believe comfort when shooting is a
13 positive thing?

14 A. Yes.

15 Q. Okay. Moving on to adjustable stocks.

16 A. Do you have a page?

17 Q. Sure. Let me -- so you state on page 8 in
18 paragraph 27 that "folding or" -- "folding or telescoping
19 stocks and a rifle with overall length under 30 inches
20 aid in the concealability of the weapon;" is that right?

21 A. Could you give me the paragraph again?

22 Q. 27.

23 A. "Folding or telescoping stock and a rifle with
24 an overall length under 30 inches aid in the
25 concealability."

1 Okay. I see what you're speaking of.

2 Q. Now, back on page 6, you discuss telescoping
3 stocks.

4 A. Do you have a line?

5 Q. So paragraph 21. So you say, "Telescoping stock
6 is a stock that is shortened or lengthened by allowing
7 one section to telescope into another portion."

8 Is that right?

9 A. Yes.

10 Q. And on AR-15-style firearms, the buffer tube or
11 receiver extension acts as the fixed part of the stock on
12 which the telescoping butt stock slides or telescopes; is
13 that right?

14 A. Yes.

15 Q. On an AR-style rifle, how -- how much does it --
16 a stock telescope generally in your experience?

17 A. Three or four inches.

18 Q. Three or four inches?

19 A. Yeah.

20 Q. So could -- are you familiar with short barrel
21 rifle laws?

22 A. Somewhat.

23 Q. Do you know the definition of a short barrel
24 rifle under California law?

25 A. I can give it a shot if you want me to.

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1 Q. Sure. I can assist you if you want. I'm not
2 trying to quiz you.

3 A. Sure. No. I've testified as an expert at least
4 once on one of the cases --

5 Q. Okay. Go ahead while I look for it to confirm.

6 A. So generally on the short barrel rifle, the
7 things you're going to evaluation: Is the barrel less
8 than 16 inches? Is the overall length less than 26
9 inches?

10 Q. That's my understanding.

11 A. Yeah. So those are the rough parameters that
12 state and federal law would kick in if something like
13 that was found.

14 Q. And that's Penal Code Section 17170.

15 A. The definition, yes. The charging section is
16 possibly 33210.

17 Q. Okay.

18 A. Somewhere around there.

19 Q. Okay. So why couldn't somebody with an AR -- or
20 strike that.

21 So an AR must have at least a 16-inch barrel in
22 order to be legal, correct?

23 A. AR rifle.

24 Q. An AR rifle must have at least a 16-inch barrel,
25 correct?

1 A. Yes.

2 Q. So with a 16-inch barrel plus the length of the
3 receiver, could you possibly make a short barrel rifle
4 via the stock on an AR-style rifle?

5 A. I don't know. With an AR, it would be tough
6 because of the length of the receiver. I don't know if
7 I've done measurements on that specific question to be
8 able to answer really well.

9 Q. So it would -- you believe it would be tough?

10 A. With a 16-inch barrel, it would be tough.

11 MR. BRADY: So let me mark as Exhibit 98.

12 (Whereupon Exhibit 98 was marked for
13 identification.)

14 BY MR. BRADY:

15 Q. Turn to page 2 of Exhibit 98. There's a
16 schematic of an image of an AR-15 rifle; is that right?

17 A. Yes.

18 Q. And this rifle has what appears to be a 16-inch
19 barrel, correct?

20 A. Uh-huh.

21 Q. And then from the barrel, the receiver is about
22 8.375 inches, right?

23 A. Uh-huh.

24 Q. So between those two -- between the barrel and
25 the receiver, you're at 24.75 inches, right?

1 A. Right.

2 Q. So in order to be a short barrel rifle, the
3 stock -- there's only room for a one-inch stock, right?

4 A. Right.

5 Q. And behind the receiver, there's a buffer tube
6 inside there that you said that the stock telescopes on,
7 right?

8 A. Yes.

9 Q. How long is a buffer tube more or less? Because
10 I don't think this schematic provides that.

11 A. Yeah. It's going to be probably -- let's see
12 here. I don't know. It could be eight inches roughly on
13 the carvings, and then the rifle versions would be
14 slightly longer. And then a pistol buffer would be six
15 inches, maybe, depending on the maker. Because sometimes
16 you can have guys that will make them a little bit longer
17 on the pistols.

18 Q. So then with a 16-inch barrel, assuming that the
19 receiver is about 8-ish inches, as this indicates, do you
20 have any reason to not agree that a receiver is about
21 eight or so inches long?

22 A. No. That seems a good approximate.

23 Q. And then the buffer tube is another 6-ish inches
24 as you indicated?

25 A. Yeah.

1 Q. So we're at 30 inches with a standard -- with a
2 legal -- a non-short barrel rifle, AR platform rifle,
3 right?

4 A. Yeah. Right around 30 inches would be the --
5 sort of the -- the minimum, I guess, for an average AR if
6 it's got a telescoping stock.

7 Q. And you can own a rifle that's down to 26 inches
8 overall length, right?

9 A. Yes.

10 Q. So an AR cannot be a short barrel rifle via
11 the -- via the stock, right?

12 A. Well, so -- so far up to this point, we're sort
13 of blending assault weapon, and we're talking about short
14 barrel rifles. Assault weapons have to be semiautomatic.
15 Short barrel rifles can be single shot. If somebody had
16 created something, whether accidentally or intentionally,
17 that was capable of firing a single round, it might
18 somehow classify -- they basically could cap off that
19 buffer tube if they were able to just basically have a
20 pullback bolt action rifle. You wouldn't necessarily
21 need this style stock off the end or the buffer tube.

22 There are -- there's one or two weapon systems.
23 I think Olympic Arms, they made an AR pistol that didn't
24 have a buffer tube at all. And there are some other
25 newer technology AR-family weapons that are -- as opposed

1 to the delayed -- sorry -- the gas system that's on
2 this -- depicted here. There might be a direct
3 impingement scenario where they wouldn't necessarily need
4 the buffer or whatever.

5 And if they're only going to fire it once and
6 then manually manipulate it like a bolt, they might be
7 able to get away with no buffer tube or receiver
8 extension.

9 Q. But that would involve some pretty significant
10 alterations to the standard semiautomatic AR platform,
11 right?

12 A. Agreed. Yes.

13 Q. So your standard AR is going to be a few inches
14 over the short barrel rifle law, correct?

15 A. In most cases, I believe so.

16 Q. Okay. And so it would be legal for somebody to
17 acquire an AR with the stock in its shortest
18 configuration as long as it's over 26 inches, right?

19 A. If -- if the weapon was measured in the -- I
20 would say the shortest possible configuration in which it
21 will fire, which would be, in this case as depicted in
22 this picture, telescoped down, that should be fine. If
23 you had a folding -- like an AK, it's more common in an
24 AK will have a folding stock. Those weapons can get
25 really close to 26 inches. In fact, some versions are

1 under 26, so the AKs are a little easier to slip into
2 that short barrel rifle status --

3 Q. Sure.

4 A. -- than an AK would -- I'm sorry, than an AR
5 would.

6 Q. That's okay. I just want to stick with the --
7 the adjustable stock.

8 A. Okay.

9 Q. The telescoping. We'll get to folding in a
10 second.

11 A. Okay.

12 Q. Because you indicate in your report, right, that
13 telescoping stocks are an issue because they can be more
14 easily concealed. They're more easily concealable than a
15 rifle without a telescoping stock, right?

16 A. Yeah. If I have a -- a much larger -- like the
17 picture here is a carbine, which is usually around a
18 16-inch barrel with a telescoping stock. There are rifle
19 versions that might have maybe about a 20-inch barrels
20 and then a fixed stock that would be potentially slightly
21 longer than this, even when it was extended, perhaps. I
22 would have to lay the two weapons out and see.

23 But you might have a scenario there that would
24 be different. But, you know, this is a carving, so it
25 's -- obviously the law applies to not just AR-15s. It's

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1 a broad range of rifles.

2 Q. Yes. Understood. But here with respect to the
3 feature of telescoping stocks on an AR, you could buy
4 this carving in its shortest configuration, and it
5 would -- you could -- assuming you could purchase it
6 lawfully, right? It would not be a violation of the
7 short barrel rifle law?

8 A. It would certainly be over 26 inches. Yes.

9 Q. Okay. And so you could get that rifle in its
10 shortest configuration, so I'm asking how does a
11 telescoping stock affect this rifle's concealability if
12 you can buy it in its shortest configuration already?

13 A. Well, if it's -- if something's legal, it
14 doesn't mean it's not concealable. If I have a long
15 20-inch barrel rifle and then I have a fixed stock,
16 it might -- maybe it has an overall length of 35 inches
17 or something, but then I buy the one depicted here.
18 Maybe it's 30 inches overall. So there's really a
19 shrinkage of the weapon of about five inches because of
20 the variant of the AR platform -- or the -- between those
21 two systems or weapons within that family of weapons.

22 So the smaller one as depicted here would be
23 more concealable than the bigger sort of cousin with that
24 longer barrel, etcetera.

25 Q. But my point is, you can buy it in its shortest

1 configuration, right?

2 A. Yes.

3 Q. So that's as concealable as that particular
4 rifle gets in its shortest configuration, right?

5 A. Yes. That's a different question than you
6 asked.

7 Q. Okay. I apologize if I wasn't there.

8 A. That's okay.

9 Q. So that is -- in its shortest configuration,
10 that's as concealable as it gets, correct?

11 A. Yes. Yeah. That would be right about 30 inches
12 unless they made some potentially illegal modification to
13 the barrel or some mechanical change perhaps to the
14 buffer system or they bought a whole new upper or
15 something.

16 Q. And so in that case, the adjustable stock -- the
17 telescoping stock really only lengthens the rifle; is
18 that fair to say? If you're buying it at a legal
19 length -- here, 30 inches -- and that's its shortest
20 configuration with the stock completely collapsed as much
21 as possible and it's a legal length rifle, then the
22 telescoping stock only serves to lengthen the rifle three
23 to four inches; is that fair to say?

24 A. I don't know if I've ever -- it's sort of a
25 reverse measurement than the way I would normally do it.

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1 Possibly. That's, I guess, my best answer for that.

2 Q. Let me just help you out.

3 A. Sure.

4 Q. So it's as concealable as it's going to get in
5 its shortest configuration as you purchased it, right?
6 30 inches?

7 A. Right around 30 inches.

8 Q. So that's its shortest configuration.

9 A. Right.

10 Q. It has a telescoping stock, but then you said
11 telescoping stocks on average change three to
12 four inches. It's only growing three to four inches from
13 its shortest configuration, which is legal -- or you
14 could buy a fixed stock at 30 inches, right?

15 A. Yes.

16 Q. And so you wouldn't run afoul of the assault
17 weapon law?

18 A. Sure. Right.

19 Q. So you can have a gun that is just as
20 concealable as this gun at 30 inches, right?

21 A. Right. But when you speak about concealability
22 like I did in page 8, No. 27, if I have the ability to
23 shrink my weapon down, it aids in my concealability. If
24 I'm going to conceal it under a long coat or in a bag or
25 something -- like a backpack, and I can collapse it down

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1 to right at 30, whether it be a fixed or telescoping
2 stock version, making something smaller, it makes it more
3 versatile if I'm going to try to get it into a -- maybe a
4 -- I don't know -- a school zone or something like that.
5 It gives flexibility as far as the shooter. They can
6 customize it to their body fit, as well.

7 Q. But my point is that you can buy with a fixed
8 stock at 30 inches, right?

9 A. Yes.

10 Q. So it's already as concealable as it's going to
11 get with the fixed stock or -- whether it has a fixed
12 stock or an adjustable stock, at 30 inches, that's as
13 concealable as it gets?

14 MR. CHANG: Objection. Asked and answered.

15 THE WITNESS: So larger frame shooters may
16 choose to have longer weapons because of their body type.
17 They may seek a telescoping stock variant to -- when I
18 say concealability, that might be because they have some
19 bad intent to do. Get it into a building or something
20 like that.

21 Granted, you can buy a weapon with a fixed
22 stock, and it's locked in at 30 or 31 inches. Whatever
23 it's going to be. But having the freedom to telescope it
24 down and back it off so that it's longer to fit the
25 shooter's needs, it's an advantage.

1 BY MR. BRADY:

2 Q. You don't think that a change of three to four
3 inches is fairly negligible when you're talking about
4 concealment of a firearm?

5 A. No. I think it's kind of significant. The AR
6 platforms come in various lengths. Barrel lengths are
7 around 16 for the standard ones. And then if you go down
8 to the short barrel rifle or machine gun versions,
9 they're 14-and-a-half-inch barrel, and then a 10- or
10 11-inch barrel, too. Different stages of those upper
11 receivers.

12 The smaller you get, the -- those chunks taken
13 off the end of the barrel, as you're -- if you're
14 clearing houses, like what I do for a living sometimes,
15 having the shorter barrel will aid you in not giving away
16 your position if you're creeping around trying to clear a
17 house. That is an advantage. I'm not going to give
18 myself away by having a long barrel sticking out in front
19 of me.

20 Q. So there are -- you have an adjustable stock on
21 your rifle?

22 A. On my M4, yes.

23 Q. So they are of -- why do you have an adjustable
24 stock on your rifle?

25 A. Why do I?

1 Q. Yes.

2 A. The department issued me that rifle, and it had
3 it when I got it.

4 Q. Would you prefer a rifle that did not have an
5 adjustable stock?

6 A. No. I'm happy with it having an adjustable one
7 because I have different levels of body armor, thickness
8 levels. So between the heaviest armor that I wear for
9 search warrants, it's definitely thicker, and I have to
10 put it on a different setting. Otherwise it causes me
11 problems.

12 Q. Okay. And why -- why do you need different --
13 different lengths of the rifle? Why do you need to
14 change the stock to accommodate the body armor? Why
15 can't it just be a fixed stock?

16 A. Ergonomics because sometimes I have a helmet on.
17 Sometimes I have Level 4 body armor on with a rifle
18 plate. I'm very -- my girth increases, if that makes
19 sense. So I need to shorten the stock so I can have the
20 same sight picture, the same eye relief, etcetera.

21 So if I have a T-shirt on, I might change the
22 position because I don't have, you know, two or
23 three inches of body armor on.

24 Q. So you're saying that the length of stock can
25 affect your ability to -- to effectively use the firearm?

1 A. In an ergonomic sense, yeah. You're better off
2 customizing the length of the stock to fit your body
3 type. You might have somebody that has really short
4 arms, and they may need to go as short as they legally
5 can go. Somebody that's really long, over six-foot
6 something, they're going to probably want that stock
7 backed out because they're likely to have longer arms,
8 and that's just what fits their body type better.

9 Q. So stock fit is important in being able to shoot
10 properly?

11 A. Yes.

12 Q. And if a rifle does not have an -- an adjustable
13 stock is meant to, like you just said, fit a particular
14 shooter whether it be their standard arm length or if
15 they have a heavy coat on versus a T-shirt, right?

16 A. Yeah. Those things would be factors.

17 Q. Or teaching a younger person who's smaller or
18 teaching somebody else who's of a different size how to
19 use a firearm. That might be a factor in wanting an
20 adjustable stock?

21 A. Yeah. Versatility. Like I said, the department
22 issues us these weapons. We all get the same weapon
23 regardless of our height and weight and our length, so
24 it's a practical reason.

25 Q. Without an adjustable stock, a person who wants

1 to have the proper stock fit, what would they do to find
2 a rifle that has the proper stock fit?

3 A. They may try the one that came with it and see
4 if it -- if it's too long or too short for them, they may
5 add a pad to the end of their stock if their stock will
6 accept different thickness pads. They may just go
7 outside the box and buy a whole other company's stock
8 that fits their rifle.

9 I'll use an example of a company that a lot of
10 people use. MagPole. They make various stocks for the
11 AR platform. There's probably -- I don't know -- five or
12 six different variants of their stocks, and some of those
13 versions have different thickness. Buffers -- I'm sorry.
14 Not buffers, but pads for the end of the stock, and some
15 of those are fixed stocks. Some of them are telescoping
16 stocks.

17 Q. So you can change the length of your stock if
18 you want whether it has a telescoping stock or not?

19 A. Generally, there's some variation -- some --
20 there's a lot of options is what I'm trying to say, I
21 guess, for a person. If you want a fixed stock or a
22 telescoping stock, there are a ton of options out there
23 in the marketplace.

24 Q. Well, people can't have telescoping stocks under
25 the AWCA, so that's my question is: What are the

1 alternatives? And I think you just laid out some of
2 them. People can figure out certain -- they can put a
3 pad on or try to find a stock that fits them, buy a
4 custom stock.

5 Wouldn't it just be a whole lot easier to have a
6 stock that you can move around to adjust to your -- your
7 shoulder length?

8 A. A whole lot easier in what sense?

9 Q. When you're -- to get the proper shoulder fit.

10 A. If that was allowed by law, which in some cases,
11 it is. A .22 rifle that didn't have Category 1 or 30510
12 markings, .17 caliber, those are still allowed. But if
13 it's a centerfire without a fixed mag, it might get
14 classified as a 30515 or a Category 3 assault rifle.

15 Q. Because those three to four inches on an AR are
16 increasing its concealability.

17 Is that the sole reason that the telescoping
18 stock is --

19 MR. CHANG: Objection. Lacks foundation. Calls
20 for speculation.

21 MR. BRADY: Good objection, but I need to finish
22 my question.

23 MR. CHANG: I just wanted -- it looks like -- it
24 looked like the witness was about to answer, so I was
25 trying to thread the needle right there. Please finish.

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1 MR. BRADY: I know. I appreciate it.

2 Can I have that read back?

3 (Whereupon the record was read back.)

4 BY MR. BRADY:

5 Q. -- is objectionable under -- in your -- in your
6 analysis?

7 A. So your question is solely to the AR-15
8 platform?

9 Q. Sure. Let's start with that.

10 A. Okay. So the AR-15 platform -- because of its
11 design as depicted in Exhibit 98 is somewhat limited in
12 the -- the concealability, and the -- I guess the
13 benefits of a telescoping stock on that platform. Other
14 weapon systems that are, you know, not this one
15 potentially, the telescoping stock might be more of a
16 factor.

17 So this -- No. 27 on page 8 is a broad statement
18 that's not strictly talking about the AR platform. So
19 other weapon systems may be more than a three- to
20 four-inch concealability factor.

21 Q. So you're talking about, for example, the, like,
22 wire stocks that telescope into, like, the stop of an AK
23 where it will collapse all the way to the receiver?

24 A. I don't know if I've seen the wire types on an
25 AK, but the ones I'm thinking of are on some of the more

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1 odd ball ones like a -- a Feather Industries -- they do
2 have a wire, like the calicos. They have more like a
3 double wire almost like a --

4 Q. And it collapses all the way to the action,
5 right?

6 A. Yeah.

7 Q. And there's no buffer to it?

8 A. Correct.

9 Q. Okay. So would it be fair to say that those
10 rifles are in a different category with respect to the
11 significance of a telescoping stock than AR platform
12 rifles?

13 A. Yeah. I would say the non-ARs are probably
14 certainly more concealable because of their telescoping
15 stocks and their overall mechanics of their design. The
16 AR is the least benefitted by a telescoping stock under
17 the majority of the builds out there.

18 Q. Are you aware of any incidents where a bad guy
19 has utilized a telescoping stock to smuggle an assault
20 rifle into a location where he should not have had it or
21 where we don't want him to have it?

22 A. So I know there was a shooting at the LA
23 airport. I don't know what the terms of him getting the
24 weapon into the system were, but the incident happened
25 right around the bag check or magnetometer area where the

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1 TSA guys, you know, check things. That was -- that's an
2 incident of something like that happening.

3 There have been various incidents that have
4 happened at schools. The one I can think of was in Santa
5 Monica, but the guy basically got out of a vehicle and
6 then walked right into the campus and started shooting
7 folks, so that wasn't necessarily like a smuggle in.

8 The Aurora, Colorado, scenario, he came in
9 through, I think, a back door in the theater with at
10 least a shotgun, a pistol, and a rifle. I think the
11 shotgun may have been in a duffel bag or something like
12 that, but the AR I think he had in his arms or on a
13 sling.

14 Q. And the shotgun did not have an adjustable
15 stock?

16 A. I don't remember the details on the shotgun.

17 Q. Okay.

18 A. I can probably look at my report. I may have
19 mentioned some of the shootings. That might jog my
20 memory. I'll flip through here. Okay. So I'm looking
21 at page 11. So lines -- so page 12, line 7 which is also
22 E, that was the one I mentioned there.

23 Q. Yeah.

24 A. Aurora, Colorado. I don't have a lot of details
25 on the next one.

1 Zawahri, that's line 13, letter G. That's the
2 one at Santa Monica. He walked in. The rest of these
3 were, for the most part on page 12, ones that happened,
4 and I don't know the circumstances of how -- if they came
5 in over with them or if they had them broken down or
6 collapsed.

7 Q. Yes.

8 A. Those kinds of things.

9 Q. So "broken down," what do you mean by that?

10 A. Broken down would be like separating the upper
11 and the lower on an AR if that was the weapon that was
12 involved. Whereas something that was collapsed or
13 telescoped down would be still operational.

14 Q. It would not be operational if the upper was off
15 the lower?

16 A. Right.

17 Q. How long does it take to put the upper back on
18 the lower?

19 A. If you know what you're doing, a few seconds.

20 Q. How long does it take to adjust the stock to
21 your proper shoulder fit?

22 A. You may not have to adjust it. It may already
23 be set there if you've left it in the last comfortable
24 position.

25 If for some reason you had to really close it

1 all the way down and then adjust it out, it -- you know,
2 you might feel it as you're backing the stock back. One
3 click, two clicks. You'll know if you have a certain
4 setting that you always go to. So it might be a second
5 or two for that.

6 Q. Okay. So there's a couple seconds difference in
7 a -- between a telescoping stock and just separating the
8 upper from the lower and putting it back on?

9 A. I mean, it might even be the same time depending
10 on what's -- when you put that gun back together, you're
11 going to have to charge it. You're probably going to
12 have to have loaded the magazine. So the making it
13 operational action versus just adjusting the stock.
14 Getting it operational again when you factor in inserting
15 the mag, charging the handle, and attaching, if it's an
16 AR, the upper and the lower with the two pins, that's
17 going to be more time than adjusting the stock.

18 Q. Okay. So you can't have a -- a magazine already
19 in the mag well when the upper is off the lower for an
20 AR?

21 A. You could, but people might experience issues
22 when they're trying to mate the upper and the lower
23 because of a malfunction. It would be cleanest,
24 mechanically speaking, if you attach the upper and the
25 lower, insert the mag, and then did the charge on the

1 bolt.

2 Q. And if an upper was off a lower, that would
3 basically cut the size of an AR in half, right?

4 A. Pretty close to it because you could lay it on
5 top of each other. You might be down to -- instead of
6 30 inches, you're going to be down to -- I don't know.
7 You could shave off 12 inches, maybe, or something from
8 the overall length and put it in a backpack or something.

9 Q. And when an upper is separated from the lower on
10 an AR, it is not considered an assault weapon; is that
11 correct?

12 A. Correct. For registration purposes right now.

13 Q. Well, if somebody was walking, you know -- for
14 registration purposes, if somebody has an upper separated
15 from the lower in their house, they are not in violation
16 of the AWCA; is that correct? Assuming it's not a Cat 1
17 or a Cat 2.

18 A. Right. Well, if their upper and lower are
19 separated, as I said earlier, the semiautomatic wouldn't
20 apply, right? So separate upper and lower shouldn't be
21 based on your receiver question. It's kind of the same
22 thing.

23 Q. 30515 also requires it be a semiautomatic rifle,
24 right?

25 A. Yes.

1 Q. Okay.

2 A. Yeah. So, yeah, separated upper and lower. I
3 wouldn't advise anybody to arrest a non-prohibited
4 person -- meaning an average citizen, gun store owner,
5 whatever -- for a separated upper and lower if it's a
6 16-inch barrel. And then when those things get
7 assembled, it's more than 26 inches; so there's no short
8 barrel rifle issues or any of that stuff.

9 Sean, can we do a five-minute break?

10 MR. BRADY: Any time you want. Off the record.

11 (Recess from 2:14 p.m. to 2:22 p.m.)

12 BY MR. BRADY:

13 Q. Go back on the record. We -- let's take a look
14 at page 8 of your report, paragraph 28.

15 You say, "Flash suppressor may increase
16 efficiency while the shooter is firing since the
17 shooter's vision is less likely to be impaired by excess
18 flash in low light settings."

19 Is that right?

20 A. Yes.

21 Q. So is a flash suppressor only relevant -- the
22 effect of a flash suppressor only relevant in low light
23 conditions?

24 A. I would say it's most relevant because the --
25 I'll call it the ball of fire at the end of the barrel is

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1 most visible the darker things get.

2 And in terms of flash suppressor, the way the
3 definition has always sort of been focused, it's about
4 the shooter's vision being affected as opposed to someone
5 other than the shooter being able to see the shooter.
6 Like a muzzle blast from a distance. It's more about
7 what can the shooter see or not see because of the device
8 on the end of the barrel.

9 Q. So a flash suppressor under California law would
10 not necessarily, anyway, affect the muzzle -- the
11 visibility of the muzzle flash by people being shot at;
12 is that right?

13 A. Could you rephrase that question?

14 Q. Sure. If you're downrange on the wrong end of
15 the gun --

16 A. Okay.

17 Q. -- okay, a flash suppressor will not make the
18 muzzle flash less visible to you, right?

19 A. Depending on your angle to the shooter, it may.
20 If you're off to the side, you're probably going to be
21 able to still see the shooter a bit. If you're dead on,
22 it may be less of -- I don't know how to explain this.
23 It may not matter if there's a device on the end of the
24 barrel or not.

25 Q. Because it's dead on.

1 A. Well, there's that, too.

2 Q. You're on the wrong end of the gun.

3 A. Yeah. Let's just say in a scenario of sustained
4 fire -- let's say law enforcement had to respond to a
5 shooting. They might be able to see somebody easier in,
6 let's say, dusk or something with no flash suppressor
7 possibly. It depends on the mechanics of the device.
8 The Penal Code and then our regs haven't really spoken to
9 what the -- the victim potentially or outsiders could see
10 on the -- it would be a more complicated definition to
11 write, so I'm not sure. Maybe that's why they never went
12 there.

13 Q. So the definition of flash suppressor, as you
14 understand it under California law, is solely concerned
15 with the shooter's field of vision; is that fair to say?

16 A. Yeah. For the most part. We get into a little
17 bit more detail in the recent regulations about
18 registration on -- if there's a hybrid-type device,
19 etcetera. Yeah.

20 Q. And in paragraph 22 on page 7, the definition of
21 flash suppressor that you're using is again from --

22 A. 5471 of --

23 Q. Yeah. I'm just trying to find the Exhibit
24 number.

25 A. Yeah. Let me find it here.

1 MR. CHANG: Exhibit 94?

2 MR. BRADY: Exhibit 94, yes.

3 THE WITNESS: Yeah. It would be page 2, letter
4 R; and then it continues to page 3.

5 BY MR. BRADY:

6 Q. Okay. And so you state on page 7 at the end of
7 paragraph 22 that the rifle with the flash suppressor
8 should be easier to shoot in low light conditions because
9 the shooter should have less problems aiming accurately;
10 is that right?

11 A. Yes.

12 Q. Is that a good thing or a bad thing?

13 A. Well, if you're -- if you are the shooter, you
14 want to have less impediment or impede to your vision,
15 so you might -- like, my duty machine gun has a flash
16 suppresser on it, as do most military guns issued by the
17 United States, so that your vision isn't temporarily
18 obscured or you don't get sort of a night blindness
19 scenario where your eyes have to readjust.

20 Q. And so if a person were using a rifle in low
21 light conditions for legitimate purposes, say
22 self-defense in the home, would it be a good thing that
23 they could shoot easier and more accurately in low light
24 conditions?

25 A. A legitimate use of a rifle -- well, whether it

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1 be legitimate or illegitimate, the shooter is going to
2 have probably a better chance of hitting what they're
3 shooting at. Regardless if it's a civilian -- you know,
4 non-prohibited citizen or a criminal. There's an
5 advantage to it at the end of the day.

6 Q. All right. So in paragraph 24, you say that the
7 challenge features described in Penal Code Section 30515
8 on assault rifles, and those features are the ones we
9 just went through as far as the pistol grip, the
10 adjustable stock, and the flash suppressor, right? And
11 granted, there's others; but those are the three that
12 we're mostly talking about here.

13 A. Right. You called it adjustable. I would call
14 it telescoping stock.

15 Q. Correct. Well, there's telescoping and folding,
16 right?

17 A. Correct.

18 Q. And those are two different animals, if you
19 will, with respect to your -- well, I guess even
20 telescoping can be broken into two categories as we
21 already found: One that will allow the rifle to be
22 shortened down to the receiver and then the AR
23 telescoping stock which cannot be as shortened. And so
24 those are sort of two different types of concerns; is
25 that fair to say?

1 A. Yes.

2 Q. So we're talking about those -- we're talking
3 about those features when in paragraph 20, you say that
4 they may, quote, aid -- sorry. Let me rephrase that.
5 That, quote, "May aid the shooters in being potentially
6 more effective and efficient while shooting people."

7 Is that correct?

8 A. Yes.

9 Q. Okay. So as we just went through, and I believe
10 you said with respect to the -- all of those things --
11 the flash suppressor in low light, the adjustable stock
12 for proper shoulder fit, the pistol grip for the
13 ergonomics and control -- those things would also aid a
14 person shooting people legitimately in self-defense,
15 right?

16 A. Potentially, yeah.

17 Q. You have these features on your rifle, right?

18 A. Right.

19 Q. And you are only shooting people in legitimate
20 self-defense, right?

21 A. Yeah. It might be a dog or it might be a person
22 that has a weapon. Something like that.

23 Q. You're only taking life if there is a legal,
24 justified reason to do so, right?

25 A. Correct.

1 Q. And your department use of force policy is -- is
2 what? Can you explain?

3 A. Yeah. I'll give it a shot. I'm not the
4 department's expert.

5 Q. What is your understanding of when you are able
6 to use up to deadly force?

7 A. If you boil it down, it's basically to prevent
8 serious bodily injury to myself, other law enforcement,
9 or other members of the public that might be subject to
10 an immediate attack. Somebody may be swinging a weapon
11 or throwing a brick or shooting at one of us, and there's
12 nothing else that can potentially stop that from
13 happening. So you have to stop the threat by potentially
14 using lethal force against the aggressor.

15 Q. Is that standard any different than for a
16 non-law enforcement member of the public, to your
17 knowledge?

18 A. There's -- there's a specific Penal Code that
19 breaks down justified homicide, and there might be a
20 separate exemption that is carved out for law enforcement
21 versus civilian. I'm not an expert on that area, so I
22 don't want to comment, but I think there might be some
23 differentiation, at least a separate exemption broken
24 down there.

25 Q. Generally, you're only using lethal force to

1 protect a threat to life or great bodily injury; is that
2 fair to say?

3 A. Yes.

4 Q. Have you ever had to use lethal force?

5 A. No.

6 Q. Have you ever discharged your weapon in the line
7 of duty towards a human being?

8 A. No.

9 Q. Have you ever pointed your gun at anybody in the
10 line of duty?

11 A. Hundreds of times.

12 Q. Hundreds of times.

13 Why didn't you shoot in any of those hundreds of
14 times?

15 A. I didn't feel a threat that would justify me
16 pulling the trigger.

17 Q. Was that -- out of those hundreds of times, was
18 it with your pistol or with your rifle or both?

19 A. Both.

20 Q. Do you notice a difference in the response from
21 the suspects when you're pointing a pistol versus a rifle
22 at them in their reaction to you?

23 A. No, not really. I would say in every occurrence
24 that this has happened, I've usually had one or more
25 partners with me also doing the same thing, and they may

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1 have had a pistol or a rifle whereas I had the opposite.
2 Sometimes it was all of us had rifles. Sometimes all of
3 us had pistols.

4 So when you're in that moment, I've never
5 noticed someone all of a sudden their eyes get bigger
6 than they already are if somebody with a rifle walks into
7 the room and there's already a Glock or two pointed at
8 them. I've never noticed that.

9 Q. Have you ever had a situation where a suspect
10 was not complying because they didn't realize you had a
11 gun out?

12 A. No.

13 Q. No?

14 A. Huh-uh.

15 (Pause on the record.)

16 BY MR. BRADY:

17 Q. Okay. So we went through the features that are
18 restricted on a semiautomatic centerfire rifle that does
19 not have a fixed magazine as defined in California Penal
20 Code Section 30515 that you describe in your report.
21 I'll note that we did not go through thumbhole stocks
22 because would you agree that those are essentially pistol
23 grips?

24 A. Agreed.

25 Q. And forward pistol grips are essentially the

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1 same as pistol grips?

2 A. Agreed.

3 Q. So that is why we did not discuss those, but
4 they're implicit in the pistol grip analysis.

5 And in discussing those -- correct me if I'm
6 wrong, but it is my understanding that you believe that
7 each of those features is beneficial to the user of a
8 firearm; is that fair to say?

9 A. Yes.

10 Q. But is it then your opinion that because those
11 features are beneficial to bad guys as well as good guys,
12 that that's why they should be restricted?

13 A. Well, it's not really up to -- sorry.

14 MR. CHANG: Objection. Lacks foundation.

15 THE WITNESS: It's not really up to me to say
16 what is permissible, per se, under state law. The
17 legislature sets that up. So I'm not sure if that's
18 responsive to your question.

19 BY MR. BRADY:

20 Q. I'm not asking your opinion on the law unless
21 you want to give it. I was planning to not put you in
22 that position because I'm friendlier than that, but I
23 understand that you're dealing with the law that is in
24 front of you, but you are making the -- the case for why
25 each of these features in Penal Code Section 30515 is

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1 problematic from the state's view. From a public safety
2 perspective, right?

3 A. Yes. So I'm making the point that each of those
4 features, in my eyes, has some kind of advantage that it
5 gives to the shooter. It's not necessarily, you know --
6 bad things can happen with guns.

7 We have the so -- on page 9, we have Rifle A and
8 Rifle B. They both fire the same ammunition. They're
9 both semiautomatic. The magazines are interchangeable.
10 Rifle B has some of the features. I wouldn't want to get
11 shot by either Rifle A or Rifle B. And depending on the
12 skill level of my opponent, it may not make a difference.
13 But the average person picking up Rifle A or Rifle B, I
14 would probably prefer them to have Rifle A.

15 Q. Why?

16 A. Because they -- Rifle A lacks a few ergonomic
17 features that I would want myself, so doesn't have a
18 flash suppressor. If this guy is shooting at me in a low
19 light situation, I do want him to be maybe -- his vision
20 to be impaired probably because there's no flash
21 suppressor there.

22 Maybe this person stole the weapon and maybe
23 their arms are so short that they're having a hard time
24 shooting or aiming this thing, so I don't necessarily
25 want them to be able to collapse the stock down or to,

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1 you know, make the weapon smaller or to conceal it or
2 something like that.

3 The pistol grip, earlier I gave examples of
4 magazine exchange being slightly faster for me which
5 could apply to another person. With that pistol grip,
6 they can keep their gun on site, which might be aimed at
7 me. I would want them to come off of target while
8 they're trying to fumble to get their mag exchange and
9 then come back up and find me to start shooting at me
10 again.

11 So the Rifle B, to me, has tactical advantages
12 over Rifle A. So that's my point in calling out those
13 features as perhaps why the legislature called out
14 certain features.

15 We didn't -- in California law, we never worried
16 about bayonet lugs. The federal law did at one point.
17 Rifle B -- the picture has a bayonet plug, but I didn't
18 it speak to it. I'm not aware of any people getting
19 bayoneted, so -- but other things do happen. A lot of
20 shootings happen with, you know, various weapons.
21 Rifle A and B, there's a lot more Rifle As out there in
22 the general population. They're still legal for sale
23 just like that.

24 Q. And features on Rifle B that make it easier for
25 a bad guy to use would likewise make the rifle easier for

1 a good guy to use, right?

2 A. Potentially, yeah. It's a double-edged sword.

3 Q. And by taking away the features from Rifle B,
4 that could potentially contribute to a better fit of
5 firearm for a user. The state is basically saying that
6 the general public should have less effective weapons
7 than -- because the most effective ones could be misused
8 by criminals, right?

9 MR. CHANG: Objection. Lacks foundation.
10 Speculative. Argumentative.

11 THE WITNESS: Since 1989, the legislature has
12 called out certain military-style weapons. Albeit,
13 they've been semiautomatic ones. Most of the ones called
14 out in 30510 have been ones that had one or more of the
15 features on Rifle B. Some of them have multiple features
16 like that.

17 The 30510 sort of scheme for registration and
18 the control and lack of sales of those after that lawsuit
19 was settled in 1991, I think, didn't quite work, so the
20 legislature sort of reinvented the wheel and went down
21 the path of what the federal government had done by
22 calling out certain generic characteristics.

23 Probably neither of these is a perfect sort of
24 fix to what they perceive is a problem. They obviously
25 have evolved over time with the Senate Bill 880 being the

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1 most recent version of the assault weapons changes over
2 time. The weapons over time are changing, and the laws
3 are slowly changing behind them, sometimes ten years or
4 later after a significant change has occurred like the
5 bullet button sort of change.

6 BY MR. BRADY:

7 Q. So you gave some examples of why you would
8 prefer a bad guy shooting at you having Rifle A versus
9 Rifle B and that had to do with maybe they stole it, so,
10 you know, the stock doesn't fit them right. That makes
11 sense. You know, if it's in low light, it doesn't have a
12 flash suppressor, they may lose their night vision and
13 not be able to see you for the follow-up shot. Okay.

14 But in a general daytime situation with an
15 average -- average build person with Rifle A versus
16 Rifle B, how much of a difference do these features
17 really make for accuracy?

18 A. Could you discuss the range of which -- let's
19 say two people squared off. One with Rifle A and one
20 with Rifle B.

21 How far apart are they?

22 Q. Why don't you tell me what the difference would
23 be.

24 A. If the shooters were -- I don't know -- 50 to
25 100 yards apart and shooting each other, the shooter with

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1 Rifle B would probably want to have the stock extended
2 out like in the picture because they're going to want to
3 have the best and most accurate shot. The longer -- with
4 the stock extended like this, it's going to mimic the
5 stock on Rifle A. The advantage that this weapon here
6 will have is during the reload, they're going to have the
7 pistol grip. They can keep the weapon up and roughly
8 pointed at the target when the mag exchange happens --

9 Q. You can't do that with Rifle A?

10 A. You can. I find it troublesome with this
11 specific weapon. I've fired both versions of this the
12 department owns. And to me, it's just harder to reload
13 this while keeping the weapon up.

14 Q. Have you ever done a side-by-side comparison
15 of -- of Rifle A and Rifle B? Obviously not those
16 specific rifles, but a -- a featureless rifle, which is
17 Rifle A, and a featured assault rifle, which is Rifle B?

18 A. Yes.

19 Q. You've done a side-by-side comparison?

20 A. Yes. Folsom prison. We did it there with a
21 bunch of other guns that we had laid out for a training
22 day to get people accustomed to as we seize these, "Hey,
23 you're going to find these weapons. And some will be
24 loaded. Some will be not loaded." We've done it with
25 AKs so that people are used to shooting and hearing the

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1 sounds of certain weapons if they're fired at you.

2 Submachine guns, machine guns, etcetera.

3 So our agents -- we try to train them so that
4 they can safely -- when they recover weapons, they're
5 making sure they're clearing the chamber, making sure
6 we're not taking loaded guns home -- or back to the
7 office for our evidence technicians to have an accidental
8 discharge or things like that. So there's a good reason
9 to have these out there and shoot various ones.

10 We have a -- one that looks a lot like Rifle B,
11 and then there's a one that looks a lot like Rifle A, and
12 I think there's one or two other variants that are sort
13 of in between with, like, a flash suppressor attached,
14 and then there's another version that has some other
15 change to it. I think it might be stainless or
16 something.

17 Q. And you shot those side by side on the same day
18 at the same targets?

19 A. Yeah. Yeah.

20 Q. And what was the difference in your groupings?

21 A. It was -- I don't know that it was a groupings
22 difference. It was my speed to which -- it wasn't a
23 timed test, per se, but it was how quickly could I fire
24 enough rounds to stop the threat. That type of thing.

25 If I was doing two rounds, mag change, put the

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1 new mag in, charge it, and then two more rounds, it was
2 three or four seconds slower with the rifle that was
3 similar to Rifle A.

4 Q. Okay. So then your effective rate of fire was
5 not as -- was slower than the actual rate of fire.

6 Is that fair to say with Rifle A versus Rifle B?

7 A. Yes. Rifle A, I was a little bit slower. The
8 distance in which we were shooting was seven yards.

9 Q. Okay.

10 A. So the distance -- it was negligible.

11 Q. So accuracy did not change between the two?

12 A. I didn't notice a much larger pattern.

13 Q. It was the magazine change that made the
14 difference there?

15 A. Yeah. The speed in which I could reload and
16 just do similar drills that we do with our M4s and stuff.
17 We were just having the agents mimic that.

18 Q. And that was because of the pistol grip, right?

19 A. That's what -- yeah. I found that to be more
20 similar to my M4 which I've used for many years, so it
21 just seemed more natural.

22 Q. Okay. So between Rifle A and Rifle B, when you
23 did a side-by-side comparison, you weren't really looking
24 for accuracy because you were at short distances, right?
25 But -- so accuracy was really -- couldn't be

1 distinguished at that...

2 A. Yeah. At that short range, seven yards, it's
3 not going to make a difference.

4 Q. So on what do you base your opinion that the
5 features on Rifle B increase accuracy on a rifle?

6 A. So I was in a -- I was in a scenario which I
7 didn't have people shooting back at me. I had -- I
8 basically could go as fast as I felt comfortable going.
9 I was at my own pace, in other words. So if I'm going to
10 be in a stressful situation trying to shoot, reload,
11 shoot again, and repeat that cycle as long as I needed
12 to, Rifle B would be my choice. I might be 10 percent
13 more effective because especially in low light with the
14 flash suppressor change. And when I say effective, I
15 mean quicker and potentially more accurate.

16 Another factor with Rifle B -- it wouldn't come
17 to play with a 50- to 100-yard or longer -- but if I'm up
18 close, say seven yards, I could probably even fire this
19 thing with no stock, meaning it's been folded to collapse
20 it down, and I could still probably hit the target with
21 all my rounds, and just coming up like this without
22 actually a brace or a sling on there.

23 I'm going to -- I may lose a little bit of
24 accuracy there, but the -- the difference being is I
25 would be sort of simulating coming out from maybe -- I

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1 don't know -- a trench coat or some other -- maybe out of
2 a bag, and I didn't see the need at that point to flip
3 the stock out. I just wanted to start shooting. The
4 concealability factor there would override the accuracy
5 at a close range.

6 Does that make sense?

7 Q. Yeah. I believe so. It makes sense. I don't
8 know if it was completely responsive to my question about
9 why you think the features -- or what you base your
10 opinion that the features make Rifle B more accurate than
11 Rifle A, because that is your opinion in your report,
12 correct?

13 A. Right.

14 Q. So I'm just wondering, do you -- do you base
15 that opinion that Rifle B is going to be more accurate
16 than Rifle A on just your personal preference for these
17 features or on testing that you've seen? That's what I'm
18 trying to get at.

19 A. I would say, like, the only time I've done that
20 side by side with weapons similar to Rifle A and Rifle B
21 would be that one time. I've fired a weapon like Rifle A
22 a few other times, but we didn't have the Rifle B clone
23 out there, and it was sufficient. I was able to hit, you
24 know, things on target, but I just felt like I was
25 more -- when the stock would be extended, I was more

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1 comfortable shooting Rifle B. And if I had to shoot for
2 some kind of a score between the two and a timed score, I
3 think I'm going to do better with Rifle B.

4 Q. Okay. How much better, do you think?

5 A. Perhaps 10 percent. Something like that. Each
6 of these features maybe is going to give you a few maybe
7 percentage points of improvement. Small little things.
8 The professional or semipro shooters out there, they do
9 all kinds of things to their guns, whether it be handgun
10 or long gun, from grip wraps so they get a perfect grip
11 and different, you know, carvings on the wood stocks and
12 all this other stuff.

13 So little ergonomic differences make a
14 difference if you're really into having a high score if
15 it's a, you know, paper target scenario where you're
16 shooting metal plates and, you know, things like that at
17 a competition.

18 Q. And accuracy is a good thing, right?

19 A. Yes.

20 Q. You train to be accurate, right?

21 A. Yeah. You want to have the highest score
22 possible if you're shooting for a qualification, for
23 example.

24 Q. And that's because -- well, also, you want to
25 hit your target in the real world if you need to, right?

1 A. Uh-huh. Same thing would apply.

2 Q. And we would want somebody who is shooting
3 somebody in self-defense to hit their target and not miss
4 and hit something else, right?

5 A. Legitimate --

6 Q. Yeah, we're assuming legitimate.

7 A. Yes.

8 Q. Yes. Bad guys coming down the hallway with the
9 knife in hand. You want the homeowner to put two in his
10 chest and not two over his shoulder into the neighbor,
11 right?

12 A. Yeah. You want responsible gun owners to --
13 and/or law enforcement, if that's what's going on in the
14 shooting, to hit what they're shooting at and not have
15 rounds flying around.

16 Q. And control of the firearm assists with being
17 accurate, right?

18 A. I believe so.

19 Q. So you want a gun that fits well, right?

20 A. Yes.

21 Q. That's crucial for proper firearm -- safe
22 firearm use, right?

23 A. Depending on how your -- what your needs are,
24 you can get away with certain things that you -- some
25 people have multiple weapons, and they're all slightly

1 configured different ways. Rifle A and Rifle B can both
2 get the job done. But probably people with Rifle B,
3 you're going to end up with -- if you have had a lot of
4 training with an AR specifically and had to transition to
5 one of these two, I'm going to be most accurate, I
6 believe, with Rifle B.

7 Q. All right. Got it. We're going to talk a
8 little bit more about mass shootings in a second. But
9 while we're on the subject of accuracy, I just want to
10 ask what you think.

11 If a mass shooter -- because they're, by
12 definition, merely trying to kill people, I wouldn't say
13 the average criminal would do this. But in a mass
14 shooting situation, if a mass shooter hits somebody
15 they're shooting at, what do you think would be their
16 most likely response after they realize that they've hit
17 their target?

18 MR. CHANG: Objection. Calls for speculation.

19 THE WITNESS: I think the response might be
20 dependent upon what body part they hit on the victim, how
21 much ammunition they have left, are they seeking to flee,
22 or are they just going to stay and shoot it out until
23 they're out of ammunition.

24 BY MR. BRADY:

25 Q. Let's say they're at the beginning of their --

1 they don't anticipate any resistance yet. They're there.
2 They're just starting. Shot, they hit somebody, person
3 goes down, what do you think their reaction is going to
4 be?

5 A. They may move to another target unless they
6 perceive the person on the ground to be a threat.

7 Q. And if they realize that they completely missed
8 the person, what do you think their most likely reaction
9 is going to be?

10 MR. CHANG: Objection. Calls for speculation.

11 THE WITNESS: Unless they have some threat
12 approaching them or they get distracted, they may go back
13 and fire again at that person that they apparently
14 missed.

15 BY MR. BRADY:

16 Q. And granted, this is a hypothetical and anything
17 could happen. But I'm just asking what a reasonable
18 result would be, and I think that you provided your
19 answer.

20 A. Yes.

21 Q. And so based on that, could it be possible that
22 a less accurate weapon that a mass shooter is using could
23 result in more rounds being fired?

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

1 THE WITNESS: I'm going to say that a lot of it
2 is going to depend on how much ammo they're carrying, sa
3 to how many rounds they get off, the police response
4 time, or if bystanders are able to disable the person, as
5 well.

6 BY MR. BRADY:

7 Q. Okay. I want to move to the next section of
8 your report on page 9 titled, "Assault Rifles Have Higher
9 Capacity for Firepower."

10 Can you define what "capacity for firepower" is
11 in your understanding?

12 A. So I think it's 30 -- Penal Code Section 30505
13 is a -- sort of a general statement of intent by the
14 legislature. I don't know that I have it quoted in my
15 report. But the beginning of the assault weapon control
16 act, in other words, has some language in there that
17 speaks to capacity for firepower that the legislature was
18 seeking to rein in.

19 Q. So that's what you're using here?

20 A. Yeah. I attempted to sort of give my
21 understanding of what that could have been based on
22 the -- the guns called out in 30510 and then the other
23 features that were pulled in under 30515 to look for a
24 thread that -- a commonality between the two sections.

25 Q. Okay. When you say assault rifles have higher

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1 capacity for firepower, what are you meaning to say with
2 capacity for firepower?

3 A. So semiautomatic would be the start of the
4 conversation. Generally, a -- at this point, a nonfixed
5 magazine would come into the conversation, as well.
6 That's the newest language for 30515. Generally, you're
7 going to have one or more of these features that might be
8 a concealability -- strictly concealability or maybe some
9 ergonomic benefit.

10 Flash suppressor -- I don't know if that's
11 ergonomics necessarily, but it's more about the shooter's
12 vision not being impaired. So I don't know if that's an
13 ergonomic benefit, if you will. But a lot of it ties
14 into can the magazine be quickly reloaded? Meaning a
15 nonfixed mag. That's sort of a -- the basis of all that.

16 Q. So how does Rifle B have a higher capacity for
17 firepower than Rifle A in your opinion? Or does it?
18 Setting aside the fact we're going to assume they have
19 the same size magazine, right, because they both can
20 accept the same magazines?

21 A. Right.

22 Q. Assuming they have the same size magazine in
23 them, does Rifle B have a higher capacity for firepower
24 than Rifle A?

25 A. If you factor in the potential accuracy

1 increases the shooter might get in a low light situation
2 with a flash suppressor, some potential accuracy
3 increase from -- not accuracy. It would be the
4 ergonomics of a quick mag exchange on Rifle B. The
5 benefit would be, again, like I said earlier, you can
6 keep your eyes on the target while you're doing that mag
7 exchange. I would say that Rifle B would have a slightly
8 higher capacity for firepower.

9 Q. Because you can get more magazines in it
10 quicker?

11 A. That's part of it. Yeah.

12 Q. So speaking of magazines, you say on the next
13 page, page 10 of your report, some LCMs -- and
14 "LCM" stands for large-capacity magazines, correct?

15 A. Yes.

16 Q. So, "Some LCMs can hold 20, 30, 50, 75 or 100
17 rounds of ammunition at a time."

18 Is that right?

19 A. Yes.

20 Q. They can also hold 12 or 15, right?

21 A. If it's a pistol. Those are -- there are
22 various pistols that would hold 12 or 15. There's
23 probably -- I'm thinking of like the M1 carving. There's
24 a 15-round variant for that.

25 Q. Okay. So just -- you were talking about rifle

1 LCM -- LCMS that are usually used in rifles when you were
2 giving these numbers?

3 A. For the most part, yeah. That's why I put "some
4 LCMS." I didn't say all.

5 Q. Fair enough. So how many hundred-round LCMS
6 have you come across in your career?

7 A. Quite a few coming back from Reno.

8 Q. Yeah.

9 A. There were -- sometimes the people would buy
10 multiple of those, and they were usually gang members.
11 They would have ammo that would match. Sometimes we got
12 guns that matched. Sometimes we got -- they were in the
13 car. Sometimes we would get guns subsequent with a
14 search warrant that matched the weapon -- or sorry,
15 matched the ammo and the magazines they were buying out
16 of state. So that -- those are some definite scenarios.

17 We've also recovered them during APPS
18 investigations, and the people were obviously acquiring
19 them either as parts kits when that was still a thing or
20 they got them from out of state and smuggled them in.

21 Q. Okay. Moving to paragraph 34 of your report.
22 You state, "Assault rifles as defined in Penal Code
23 Section 30515 are often used with rifle rounds that are
24 associated with increased lethality."

25 Did I quote you accurately?

1 A. Yes.

2 Q. What does "increased lethality" mean?

3 A. So the United States Military has adopted,
4 generally, for the most part, two rounds that they're
5 consistently using in a lot of the weapon system. The
6 5.56 and the 7.62x51 round, those two calibers are found
7 in a lot of AR-15, Springfield M1A, which are still used
8 in the military now.

9 These rounds were created for mainly military
10 use, and there's sort of a civilianized version of both
11 of these rounds which would be the .223 for the 5.56
12 military round and then the .308 round which is a sort of
13 civilianized version of the 7.62x51. There are other
14 cartridges out there, but those are the easiest to...

15 Q. You're saying that those cartridges have
16 increased lethality because they're used by the military?

17 A. Well, the military would not, let's say, use
18 something that they felt was inadequate to arm their
19 soldiers with. They go through lots of testing on which
20 rounds will be accurate. Weapons -- sorry. Not weapons.
21 But ammunition that will do the job at a certain distance
22 because certain fire fights happen at certain distances.

23 So they factor all those things in when they
24 choose a particular round to issue to the military
25 members.

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1 Q. Is the job of a soldier necessarily to be lethal
2 in shooting somebody?

3 A. No. Not necessarily. Sometimes the job is to
4 wound as many of the enemy as you can because you
5 actually sometimes tie up more of the opponent's forces.
6 If it's large-scale military actions, arguably if you can
7 wound 100, it's better than killing 50.

8 Q. And are you aware that militaries are restricted
9 on what ammunition they can use by The Hague Convention?

10 A. I was thinking Geneva Convention, but Hague
11 sounds right.

12 Q. Is it? It could be. Some European convention.

13 A. Correct. My understanding, there are
14 restrictions on those. But the rounds themselves, I
15 think one of the general sort of key factors is I believe
16 they have to be full-metal jackets, and it can't
17 necessarily be, like, a hollow point, which is okay for
18 civilian use.

19 Q. It is the Geneva Convention. You just jogged my
20 memory.

21 A. All right. There you go.

22 Q. You got me. I owe you. Okay.

23 So then can you really say that those cartridges
24 have increased lethality just because military use them?
25 Based on what we just went through, that they're not

1 necessarily trying to do the most harm?

2 A. Well -- so the military will -- wants to use
3 weapons that are going to fire when cleaned by some
4 19-year-old recruit in poor conditions somewhat
5 infrequently if they're out doing whatever mission
6 they're on. If they arm all of their soldiers with .22
7 caliber rimfires, we would be hampering our soldiers from
8 potentially killing or wounding the enemy.

9 By putting 5.56, 7.62 and other rounds at the
10 disposal of our soldiers, they're giving them a lethal
11 round; but they're not going all the way to some of the
12 civilian rounds that are out there now. Hollow points,
13 etcetera, are arguably more effective. And if it's a
14 handgun round, there are a few -- there are some hollow
15 point and other expansion-type rounds that exist. But
16 the military doesn't necessarily use those because what
17 they issue to the troops is sufficient, and it's
18 sufficiently lethal and deadly.

19 Q. So would you consider the 5.56 to be a
20 particularly powerful round?

21 A. It's powerful enough for probably 98 percent of
22 our military forces to use. I would say yes, it's
23 powerful enough to do its job. I wouldn't want to shoot
24 an elephant or a Grizzly bear with it. But to stop a
25 man, it's adequate.

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1 Q. And you say that some California assault rifles
2 are capable of firing the same centerfire rounds as these
3 military weapons; is that right?

4 A. Yes.

5 Q. But so can Rifle A, which is not an assault
6 rifle, right?

7 A. Yes.

8 Q. So you don't necessarily need the features to be
9 able to shoot the same rounds as these military weapons,
10 right?

11 A. Correct.

12 Q. You go on in paragraph 34 to say, "These rounds
13 will typically defeat normal bullet-resistant body armor
14 used by law enforcement."

15 Is that right?

16 A. Yes.

17 Q. Are you aware of a rifle caliber round other
18 than a .22 long rifle that would not penetrate the -- or
19 defeat normal bullet-resistant body armor that law
20 enforcement uses?

21 A. Even normal .22 when fired from a rifle will
22 probably penetrate most average law enforcement officer's
23 soft body armor.

24 Q. Okay. So then is it fair to say that generally
25 a round coming out of a rifle is going to penetrate body

1 armor?

2 A. Yes.

3 Q. So it doesn't matter whether it's these rounds
4 coming out of an assault weapon or not. They're going to
5 penetrate body armor?

6 A. A normal set of body armor without a rifle
7 plate, probably it's going to go through.

8 Q. And if you have a rifle plate, would a 5.56 or
9 .223 round penetrate the rifle plate?

10 A. Depends on how thick your plate is and what it's
11 rated for. But there are different thicknesses. If it's
12 ceramic, they can be two inches thick sometimes depending
13 on what you're trying to stop. Sometimes they're thinner
14 than some metal plates that have, like, a rubberized
15 coating on them.

16 They also have a rating system, as well, and
17 I've seen -- I'll call it armor. I don't know about body
18 armor, but it's stuff that will stop even up to like a
19 .50 BMG round. But it's very thick. I saw that shot in
20 Sacramento County at a range by a company trying to sell
21 this to, you know, governmental agencies and stuff.

22 So there's a whole range of stuff that could or
23 could not be stopped depending on the thickness. If
24 they're trying to outfit a vehicle versus, you know, a
25 person in the thicker body armor, it will -- it may or

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1 may not stop something.

2 Q. And do the features that make a rifle an assault
3 weapon under Penal Code Section 30515 affect how a round
4 reacts with body armor in any way? A pistol grip, an
5 adjustable stock, a flash suppressor, would that effect
6 how a round reacts to hitting body armor?

7 A. Should not.

8 Q. The last sentence of your paragraph 34, it -- is
9 that -- the last line of page 10, it starts, "The rifle,"
10 and then goes on to page 11.

11 It says, "The rifle barrel being at least three
12 times longer than most semiautomatic handgun barrels
13 leads to the bullet leaving the barrel at a higher rate
14 of speed (or higher muzzle velocity)."

15 That's your -- you're just talking about rifle
16 barrels generally versus handgun barrels, right? Not
17 necessarily assault rifle barrels versus handgun barrels?

18 A. A legal length rifle barrel being 16 or more
19 inches in length. Minimally, if an average pistol is,
20 let's say, four and a half, five inches long, if you
21 triple that, you're going to be about the same length as
22 an average legal length, you know, 16-inch barrel. So
23 five-inch, five-inch, five-inch, you're about 15 inches
24 versus a 16-inch rifle, so it's roughly comparable.

25 Q. So a rifle is going to have higher muzzle

1 velocity than a handgun just by virtue of the fact that
2 it has a longer barrel, right?

3 A. Traditionally, if both weapons are shooting the
4 same ammo out of the same box, it should produce higher
5 muzzle velocity because there's -- the longer it stays in
6 the barrel, generally the quicker it will leave the
7 barrel and muzzle blasting --

8 Q. Got it. And none of the features in Penal Code
9 Section 30515 that make a rifle an assault weapon affects
10 muzzle velocity; is that fair to say?

11 A. I can't think of any that would.

12 Q. All right. Moving to page -- well, we're on
13 page 11. Under the heading, "Use of Assault Weapons in
14 Mass Shootings."

15 A. Okay.

16 Q. So on this page, you -- you list, starting in
17 paragraph 40, several incidents involving shootings where
18 the perpetrator appears to have used what would qualify
19 as an assault rifle under California law; is that right?

20 A. Yes.

21 Q. What is your definition of mass shooting that
22 you used here?

23 A. Under No. 40?

24 Q. Well, the heading on page 11 is "Use of Assault
25 Weapons in Mass Shootings."

1 A. Okay. I -- no, I understand. But on page 11,
2 line -- sorry, paragraph 40?

3 Q. Yeah. So in paragraph 40, you have subsection
4 A, B, C, all the way through M.

5 A. Okay.

6 Q. And I assume that these are the mass shootings
7 that you're referring to in your heading "Use of Assault
8 Weapons in Mass Shootings" on page 11; is that right?

9 A. Right. So it says one or more persons,
10 including peace officers, while using assault weapons.
11 That's -- maybe the "mass" is the --

12 Q. Okay.

13 A. It's basically assault weapons used in
14 shootings. Maybe that's a more accurate way, and I could
15 have broken this list into two categories.

16 Q. Okay.

17 A. I see what your confusion is about the title.

18 Q. Thank you. Just because there is now three
19 definitions that we're working with --

20 A. Understood.

21 Q. -- with mass shootings, so I just wanted to
22 clarify.

23 A. Sorry about that.

24 Q. No, it's okay. I appreciate the clarification.
25 So basically some of these are what you would consider

1 mass shootings. Others are just perhaps public shootings
2 that would not be mass shootings but involved assault
3 weapons; is that fair to say?

4 A. Yes.

5 Q. Okay. So starting with the first one, A, the --
6 the shooting in Stockton that started all of this type of
7 regulation, the Assault Weapon Control Act. The shooter
8 shot and killed five and wounded 32 with an AK-47-style
9 rifle using large capacity magazines, right?

10 A. Right.

11 Q. What -- what details of that shooting do you
12 have that help you attribute the use of that particular
13 rifle to the amount of victims? In other words, how do
14 we know -- what details of this shooting tell us that the
15 use of that particular rifle was responsible for the
16 number of victims versus just the evildoer wanting to
17 shoot that many people?

18 A. I'm not sure if I understand the question.
19 He -- to my knowledge, he had an AK-47-style weapon. I
20 don't recall if he had other weapons on him, but I know
21 he had that style.

22 Q. Do you know how far away he was from his
23 victims?

24 A. I've read a report years ago that he moved
25 around the schoolyard doing the shooting, so I imagine

1 the distances varied.

2 Q. And it was during school hours, so it was
3 daytime, right?

4 A. Yes.

5 Q. So the flash suppressor probably wouldn't have
6 helped that much?

7 A. Most AKs don't even have flash suppressors.

8 Q. Okay. And AKs often don't have adjustable
9 stocks, right?

10 A. Yeah. Kind of like -- probably 60/40 that they
11 don't. That they'll have just a fixed wooden or plastic
12 stock.

13 Q. Do you recall whether his did or did not?

14 A. I don't remember. Yeah.

15 Q. Okay. Would you have any -- if it -- if it did
16 not -- if the rifle did not have an adjustable stock,
17 then he had a fixed-stock rifle, right?

18 A. Most likely would have had a fixed-stock weapon.

19 Q. So then the only -- and you said AKs do not
20 generally have flash suppressors, so the only feature
21 that would have likely made this firearm an assault
22 weapon under Penal Code Section 30515 is the -- the
23 pistol grip, right?

24 A. Could have been a thumbhole stock because there
25 are Norinco, like, MAK90 types which are a subset of the

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1 AK family. They -- go ahead. Sorry.

2 MR. CHANG: Make an objection that it lacks
3 foundation because there's no indication that this was a
4 30515 weapon.

5 THE WITNESS: So I forgot the last thing I said.
6 Is that okay if I ask --

7 MR. BRADY: Of course.

8 THE WITNESS: -- to repeat my last statement?

9 (Whereupon the record was read back.)

10 THE WITNESS: Okay. Sorry. Norinco MAK90 types
11 are sort of a subset of the AK family. Those will often
12 have a thumbhole stock, which as we said earlier, sort of
13 equates to a pistol grip.

14 MR. CHANG: Objection. Assumes facts not in
15 evidence.

16 BY MR. BRADY:

17 Q. Okay. So are there any details from this
18 shooting that you're aware of that suggest that he would
19 not have been able to shoot just as many victims had he
20 not had a pistol grip or any of the features that are
21 identified in Penal Code Section 30515 on his rifle?

22 A. I don't know specifics other than a report that
23 I read many years ago. It was a DOJ sort of -- I don't
24 know -- after-action type report that existed written by
25 an obviously now retired special agent way back in 1989.

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1 Because there was no assault weapon law at the
2 time, things that I would call out now wouldn't have
3 necessarily been called out in a report like that back
4 then because 30510, 30515 and their predecessors didn't
5 exist.

6 All I can tell you from the number of killed and
7 wounded is that probably there was at least one mag
8 exchange unless he had a larger than 30-round magazine on
9 him, but I don't know specifically how many magazines he
10 possessed that day.

11 Q. Okay. And let's assume that Rifle A from your
12 report -- the gun we referred to as Rifle A is a Mini 30.

13 A. Okay.

14 Q. And a Mini 30 fires the same or similar round as
15 an AK-47; is that correct?

16 A. Correct.

17 Q. Okay. So it's essentially an AK-47 without a
18 pistol grip for lack of a -- generally, would that be
19 fair to describe it?

20 A. Sure.

21 Q. Okay. So -- and you testified earlier, I
22 believe, that the difference in a magazine change for you
23 between Rifle A and Rifle B due to the pistol grip would
24 be a difference of a few seconds; is that fair to say?

25 A. Yes.

1 Q. So if this shooter had Rifle A instead of the
2 AK-47 he had --

3 A. Uh-huh.

4 Q. -- his magazine change that you assumed happened
5 -- and that's likely a safe assumption based on there
6 being 37 people shot -- unless there was through and
7 throughs and stuff like that -- but that the difference
8 between his using the AK-47 with the pistol grip versus
9 Rifle A would only have hindered him a few seconds; would
10 that be fair to say?

11 A. Yes.

12 Q. So based on that, is there any way to attribute
13 the features present in Penal Code Section 30515 that
14 make a rifle an assault weapon to the victim count in the
15 Stockton shooting?

16 A. I would say that in the chaos of what I can
17 imagine happened that day -- kids scattering everywhere,
18 adults potentially scattering everywhere, and he's trying
19 to shoot as many as people as possible, and he has to be
20 interrupted by a mag exchange, if his mag exchange takes
21 longer because he has no pistol grip and he's fumbling
22 around for an extra three or four seconds, that's three
23 or four seconds that those kids could have gotten farther
24 away, maybe rounded a corner. Gone out of his view.
25 Perhaps something like that. Maybe a few more seconds

1 for the police to show up to engage him.

2 So it could have made a difference. Less
3 wounded. Maybe less death if his reload was slightly
4 slower.

5 Q. And if I asked you the same set of questions for
6 each of these shootings where there was multiple people
7 -- because some there's only one, and I'll ask you about
8 those.

9 But for all the shootings where there's multiple
10 people, would you essentially have the same -- what if
11 there was no magazine change needed? Would it make a
12 difference whether it was an AK-47 or Rifle A?

13 A. If there was no mag exchange or change of any
14 kind -- let me review the list here.

15 Q. Maybe the Santa Monica Community College
16 shooting. I forget how many people were shot there, and
17 your report doesn't indicate it, but...

18 A. Yeah. It was, comparatively speaking, to some
19 of these others, it was a more modest, you know, bad
20 event.

21 Q. What about the -- the Texas event? The Dallas
22 -- it's J. Towards the bottom.

23 A. J. So I've seen a picture of that weapon. It
24 was an Izhmash Saiga variant that had been AK-ized. It
25 had a pistol grip and an adjustable stock, 30-round mag.

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1 But I don't know how many times he did his reloads
2 because there were a lot of shots that he fired.

3 Q. Oh. So he did do reloads?

4 A. I believe so.

5 Q. Okay. I'm sorry. I thought I saw five killed,
6 but it was actually 14 killed.

7 A. Fourteen.

8 Q. It was five cops. Okay.

9 A. Yeah. Five cops. And actually, he --

10 Q. Oh. Wounded nine others.

11 A. -- wounded nine others, some of which, I think,
12 were peace officers, some of which were civilians that
13 were just caught, you know, in the middle of it.

14 Q. Okay. I just am trying to avoid us having to go
15 through each of these and talk about the specifics to
16 determine, you know, the impact of the features --

17 A. Sure.

18 Q. -- on these shootings.

19 So I guess would it be safe to say that -- that,
20 in your opinion, the only difference between an assault
21 rifle being used in a mass shooting versus Rifle A would
22 be the -- the quickness of a magazine change?

23 A. If -- if the pistol grip was the only factor,
24 that's a fair answer. Some of these shootings happened
25 in dim light, so a flash suppressor would potentially

1 come into play.

2 Q. Like which ones?

3 A. The January 9, 2005. The June 15th, 2008.

4 Q. Okay. So the -- the January 9, 2005,
5 incident --

6 A. Uh-huh.

7 Q. -- involved the shooting and killing of a single
8 individual, right?

9 A. Yes.

10 Q. Do you know how many rounds were fired?

11 A. I don't recall how many were fired. I remember
12 Sergeant Stevenson was killed, and then a second officer,
13 I believe, maybe had caught some ricochettted rounds. I
14 think the two of them were the only ones shot. There
15 were quite a few rounds fired, though. I remember from
16 the video. When this happened, I interviewed a
17 responding Modesto officer that went to the scene
18 regarding the weapon. It was an SKS with a detachable
19 magazine.

20 Q. And it had a flash suppressor?

21 A. No. In this particular case, it did haven't a
22 flash suppressor to my knowledge.

23 Q. Okay.

24 A. But this was a nighttime thing, so a flash
25 suppressor might or might not have made a difference on

1 this.

2 The June 15th case, that was a gang member that
3 killed Deputy Diaz. About 17 rounds were fired, and it
4 was definitely nighttime. I believe there was just one
5 magazine in play.

6 July 20th, 2012, that was in a dark movie
7 theater, so a flash suppressor would have been a factor
8 there.

9 Q. And he killed 12 people in that incident, right?

10 A. And then wounded about 70 others.

11 Q. And do you know how many of those victims were
12 shot by the assault rifle?

13 A. To my knowledge, the majority of them were from
14 the assault weapon. If he deployed the shotgun, I don't
15 have a specific recollection if he did. It may have been
16 strictly the rifle that he had.

17 So June 12, 2016, that was in a nightclub. I
18 don't know what the lighting conditions were, but I can
19 imagine parts of the inside of the building had more or
20 less light than others if it was a dance club.

21 Q. And in that shooting, the -- in the nightclub,
22 he killed 49 people and wounded 53 others, right?

23 A. That's my understanding from what I was able to
24 gather.

25 Q. So he would have had to have made multiple

1 magazine changes, right?

2 A. Unless he had one very large capacity double
3 drum mag. There are some that are -- well, yeah. I
4 don't know of a 120-round drum. So, yeah, probably
5 multiple exchanges were done.

6 Q. Assuming he had 30-round magazines in his rifle
7 and, you know, whatever he had in his pistol -- I don't
8 know how many people he shot with that or whatever.

9 But assuming he had 30-round magazines in his
10 rifle, he would have had to have made multiple magazine
11 changes to get those figures, right?

12 A. Right.

13 Q. Okay. And to your knowledge, did you look at
14 the details of that --

15 A. When it happened, I studied it at the time. As
16 these things happen -- because I eventually sometimes
17 might get asked, like in this setting, about various
18 shootings and what went on -- I'll try to gather data
19 about particular events.

20 Q. Do you recall how that one ended?

21 A. I believe the SWAT team eventually made entry,
22 and I think there was an exchange of gunfire. But I
23 don't remember if the final result was that he killed
24 himself or if the rounds from the SWAT team killed him.

25 Q. But it was law enforcement intervention that

1 ended it?

2 A. I believe so.

3 Q. No civilian stopped him?

4 A. Correct. I don't think so on that one.

5 Q. Okay. Go ahead. I'm sorry. If you wanted to
6 bring others up.

7 A. No. That's fine. So moving to page 13, the
8 Steven Patock incident in Las Vegas. It was an evening
9 concert. He's at an elevated position. He had broken
10 out the windows to the hotel room. A lot of things in
11 play with that one. Many firearms he had added the slide
12 fire solutions-type bump stocks to around 12, I think, of
13 his long guns. And he had lots and lots of and lots of
14 large-cap mags ready to go, and there's some video that I
15 saw early -- like, within a day or so -- it was probably
16 on the news or something, but I wasn't able to really
17 pick out what windows the shooting was happening from
18 until they did some, like, still frames, and they had
19 little arrows pointing. I wasn't able to tell just from
20 that cell phone video or whatever they had gotten from
21 citizens that day.

22 I imagine the same scenario if you're looking
23 with the naked eye, looking to see where these bullets
24 are coming from, you're going to have difficulty as well
25 with a music concert going on with lights and probably

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1 stage effects and things, too.

2 Q. He -- he -- in that particular case, accuracy
3 was not really necessary to inflict the type of damage he
4 did, right?

5 A. Yeah. He just had to be generally accurate
6 enough to get --

7 Q. He's shooting at a crowd of thousands of people,
8 right?

9 A. Yeah. Yeah. He didn't have to be super
10 precise. Just put a lot of bullets in a small --
11 relatively small area, and he was going to hit something.

12 Q. He probably could have inflicted the same amount
13 of damage with a blindfold on; fair to say?

14 A. Other than having difficulty reloading his guns,
15 or I think after the -- I mean, the -- even
16 blindfolded --

17 Q. Granted -- okay. Because he was probably
18 grabbing different rifles as they heated up and changing
19 the magazines --

20 A. Yes.

21 Q. -- which would be hard with -- but the -- just
22 the shooting part, he could have done it with his eyes
23 closed, right, and inflicted what he did?

24 A. I don't know about that. The -- there's a lot
25 of people obviously that were injured there and killed.

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1 I definitely don't want to sort of trivialize that.
2 He -- he set himself up for success. I'll put it that
3 way. And very little things that he did was going to
4 hurt his quest for infamy.

5 That's about all I think I have as far as the --
6 the list of shootings there, Sean.

7 Q. So would it be fair to say, Mr. Graham, that you
8 would not be able to definitively say that any of the
9 features in Penal Code Section 30515 that define a rifle
10 as assault weapon contributed to the number of victims in
11 any of the shootings that you've identified in
12 paragraph 40 of your report?

13 A. I would say -- I guess between all these
14 different shootings, it's too hard for me to generalize
15 and say if a particular weapon or shooter was aided by a
16 particular feature on their weapons.

17 Q. Well, let me ask you: Is there any shooting on
18 that list where you can say definitively that you know or
19 believe that the features made a difference based on
20 specific facts? Not just the general, like you said,
21 with the -- with the Stockton shooting. You know, the
22 pistol grip potentially could have helped him. Granted,
23 it could have. It may have, may not have made a
24 difference.

25 What I'm asking is, can you definitively say in

1 any of these whether the features made a difference?

2 A. Because I wasn't the overall investigating
3 officer on any one of these, I have -- I have a hard time
4 picking out a particular feature that would have aided
5 the shooter. But, in general, if their weapons did have
6 one or more of those features, it probably did help them
7 in some level.

8 The Topete case at the top of page 12, I
9 testified in that case for the Yolo DA's office, and I
10 fired the murder weapon at the request of the DA's office
11 and saw the magazine and whatnot. So that was an
12 AR-15-style weapon that was used to kill the deputy.

13 Q. Granted, and -- assault weapons were used in
14 each of these shootings, right?

15 A. Yes.

16 Q. My question is: Is there anything in any of
17 these cases that you can point to that would definitively
18 say that had the shooters used Rifle A, that they
19 wouldn't have inflicted the identical casualty rate?

20 A. I don't know that I can say that either way.
21 The -- in all these cases, they used assault weapons. I
22 -- typically, when I hear about a scenario like this
23 where it's cops getting killed, sometimes there's assault
24 weapons. Sometimes it's a handgun. Sometimes the
25 officer was disarmed and killed with his own handgun,

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1 unfortunately. But there are more and more of these
2 anti-law-enforcement shootings using assault weapons now,
3 and there are a lot more of these mass shootings which
4 involve multiple victims that are happening, it appears,
5 just with a lot greater frequency that are using these
6 weapons that if they were weapons that were found in
7 California, we would call them an assault weapon. If
8 they're in Louisiana or Texas, they don't call them
9 assault weapons there. They're just weapons in those,
10 you know, states.

11 Q. So it's your understanding that there's an
12 increase in mass shooting incidents?

13 A. It's a perceived increase on my part.

14 Q. Okay. You haven't done any research or studies
15 to confirm whether there is an increase or not?

16 A. No. I don't have time for that.

17 Q. I hear you.

18 (Pause on the record.)

19 BY MR. BRADY:

20 Q. And so would it be fair to say also that you
21 wouldn't know whether more mass shootings are perpetrated
22 with non-assault weapons versus assault weapons?

23 A. My perception is -- I don't know if it's an
24 equal number, but the ones where there's many
25 casualties -- I'll say five or more people, let's say --

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1 typically, there's an assault weapon or something we
2 would call an assault weapon in California -- that's been
3 involved. There are a few instances where a handgun
4 maybe with a large-capacity magazine is involved.

5 There was a recent shooting in Thousand Oaks.
6 That individual had, I believe, one handgun with multiple
7 large-cap mags, and he shot people there. And I think
8 the Gabby Giffords shooting, that was a Glock with a
9 large-capacity magazine. Yeah. During his mag exchange,
10 that's when the crowd sort of jumped him. Grabbed it.

11 Q. So mass shooting with non-assault weapons
12 happen, right?

13 A. They do.

14 Q. And it's your perception that more mass
15 shootings occur with assault weapons than non-assault
16 weapons, though?

17 A. I would say that at least that maybe the media
18 is picking up on it more and publicizing it. Maybe it's
19 always been happening, but it seems to me that -- because
20 I pay attention to this stuff, but like I said, I don't
21 do formal studies. I'm not a researcher on, like, a
22 scientific level. But in the course of my career, it
23 seems like it's happening more often, and probably at
24 least 50/50 if it's an assault weapon or not.

25 Q. Understood. So moving to page 13 of your

1 report. The title, "Assault Rifles are Suitable for Law
2 Enforcement Use."

3 A. Yes.

4 Q. So assault rifles have a legitimate use, then;
5 is that fair to say?

6 A. So in California, there's been a carve-out in
7 the Penal Code by the legislature to allow law
8 enforcement agencies and the sworn members of certain law
9 enforcement agencies to purchase and register them if --
10 if they've had to make sort of a personal purchase of
11 them. Some agencies will just issue the weapons out.
12 Some agencies don't have the money to do that, so the
13 individual police officers or deputies can make a
14 purchase with agency letterhead.

15 Q. But the policy choice to allow that exception
16 for police officers to acquire assault rifles for duty
17 use suggests that those rifles have a useful, legitimate
18 law enforcement purpose; is that fair to say?

19 A. Sure. Yeah.

20 Q. And that is because they are effective for
21 defending against criminals; is that fair to say?

22 A. Yes.

23 Q. And while, granted, police officers come into
24 contact with criminals, as an individual, I'd have much
25 more -- much more common daily rate than would your

1 normal, everyday citizen. When a citizen does face a
2 criminal, it is the same criminal as those that law
3 enforcement face; isn't that fair to say?

4 MR. CHANG: Objection. Vague.

5 THE WITNESS: There might be certain scenarios
6 that a civilian might encounter a person with a weapon or
7 some other threatening object.

8 An extreme example might be like some kind of a
9 home invasion whether it be they meant to go to that
10 house and try to rob them because there's a marijuana
11 grow in that house or maybe it's a mistaken identity.
12 They thought that was the marijuana grow's house, but
13 it's actually next door. Things like that can sort of
14 happen where there's a group of individuals that try to
15 take over a house. But for the most part, law
16 enforcement is in a unique spot with sometimes daily
17 contact with armed criminals. Some of these armed
18 criminals have acquired -- through usually illegitimate
19 methods -- handguns, shotguns, rifles, assault rifles,
20 etcetera.

21 The average citizen probably is not going to go
22 through life having a criminal point of weapon at them.
23 It does happen, but -- excuse me -- law enforcement is
24 much more likely, in my opinion, to encounter armed
25 resistance or gunfire.

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1 BY MR. BRADY:

2 Q. Sure. I think I conceded that they're more
3 likely to.

4 A. Yeah.

5 Q. My question is, once the -- once it happens --
6 because obviously at least some average citizens face
7 criminals, right? There's a thousands of murders every
8 year. There's thousands of robberies, thousands of
9 rapes, thousands of all sorts of terrible crimes on
10 non-peace officers, right?

11 A. Yes. Yes.

12 Q. So the public does come into contact with these
13 dangerous people, right?

14 A. Yes.

15 Q. And in those instances, once defense is called
16 for, what is the difference between a law enforcement
17 officer and a civilian in using deadly force when it's
18 called for? They both want to end the threat, right?
19 What's the goal of using deadly force?

20 A. Yeah. End the threat. That might be by making
21 him run away or it might result in gunfire.

22 Q. Yeah. And the goal is to -- at least for the
23 civilian, to make the bad guy go -- whether it's run away
24 or -- or -- or drop dead, that's the goal of the
25 civilian; whereas, the police officer may need to

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1 detain -- doesn't want the bad guy necessarily to run
2 away because then he could be a danger to others, right?

3 A. Generally, yeah.

4 Q. So there is -- so a peace officer does have more
5 -- slightly more -- well, significantly more reason to --
6 has more responsibility when there's an encounter like
7 this. But in order to just simply defend, they're in the
8 same shoes, right? A police officer and a civilian,
9 they're in the same shoes as far as wanting to put down
10 the threat, right, or stop the threat?

11 MR. CHANG: Objection. Incomplete hypothetical.

12 THE WITNESS: It's a lot more complicated for
13 law enforcement. Law enforcement has to deal with
14 policies and procedures and the Penal Code and the
15 various exemptions that may or may not exist given the
16 situation. A civilian also might have a justifiable
17 reason to pull a weapon on somebody or, you know, shoot
18 somebody. Each group could have a basic fear of death or
19 great bodily injury. Something like that. And both
20 groups might have a need to stop the threat with a
21 firearm.

22 BY MR. BRADY:

23 Q. Have you ever had a gun pointed at you by a bad
24 guy?

25 A. Not that I know of.

1 Q. That's -- that's kind of spooky.

2 A. Yeah. I've had a lot of people talk to me
3 through partially closed doors.

4 Q. Yeah. And you don't know what they had behind
5 the door?

6 A. Yeah. Or through a security screen with very
7 tight mesh that you can't see other than an outline. I
8 can say that I've found loaded weapons in rooms where
9 there was a person there that would have had the ability
10 to set guns down. I found weapons on people when I've
11 arrested them, like down the front of their pants, for
12 example, stuff like that.

13 But to your point, I don't think I've had a
14 weapon pointed at me. I can think of definitely people
15 being armed with guns on their person, and we found them
16 after the search of the person.

17 Q. Are you aware if any of your fellow -- how many
18 fellow DOJ special agents are there?

19 A. I don't know. Maybe statewide and across all of
20 our bureaus -- firearms is just one bureau -- maybe
21 there's 300 to 350.

22 Q. Are you aware of any of them who have had
23 firearms pointed at them by bad guys?

24 A. I'm trying to think of -- I can say a few of the
25 retired people. I don't know about active people, but I

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1 know that there have been exchanges of gunfire between
2 agents and bad guys. Multiple agents that I know of have
3 been shot.

4 Q. Mr. Helsley being one of them?

5 A. He's one of the -- yeah -- the people that come
6 to mind.

7 Q. So would you say it's rare for a DOJ special
8 agent to get in a gunfight with a criminal?

9 A. I think it's rare for law enforcement to
10 probably get in a gunfight. I would include DOJ agents
11 in that group. Sometimes it's about where you're working
12 and who you're targeting with that particular
13 investigation. If you're doing white collar crime and
14 that's your thing or welfare fraud, you may not get into
15 a whole lot of gun fights. But if you're out contacting
16 street criminals or chasing murderers, then the
17 likelihood goes up.

18 Q. I don't know if I'd execute a warrant on Martha
19 Stewart, but I'll defer to you as the expert on that.

20 A. Okay.

21 Q. So you say on page 13 and paragraph 43, "Law
22 enforcement personnel undergo regular specialized
23 training to safely and effectively use assault weapons."

24 Is that right?

25 A. Yes.

1 Q. What type of training is that?

2 A. So California has a thing called the Peace
3 Officer Standards and Training or POST. There's a POST
4 mandated class that you have to go to for basically
5 rifles, and that's sort of a minimal level of training.

6 Generally, each agency will have some kind of
7 qualification requirements. DOJ, we do it typically four
8 times a year. I think the POST minimum is a couple times
9 a year. We do it a little bit more than the minimum
10 mandatory because of cost. Some agencies don't end up
11 doing more than two. Some agencies have 7,000 peace
12 officers, so they are constantly qualifying people nearly
13 365 days a year. That's not the case for my agency,
14 though.

15 Q. What's the case for your agency?

16 A. We go quarterly. Each office would get
17 everybody done and then go back to normal business
18 routine.

19 Q. Okay. It says you're trained to consider the
20 backdrop, which is the area behind whatever is being
21 aimed at, to make sure persons or property are not
22 needlessly injured or damaged, right?

23 A. Yes.

24 Q. Isn't that true for all firearms, that you
25 should be concerned about the backdrop? I mean, is that

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1 a problem that's unique to assault weapons?

2 A. No. It's a statement that could be applied to
3 any firearm.

4 MR. BRADY: Okay. So I can tell you that I'm
5 about to ask some questions on the final paragraph of
6 your report, which will then lead me into another subject
7 that that relates to. So if anybody wants to take a
8 break, now might be a good time. Otherwise, I can try
9 to --

10 THE WITNESS: Let's just do a five-minute.

11 MR. BRADY: Sure.

12 (Recess from 3:55 p.m. to 4:02 p.m.)

13 BY MR. BRADY:

14 Q. Back on the record. Going to the last page of
15 your report, page 14, paragraph 45. You conclude your
16 report by saying, "It is my opinion that the provisions
17 of California Assault Weapons Control Act challenged by
18 plaintiffs in this case enhances public safety by
19 limiting prohibited weapons that are unreasonably
20 dangerous for unrestricted civilian use and are often
21 used by those who intend on committing crimes such as
22 mass shootings."

23 Is that right?

24 A. Yes.

25 Q. So what makes those weapons unreasonably

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1 dangerous for civilians to use?

2 A. Well, if the various features enhance, you know,
3 whether it be ergonomically or whatever, it enhances the
4 shooter's ability to, in a sense, hit what they're
5 shooting at because of generally the -- if there's a
6 detachable magazine or a nonfixed magazine in play, the
7 volume of fire coming out of these is often more than a
8 non-assault weapon. And I'm saying there it's
9 unrestricted civilian use. They've chosen to allow
10 registration of certain -- over certain period of times.

11 Q. Okay. That's actually an interesting point.

12 So when you -- I was going to ask you about the
13 word "unrestricted." So you're -- when you say
14 "unrestricted," you're basing -- are you saying that
15 those who do not register them?

16 A. Yeah. There's sort of two factors in play.
17 You've got a group of people that choose to not register
18 for whatever reason. If you go to, at some point, try to
19 sell your weapon and you ignored the law or whatever the
20 deal is, the gun store shouldn't accept your unregistered
21 assault weapon because they would be putting their
22 license and permit in jeopardy.

23 A person that did register their weapon can take
24 it to that store for repair or sales legitimately, and
25 the store can accept it and not be in fear of losing

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1 their license or permits. So that's one aspect of it.

2 Registered assault weapon use and transportation
3 is limited. There's a Penal Code section -- there's a
4 specific Penal Code that says what you can do. Basically
5 to and from your residence to a location which you're
6 going to use the weapon in basically target practice.
7 That kind of a general thing. That's a permitted use of
8 a generally restricted weapon. But if it's registered,
9 you're allowed to do X, Y, and Z with it.

10 So the unrestricted civilian use, at this point,
11 is sort of also over the years various types, Category 1,
12 2, 3, and now, as you said earlier, the bullet button
13 guns, those are all sort of -- they've been restricted
14 sort of like different bites of the apple. Something
15 that met the definition of 30515 can no longer be sold
16 since 1/1/17.

17 Other weapons that shoot the same ammunition
18 that are also semiautomatic, they can be sold, or they
19 have a fixed magazine that has less than ten-round
20 capacity in it. It may have similar features to some of
21 the prohibited weapons.

22 So there are restrictions put on some of these
23 that in a sense kind of one way or the other, there's
24 some -- I don't know if you call it "mitigation." By
25 fixing the magazine down to ten rounds, let's say, the

1 reload is much slower.

2 Q. Okay. Are you aware of any registered assault
3 rifles that have been used in violent crimes?

4 A. That's a good question. Possession, yes. But
5 possession is not a violent crime. I don't know -- I
6 don't know if I have a specific example.

7 Q. Would it be fair to say that violent crime by
8 registered assault weapon owners is probably low?

9 MR. CHANG: Objection. Calls for speculation.
10 BY MR. BRADY:

11 Q. I mean -- let me strike that.

12 Have you -- you can't think of an example of a
13 registered assault weapon owner committing a violent
14 crime with the assault weapon, right?

15 A. Right. But the problem with sort of my answer
16 is there's no reporting mechanism for what you're asking
17 for. There are various things that the state legislature
18 has made law enforcement do over the years. We have sort
19 of like traffic stop reporting. We have use of force
20 reporting.

21 I'm not aware of a mandate that says police,
22 sheriffs, etcetera, must report up to DOJ every time a
23 registered or unregistered assault weapon is in use in a
24 crime, whether it be a possession crime or a violent act.
25 Something like that I could -- maybe I could reference a

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1 report that we would put out, you know, but we don't have
2 that. There's nothing like that that's out there.

3 Q. Got it. Would your opinion in paragraph 45
4 change at all if it was restricted civilian use of these
5 weapons whereby you -- the public could still acquire
6 them, but they would always have to register them in the
7 manner that they did when registration periods are open,
8 and they were limited to the use of them in the way that
9 you describe the Penal Code currently limits the use of
10 assault weapons?

11 MR. CHANG: Objection. Calls for speculation.

12 THE WITNESS: You said would I be opposed? Is
13 that what your question was?

14 BY MR. BRADY:

15 Q. Yeah. Would it change your opinion in
16 paragraph 45?

17 A. I guess I would have to see if there was a bill
18 proposed by a member of the legislature. I would have to
19 see that and digest what kind of language that carried
20 because just about with any law that comes through, we
21 have to think on multiple levels. Does it touch a
22 database that we already have? Does it have an
23 implication to the courts? To the DA's offices? To
24 local law enforcement? Kind of all these different
25 groups.

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1 Right now, we deny about one and a half percent
2 of the people that try to buy a gun. I don't know what
3 our -- our rate of putting someone into APPS is, for
4 example. I don't think we have that knowledge or data in
5 our systems. Let's say there's three million to six
6 million gun owners, you know, amongst our databases. I
7 don't know at what point -- like, what percentage of them
8 fail now and if they are already a registered assault
9 weapon owner or are they just a handgun owner and those
10 types of things.

11 So it's hard for me to make a broad statement,
12 which I think it would be a very broad statement to
13 answer you question on would I be in favor of -- it
14 sounds like it's kind of like an enhanced firearm
15 ownership status for certain people that could pass --
16 are you talking like an enhanced background check or
17 something?

18 Q. Well, what I was suggesting is basically after
19 SB880, everybody had -- acquired -- there was a year and
20 a half, right, to acquire more bullet button rifles, and
21 then you had to register them by July 1st, 2017, right?
22 Or '18? I forget what --

23 A. No. So the acquisition window closed December
24 31st of '16. That law was signed in somewhere after July
25 of '16. So at the most, it was five, six months.

1 Q. So all I'm saying is, would your opinion in
2 paragraph 45 of your report change if the acquisition
3 window never closed but people still had to register
4 every assault weapon they acquired and they were still
5 restricted in their use to the -- the uses that you
6 indicated the Penal Code already restricts them to?

7 A. I mean, we already have DROSes -- dealer records
8 of sale -- which is not the same as a registration. An
9 assault weapon status carries -- I don't know if it's a
10 burden, per se, but there are limited uses, but there's
11 also restrictions placed on who you can transfer them to.
12 Things like that. If your survivors come across the
13 weapon after you pass on, they only have 90 days to get
14 rid of that weapon lawfully, etcetera. A normally
15 DROS'd, let's say, long gun of some kind that isn't an
16 assault weapon, there's freedom to transfer it and so
17 forth.

18 I don't know. I would have to see the language
19 in a bill like that before I could really offer anything
20 useful.

21 Q. Do you normally review language of bills being
22 proposed by the legislature that affect firearms laws?

23 A. Yes.

24 Q. Would it be odd if you were not consulted for a
25 proposed piece of legislation affecting firearm laws?

1 MR. CHANG: Objection. Vague.

2 THE WITNESS: It would be odd for the Bureau of
3 Firearms to not be made aware of something like that.
4 Because usually in those kinds of bills, we're given some
5 task or more than one task sometimes. Registration or
6 tinker with this database or do this or do that. Create
7 some program that doesn't exist.

8 If we're told to do something, I would hope that
9 we would be consulted on is this implementable, or is it
10 -- you know, is this going to break the bank? Does it
11 cost too much? Or whatever.

12 BY MR. BRADY:

13 Q. So did the legislature consult the Bureau of
14 Firearms and you by extension when it was considering
15 SB880?

16 A. Yes.

17 Q. Has the legislature proposed any other changes
18 or run any other proposed legislative changes by the
19 Bureau of Firearms and, by extension, you for new
20 legislation concerning assault weapons since SB880?

21 A. Not that I'm aware of. I've only seen two bills
22 that are gun related so far this year, and they didn't
23 have anything to do with assault weapons that I recall.

24 Q. And none in the other previous two years or
25 whatever?

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1 A. Yeah. And I think 880 was -- we've been still
2 trying to basically accomplish that heavy lift, and I
3 don't remember any other assault weapon related either
4 clean up or fresh stuff that was being thrown our way for
5 consideration.

6 MR. BRADY: All right. Let's mark as Exhibit 99
7 your rebuttal report in this matter.

8 (Whereupon Exhibit 99 was marked for
9 identification.)

10 (Discussion off the record.)

11 THE WITNESS: So I have No. 99 now.

12 MR. BRADY: 99. Right. Okay. So we are now
13 talking about Exhibit 99, which is your rebuttal report.

14 (Pause on the record.)

15 BY MR. BRADY:

16 Q. Okay. So going to the end of your report, page
17 6, your response to --

18 A. The rebuttal?

19 Q. I'm sorry?

20 A. The rebuttal page?

21 Q. Yes. Your Response to Plaintiff's Expert,
22 William English.

23 A. Okay.

24 Q. And you note that Mr. English estimated there
25 are around 15 million AR-style rifles in circulation by

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1 the end of 2018, and you take issue with his analysis in
2 reaching that number because it looks like your concern
3 is he did not account for AR rifles that may not meet the
4 definition of an assault weapon under California, right?

5 A. Yes.

6 Q. And that those rifles that would not meet the
7 definition would either be featureless like Rifle A,
8 right?

9 A. Correct.

10 Q. Or rimfire rifles, meaning they don't shoot
11 centerfire cartridges, right?

12 A. Yeah. If it was a 30515 consideration, rimfire
13 would be thrown out the door.

14 Q. Or they don't qualify under Penal Code
15 Section 30515 because they have a fixed magazine with
16 less than a ten-round capacity, right?

17 A. Yes.

18 Q. Okay. I think we discussed earlier whether
19 MonsterMan grips and those sort of grips are -- exist
20 outside of California, and I believe you said to your
21 understanding other than in states where there might also
22 have assault weapons laws, there's no market for those
23 types of grips; is that right?

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

1 THE WITNESS: I would say that it's a minimal,
2 if any, kind of a market. There could be some. But, I
3 mean, if a California residence moved to some other state
4 and they just have what they had here and haven't changed
5 it out for whatever reason or -- you know, it's not a
6 hundred percent impossible that they exist in all 50
7 states, but it's just less likely to be in large numbers.

8 BY MR. BRADY:

9 Q. Would -- what reason would somebody have to make
10 an AR-platform rifle featureless other than to comply
11 with California's assault weapon law?

12 MR. CHANG: Objection. Calls for speculation.
13 Lacks foundation.

14 THE WITNESS: If they were -- if they've never
15 been in one of the states that requires certain gun
16 controls like maybe New York and California on this area
17 of law, I can't see many reasons why a person would
18 change out a pistol grip for a MonsterMan or some other
19 off shoot.

20 BY MR. BRADY:

21 Q. So There's no practical reason that you're aware
22 of to remove the AR-15 standard features like pistol
23 grips, adjustable stocks, and flash suppressors, right?

24 A. Yeah. Not since the federal ban has gone away.
25 You know, basically from 2004 to present in most states,

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1 you can just walk in and buy a traditional AR-15 like the
2 one in the exhibit earlier when we were dealing with all
3 the measurements. That's just normal in some states.

4 Q. But even that the federal law was the reason
5 people had -- had or did not have certain features was to
6 comply with the law, right? It wasn't because of
7 practicality; is that fair to say?

8 A. Right. It was a compliance thing.

9 Q. So but for the law, there would be no practical
10 reason for somebody to remove the features that
11 California identifies in 30515 from an AR-platform,
12 rifle, right?

13 A. Not the average citizen. You might have
14 somebody that's a -- maybe a shooter and they shoot a
15 particular weapon in different competitions and perhaps a
16 weapon would have to be configured a certain way to get
17 into a certain class, but that would be a really extreme
18 scenario.

19 Q. Got it. And the same with fixing a magazine,
20 right? There would be no practical reason to fix a
21 magazine on an AR-platform rifle if it came with a
22 detachable magazine, right?

23 A. Generally, yeah. That's not a common practice,
24 I believe, outside of California. Maybe some of the
25 other states they're restricted.

1 Q. As far as rimfire AR-platform rifles, how
2 prevalent are those, in your experience?

3 A. I would say -- let's say our department seizes
4 1,000 ARs in a year. I would say 50 to 100 of those
5 might be .22 ARs of some kind. The rest would be
6 centerfire variant. And I'm speaking about full, working
7 weapons. I'm not talking about lower receivers and
8 anything -- anything that's not functional.

9 Q. We'll talk about lower receivers in a second.
10 But as far as fully operational configured .22 rimfire
11 rifles, so you're -- in your experience, if what you see
12 in your line of work is reflective of the broader trend
13 of AR ownership, you would say that the rimfire variant
14 of an AR-platform rifle is five-ish, ten-ish percent?

15 A. Possibly 5 to 10 percent. I -- I've never poked
16 around and inside the AFS or DROS systems to study up on
17 that.

18 Q. Would you be able to determine that from AFS or
19 at least a better number?

20 A. I couldn't do it. We might have to ask a
21 programmer to dive into something like write code. I
22 don't know that our systems are that capable as they sit
23 there.

24 Q. So speaking of lower receivers, those can be
25 sold bare, stripped, right, just the receiver?

1 A. Yes.

2 Q. And that is a common practice, right?

3 A. Yes.

4 Q. And they are probably sold by the tens of
5 thousands in California prior to the latest ban?

6 A. Yeah. That's fair.

7 Q. And would you say the most common configuration
8 of those lowers is into a -- a semiautomatic centerfire
9 rifle?

10 A. If they ever get built up, the most common, I
11 guess, build would be probably semiauto centerfire. Most
12 likely 5.56 would be the -- if I had to pick one caliber
13 cartridge, that would probably be the most common.

14 Q. If they ever get built up. Does that mean you
15 have experience that lots of people don't build them up?

16 A. Yeah. They'll lose interest. They'll go
17 through life changes. Divorce.

18 Q. Get yelled at by their wife?

19 A. Sometimes. Yeah, that happens.

20 Q. Just saying I heard it happen before.

21 A. Right. Agreed. Agreed.

22 Q. And there are also unfinished lower receivers
23 called 80 percenters, correct?

24 A. Yeah. Unfinished receivers is a very common
25 thing in California since about the early part of 2013.

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1 Q. And --

2 A. We've seen sort of an explosion of them --
3 pardon the pun -- since early 2013.

4 Q. And by "explosion," you mean they're sold by
5 the, what, thousands? Tens of thousands?

6 A. Probably in the tens of thousands.

7 Q. Okay. So they're fairly common relative to the
8 gun world?

9 A. Yeah. My line of work is I see -- I see bad
10 guys that end up with them because they want to avoid a
11 background check, etcetera, and we will recover weapons
12 that are sometimes assault weapons that are made from an
13 80 percenter, as you said, unfinished receiver. But I
14 know that a lot of normal people buy them and build them
15 into weapons, and there's even a serial number
16 acquisition process now for legitimate hobbyists to make
17 their own weapon, get a number from DOJ, and they just
18 can't build an assault weapon. They can build anything
19 but pretty much.

20 Q. Prior to SB880 taking effect, would you say that
21 the most common result of an 80 percent lower, assuming
22 it gets built and the wife doesn't yell at the guy, would
23 you say the most common result is a -- would have been a
24 semiautomatic centerfire rifle with a bullet button and
25 the features?

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1 A. And this -- you're speaking of a lower receiver
2 with normal FFL markings on it, or are you talking about
3 80 percenters?

4 Q. 80 percenters. I'd actually like to ask you
5 about both. Lowers -- a manufactured lower that has to
6 be DROS'd, right, with the markings, you know, the eight
7 -- federal markings. A serial number. All that.

8 Would it be fair to say -- I believe you already
9 said that it's fair to say the most common would be a
10 semiautomatic centerfire rifle out of those, right?

11 A. Yeah. I would imagine the vast majority of all
12 the lowers that were sold to civilians through a normal
13 gun store transaction which caused a dealer record of
14 sale, if it was a serialized lower, you can buy as many
15 as you want at this point of those. Sometimes guys will
16 buy ten, and then there would be no more activity with
17 that person unless they started selling guns off because
18 of a life change or whatever.

19 So there -- most common scenario for those
20 weapons is semiautomatic centerfire, 5.56, pink, purple,
21 green, black, blue. One of everything. Sometimes you
22 open a safe, and you're like, "Wow. Okay. This guy's
23 colorful with all of his builds," and there's really no
24 difference between all of them. There's a color change,
25 and that's about it.

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1 Q. Got to match, right?

2 A. Yeah. You've got to match your shoes and belt,
3 I guess.

4 Q. Could the same be said for 80 percent lowers?

5 A. I'd say the majority is still.

6 Q. Prior to SB880 when it was still legal to do so.

7 A. Right. I'd say the -- the home built guns --
8 I'll go towards the 50 percent, maybe slightly 50 to
9 60 percent of those were legitimate builds in the sense
10 that they had a bullet button on them. They were trying
11 to comply with the 2000 era law as opposed to the, you
12 know, 880 law.

13 But I would say as you got into those home built
14 guns, there's more likelihood that you're going to find
15 somebody, in my line of work, that was building it with a
16 push button release, and they were just saying, "Screw
17 it. I don't care. It's got no serial number. I'm
18 putting a push button on here, and I've got all the
19 features," and then they would have all their legitimate
20 stuff in their safe, too. That was definitely more
21 common with those. We didn't see it as much with the
22 serialized lowers.

23 Q. But they were making semiautomatic centerfire
24 rifles, not rimfires, right?

25 A. Yeah. Rarely would you ever see an 80 percent

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1 build or unfinished-receiver-type build go up into a .22
2 caliber or some other rimfire.

3 Q. Got it. So if Professor English did not include
4 lowers -- whether they be finished lowers or 80
5 percenters -- in his numbers, in his figures estimating
6 the number of AR-style rifles out there, if he did not
7 consider those -- those -- those firearms in his count,
8 would he be -- would he have been omitting potentially a
9 significant number of AR rifles that are out in the
10 general public?

11 A. If he -- if you're -- I think what your question
12 is is that, if he claimed only finished weapons in his
13 numbers, there is a possibility of more guns out there
14 that are not mentioned in his report.

15 Q. That is my question. Thank you. You said it
16 more clearly than I.

17 A. Okay. I'm trying to get to the bottom of that.
18 I don't know what -- at the end of the day, I don't know
19 what was really in his pool of guns.

20 Q. Yeah. I'm asking you to assume that he omitted
21 guns that were built up from lowers.

22 A. Okay. Yeah. So -- yeah. Possibly there are
23 more out there that are unknown to the government.
24 There's never been tax paid on them. You know, the 80
25 percents, for example -- or just there was tax paid

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1 because it's got a serial number from Colt or some other
2 maker out there. I just don't know, you know -- is he
3 assuming a lower receiver is automatically an AR-15, or
4 could it be for some other --

5 Q. Let's assume he did not account for lower
6 receivers at all. And we know that lower receivers can
7 be built up into a semiautomatic centerfire rifle with
8 all the features, right?

9 A. Right.

10 Q. Or it can be built up into a rimfire nonassault
11 weapon, right?

12 A. Yes.

13 Q. Or it can be built up into a featureless rifle,
14 right?

15 A. Or fixed.

16 Q. Or fixed.

17 A. Yes.

18 Q. Right. But I believe you indicated that the
19 majority of those receivers are built up into
20 semiautomatic centerfire rifles with features, right?

21 A. But it's a big if. If they actually get built.

22 Q. Sure.

23 A. We find, in my line of work, if the guy has ten
24 guns in his safe, there's probably -- maybe it's just
25 indicative of the people that end up in APPS. I don't

1 know. But there's going to be two or three maybe ARs
2 with bullet buttons on them, and then there's going to be
3 probably an equal amount of unfinished guns that they
4 just didn't get time to build or whatever happened.

5 You know, our accounts, when we report what we
6 seize, we count those as long guns because that's
7 typically what ends up happening with the lower
8 receivers. That's the way they're DROS'd as well when
9 there's DROS activity.

10 Q. But if Professor English is omitting all guns
11 built up from lowers, then he is potentially leaving out
12 a significant number of potentially tens of thousands of
13 rifles from his count, right?

14 A. Possibly.

15 MR. CHANG: Objection. Asked and answered.

16 (Pause on the record.)

17 BY MR. BRADY:

18 Q. Speaking of numbers of AR platform rifles in the
19 hands of the public, are you familiar with how many
20 AR-platform rifles are owned by Californians and when --
21 harkening back to the beginning of this wonderful day
22 when we started the deposition, we had the exchange about
23 AR-platform rifles, what it means.

24 What it means here, just to be clear, is whether
25 it's an assault weapon or not an assault weapon, if it's

1 compliant with the law. How many people have acquired or
2 possess AR-15 platform rifles in California?

3 A. And we're talking legally registered in the
4 sense of assault weapons, or are we talking about
5 lawfully registered assault weapons, DROS'd AR-platform
6 guns, some of which we will have DROSeS for after 2014.
7 But you have to acknowledge there's potentially -- I
8 don't know -- thousands that we don't know about because
9 we weren't allowed to track the long gun sales before
10 that.

11 Q. Correct.

12 A. I don't know. I'm going to say -- are we
13 including lower receivers that have not been built into
14 anything in your question?

15 Q. If you feel comfortable assigning a general
16 percentage of how many of those you think actually get
17 built up because I will, you know -- actually, no. I
18 think we should include lowers because while, you know,
19 building up the lower might have got cut off the honey-do
20 list for whatever reason, that individual likely acquired
21 that lower with the intent of eventually owning one of
22 these rifles, right? Likely. Most likely.

23 A. Yeah, likely.

24 MR. CHANG: Objection. Calls for speculation to
25 the original question.

1 THE WITNESS: I don't know that we've ever done
2 a crunch on the numbers for something like this
3 department-wide whether it be for PRA or, you know,
4 whatever purpose or in response to another lawsuit or
5 something. I would think since the beginning of time,
6 there are probably a few hundred thousand, but I don't
7 know in what configurations. I don't know if all of
8 those would be lawfully possessed or even in legal
9 configurations as we speak right now. It's an ugly
10 population of good, bad, things that aren't yet built.
11 Things like that.

12 MR. BRADY: Can we go off the record for a
13 second?

14 (Discussion off the record.)

15 BY MR. BRADY:

16 Q. We can go back on. Thank you.

17 Okay. So you don't feel comfortable giving an
18 estimate of the number of AR-platform rifles that you
19 think the California public owns?

20 A. Yeah. We don't have a -- in a sense, a search
21 engine that tells us if something is AR versus Heckler &
22 Koch or AK or whatever. You'd have to do a lot of
23 filters on the data, and our programers are very busy
24 doing legislatively-mandated things. While that would be
25 a nice to know batch of data, our people are in lockdown

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1 as far as getting certain things done in a timely manner.

2 All of the registered assault weapons in
3 California right now are not necessarily AR-15s or their,
4 you know, derivatives, so you're going to have assault
5 pistols in there. You're go to have assault shotguns in
6 there and all the other non-ARs blended into that number.

7 Q. Do you know how many assault weapons were
8 registered under the SB880 registration last year, or was
9 it this year?

10 A. So --

11 Q. July 1st of this year, right?

12 A. Yeah. It ended June 30th, so we were already
13 processing applications as -- pretty much as they came in
14 after August of '17. And the staff processed some, and
15 people were getting their letters as they passed the
16 background check, etcetera. I don't know. That's not my
17 function.

18 At some point, I'm sure they're going to push
19 out a number of either a press release or whatever
20 they're going to do. But I don't know what that number
21 is. Even now, some people are failing the background
22 check. That person's gun will not count as a registered
23 assault weapon because they're now in APPS, so I don't
24 know if that's sort of relevant to the overall
25 conversation, too.

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1 Q. So is it fair to say that you don't know how
2 many individuals registered under SB880, like, had
3 completed registrations as of June 30th?

4 A. I don't know. Maybe someone on our -- what I
5 would call our program side. I would be on the
6 enforcement side. The program side would be the civilian
7 staff that do the background checks, etcetera.

8 Q. Got it. Do you know how many people's
9 applications that were filed before June 30th or on June
10 30th are still pending or were still pending post
11 June 30th?

12 A. I don't know. I don't know that number.

13 Q. Okay. Okay. Do you believe that the number of
14 registered assault weapons reflects the number of AR-15s
15 that are owned by the general public -- AR-platform
16 rifles, assault weapons, nonassault weapons that are
17 owned by the California public?

18 A. So my best answer for that is some of the
19 registered assault weapons in our database are
20 AR-platform weapons, but I would say there are
21 potentially whatever that number is -- and I don't know
22 because we don't have a search engine to tell us. But
23 there's probably a decent likelihood that the -- the
24 non-AR weapons that are out there that have been built up
25 into featureless, fixed, .22, bolt action, pump action,

1 those little subgroups, that might equal or maybe
2 slightly exceed the number of registered ARs we have in
3 California right now.

4 Q. Okay. So to be clear, the -- the regulations
5 that are Exhibit 94, Section 5471, allows the owner of a
6 Category 4 assault weapon -- what you and I have agreed
7 is a Category 4 assault rifle, which is a rifle with a
8 bullet button, right?

9 A. Okay.

10 Q. So those regulations allowed an individual with
11 a Category 4 assault rifle to remove it from the assault
12 weapon definition by removing features, correct?

13 A. Let me look at this document real quick.

14 Q. I think there's a definition for your -- just to
15 help you out, that says "featureless," I believe. I
16 could be wrong.

17 A. Yeah. It's page 2 of Exhibit 94. So Letter O,
18 I guess.

19 Q. Yeah. Yeah.

20 A. So --

21 Q. And I believe these regulations somewhere -- and
22 I'll try to find it -- say you cannot register a
23 featureless rifle, right?

24 A. Yeah. But it's not going to be in this
25 document. This is a section of the overall

1 regulations --

2 Q. Oh, okay.

3 A. -- that you've presented me with. So this is
4 maybe one of four sections.

5 Q. Okay. Is it your understanding, though, that if
6 you go -- if you have a featureless rifle, meaning an
7 AR-platform rifle, that you take the pistol grip,
8 adjustable stock, flash suppressor off of that you do not
9 have to register -- you cannot register that rifle as an
10 assault weapon, right?

11 A. Right. The department can only register
12 firearms that match 30515 characteristics. A featureless
13 one as defined in 5471, Letter O, which is the
14 featureless definition, doesn't match up with 30515.

15 So we spelled it out in that fashion so that if
16 people got a rejection letter, "Sorry. We can't register
17 your weapon because it doesn't meet the classification,"
18 people -- you know, I don't know what the number has, but
19 I know there's been a few rejections where people try to
20 send in an application for a disassembled gun, meaning
21 just a lower. People sent in .22, which is rimfire,
22 which is -- we'd have to fail them.

23 Some of the rejections would be because the
24 weapon had no features, per se, like listed in Letter O.

25 Q. And so people with a Category 4 assault weapon

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1 had the option of going featureless rather than
2 registering, right?

3 A. That is -- that's the way things ended up, yes.
4 They can go featureless. They can go fixed.

5 Q. When you say "they can go fixed," what does that
6 mean?

7 A. Meaning there are -- we call them compliance
8 products out there that change the magazine release from
9 a bullet-button style release to a scenario where you
10 have to disassemble on an AR, partially interrupt the
11 action by -- you can remove the rear take down pin. The
12 weapon would hinge up just a bit. And then at that
13 point, the -- it's a protrusion basically that sticks up
14 and normally touches the upper receiver. But when
15 there's a gap there, that protrusion will then fall in
16 the gap in between the two -- the upper and the lower,
17 and the mag will drop at that point.

18 So that's an example of one of the variants of a
19 fixed mag that I've seen.

20 Q. And if you have that product on your rifle, you
21 lawfully avoid registering it as an assault weapon,
22 right?

23 A. Generally unless you put a 20-round or a
24 30-round mag in there, then you've created a fixed mag
25 assault weapon.

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1 Q. Yeah. Sure. Let's leave the magazine out.
2 Just the rifle. If you put that product on it and it
3 requires that you pop the upper off the lower in order to
4 pop out the magazine, then you don't have to register
5 that rifle, right?

6 A. Correct.

7 Q. How quick can you change -- how quickly can you
8 change a magazine with one of those products that require
9 you to disassemble the action?

10 A. So there's different versions of it. There are
11 some that have a captive magazine in there, so you
12 actually have to top load. That's -- that scenario is
13 going to be much slower to do a reload. Obviously you
14 have to put between one -- one and ten rounds in there,
15 close it back up, put the pin in, charge the handle up,
16 and then you can fire.

17 There are versions of a fixed mag out there that
18 the rear take down pin -- they've got almost like a
19 lobster claw scenario where you just hit these paddles,
20 the lobster claws will retract, the weapon will hinge up,
21 and they've even built in sort of like an auto drop
22 feature into the mag well. So as soon as that -- it
23 senses that there's no spring tension right over there
24 near the mag well, it drops the mag regardless if you
25 want it to or not. There's all these little variants

1 that have sprung up since then.

2 So it could be -- I don't know -- five seconds,
3 you know, on some of them, and some of them would be much
4 longer.

5 Q. Have you shot a rifle with that feature on it?
6 With the -- with the rear take down pin that allows you
7 to remove the magazine?

8 A. One, I think.

9 Q. Okay. Have you shot an AR-platform rifle with a
10 bullet button?

11 A. Yes.

12 Q. And have you changed magazines on both rifles?

13 A. Yes.

14 Q. Can you say which one was faster?

15 A. Personally, I was slower with the fixed mag
16 version than I was with the bullet button version, and
17 I -- when I was experimenting with the various bullet
18 button tools that were out there, some of them -- those
19 were even faster than others. So just like in the bullet
20 button side of things, there are faster variants. And
21 just like in the fixed magazine conversation, there are
22 faster versions. And some accessories you can buy will
23 speed up your reload, and people are coming out with
24 those now.

25 Q. How much of a difference between the bullet

1 button and the rear take down pin for you are we talking
2 about?

3 A. Three to five seconds, maybe. If I really get
4 after it and practice, that might be the difference.

5 Q. So three- to five-second difference?

6 A. Possibly. For me with my experience and with
7 the weapons that I've experimented with.

8 Q. Okay. And is my understanding correct that if
9 you -- like we discussed earlier, if you simply remove
10 the upper from the lower and leave it in that state, then
11 you do not have to register it as an assault weapon as
12 long as you do not reassemble it?

13 A. That's correct.

14 Q. Are you aware of any notice that owners of
15 Category 4 assault weapons were given to reregister their
16 rifles as assault weapons when SB880 passed?

17 MR. CHANG: Objection. Vague as to
18 "reregister."

19 BY MR. BRADY:

20 Q. Okay. Let me strike reregister. To register.
21 Let me clarify the -- the law here, right?

22 When people purchase their Category 4 assault
23 weapons, they were not assault weapons, right?

24 A. Right.

25 Q. And so they were not -- if they were prior to

1 2014, they did not have to be registered, right?

2 A. We did not have data in the system on their
3 ownership, meaning a DROS entry, because we weren't
4 allowed to keep it.

5 Q. Okay. So regardless of when somebody bought a
6 Cat 4 assault weapon during the period that it was
7 lawful, they did not have to -- they had to go and
8 register -- take an affirmative step to register it under
9 SB880 with the California Department of Justice, right?

10 A. Yes.

11 Q. And so they had to know -- in order to do that,
12 they had to know that they had to do that, right?

13 A. Yes.

14 Q. Are you aware of any notice that owners of those
15 rifles were given to go and register their Category 4
16 assault weapons under SB880?

17 A. I believe I'll know of some, but I may not know
18 all that the department took. That was something that
19 our program site did, which, again, is not my function.

20 I'm aware that the department updated our
21 website, which amongst all of the Attorney General's web
22 pages, it gets either the No. 1 or the No. 2 number of
23 hits annually. Sometimes it's Megan's Law, or it's that,
24 the firearms page. So that page was updated to reflect
25 sort of a notice to owners of these weapons. "Hey. Go

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1 here to this special page. Figure out if you have one of
2 these. Here's how you register."

3 That was done. There was a countdown clock on
4 the top of the page. There were posters that were sent
5 to the gun show promoters, and the promoters were asked
6 to put those at the shows that they were producing
7 throughout the course of the window of registration.

8 Fliers, to my knowledge, were created which
9 mimicked the larger posters. Those were sent to the gun
10 stores in the State of California. Around roughly 2,000
11 stores, they would have received a number of fliers based
12 on what we thought their volume was. So a home dealer
13 that sells five guns a year is not going to get 10,000
14 copies because of cost and whatnot. People that had a
15 higher volume store would get more forms to hand out to
16 their customers.

17 There were press releases through the AG's press
18 office. At least one, maybe two. Probably within the
19 last month or two of the registration window before it
20 expired, there was an announcement then. I'm trying to
21 think what else.

22 We don't have a -- in a sense a central e-mail
23 address or physical address list for all gun owners in
24 California. There's -- AFS has DROS data on particular
25 addresses for people the day that they bought their gun.

1 They might move the next day, and that address is stale.
2 So we don't have a minute-by-minute perfect address
3 system that we could, you know, send a letter to
4 everybody with all of their addresses over the course of
5 time.

6 Q. So then is it accurate to say that the DOJ put
7 general information out into the public about the need to
8 register assault weapons but did not directly contact any
9 owners -- directly contact any of the owners of these
10 rifles to tell them that they had to register them?

11 A. Yes. We did a public education campaign, but we
12 don't have a perfect method to get word to every single
13 Californian that might own one or have a friend that has
14 one of these, etcetera.

15 Q. So is it reasonable to assume that there are
16 individuals who did not know that they had to register
17 the assault weapons that they acquired lawfully?

18 A. It's possible.

19 Q. And that would affect the number of people who
20 actually registered, and it would lower that number,
21 right?

22 A. Sure. They could still have an AR-platform
23 weapon, so to that larger conversation. But as to
24 whether they decided to actually register via our website
25 or later convert it to featureless or fixed or

1 disassemble it, I have no idea.

2 Q. Yeah. I know you don't -- I wouldn't assume you
3 would have an idea of the specific numbers of people who
4 did that. Just that that would -- those options would
5 affect the -- potentially affect the number of actual
6 registrants, right?

7 A. The options to --

8 Q. To alter.

9 A. -- to do something else other than -- yeah.
10 Yeah. Sure.

11 Q. And in your -- do you have any feelings or
12 impressions on how common it has been for the gun owning
13 public to -- to do an alternative to registration such as
14 going featureless?

15 MR. CHANG: Objection. Calls for speculation.
16 You may answer if you know.

17 THE WITNESS: Yeah. All I can say is that there
18 are a number of products that purport to be compliance
19 products, whether it be featureless or fixed, that have
20 sprung up in the last couple years. Presumably they
21 wouldn't be making these unless there was a market.
22 Because you can still -- even to this day, you can buy
23 something off the shelf at a store here that is
24 supposedly featureless or fixed.

25 So I don't know how much of that marketplace is

1 going to guns sold after 2017 or for the products -- or
2 how often those products would have been applied and
3 attached to a gun pre 1/1/17.

4 BY MR. BRADY:

5 Q. Understood. But you don't necessarily need
6 those products to avoid registration legally, right?
7 Like you said, you can take the upper off the lower. You
8 can just remove the features rather than get a compliance
9 product, right?

10 A. Yes.

11 Q. And would it be reasonable to assume that people
12 were dissuaded from acquiring AR-platform rifles in light
13 of the AWCA?

14 MR. CHANG: Objection. Calls for speculation.

15 THE WITNESS: I don't know. I don't know if
16 I -- are you speaking about the most recent change,
17 Senate Bill 880 where they were --

18 BY MR. BRADY:

19 Q. We can limit it to that, but I'm talking about
20 generally since 1989 since the, you know, original
21 Assault Weapon Control Act, there's been laws directed at
22 AR-platform rifles and similar type rifles.

23 Would it be reasonable to believe that people
24 who would have otherwise bought such a rifle said, "I'm
25 not going to go near those things because of California's

1 laws"?

2 MR. CHANG: Objection. Calls for speculation.

3 THE WITNESS: Yeah. I don't know. I mean, I
4 know of a lot of people who have bought some legal
5 variants, so I don't think I've ever had a conversation
6 with somebody that said, "Well, I only bought this
7 because of the laws on the books, but I'm going to buy
8 all these other things." Typically people will buy what
9 they can find in a store. That's in my experience.
10 Whether it be law enforcement friends or, you know, my
11 neighbors or whoever, they're going to buy what they see
12 in front of them. If they see a featureless or a fixed
13 mag gun on the wall and that's what they can buy, they're
14 probably going to buy some.

15 BY MR. BRADY:

16 Q. Are you familiar with the Firearms Policy
17 Coalition?

18 A. Yes. I've heard of that group.

19 Q. Do you look at their materials on the internet
20 that they put up on their website?

21 A. I've been to their website, and I don't know how
22 many times. Maybe -- I don't know -- a handful of times.
23 If we are either sued by them, I might go to their site
24 or if we are PRA'd by them. Maybe that causes me to go
25 to the site. But there's been instances where I've gone

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1 there for a particular reason.

2 Q. Have you reviewed the page of their site that
3 talks about what they claim to be key facts and stats
4 about California's bullet button assault weapon
5 registration?

6 A. If I have, I don't recall right now.

7 Q. So do you have any thoughts on their claim that
8 only 3 percent of assault rifle owners registered their
9 rifles under the SB880 law?

10 A. I don't know where they would get their numbers
11 from to do that, and I would struggle as I've had today
12 to figure out what numbers might apply. So I'm not sure
13 where they got their numbers.

14 Q. Do you know whether their claim that 52,443
15 applications for firearm registrations were still pending
16 as of June 30th?

17 A. 52,000 you said?

18 Q. 52,000 -- yes -- assault weapon registrations
19 were still -- applications for registrations were still
20 pending.

21 MR. CHANG: What's the question?

22 BY MR. BRADY:

23 Q. Yeah. Are you -- have you seen that number that
24 they're claiming that there's 52,000-ish assault weapon
25 applications that are still pending review since

1 June 30th?

2 A. No. That's news to me. I don't know where they
3 got the numbers. Maybe it came from the department.
4 Maybe it's some math they did on their own from
5 estimates. I really don't know.

6 Q. Are there still people whose assault weapon
7 applications are still pending?

8 A. Yes.

9 Q. You just don't know the number?

10 A. Right.

11 Q. Could it be 52,000?

12 A. It could be.

13 MR. CHANG: Objection. Calls for speculation.

14 THE WITNESS: It could be. Or it could be more
15 or less, too. I don't know.

16 MR. BRADY: Can we go off the record really
17 quick, please?

18 (Discussion off the record.)

19 BY MR. BRADY:

20 Q. All right. Let's go back on the record, please.
21 We are back on the record after a quite long and loud
22 fire drill.

23 So, Mr. Graham, can you still hear me?

24 A. Sort of.

25 Q. If -- if you need me to repeat a question or you

1 don't hear or understand me, please ask me to repeat it,
2 okay?

3 A. I will try.

4 Q. Thank you. So going to Exhibit 99, which is
5 your rebuttal report. You state in paragraph 5 that you
6 did agree with several opinions reached by Mr. Boone in
7 his report.

8 Can you explain what your disagreements with
9 Mr. Boone's opinions are?

10 A. So he's -- he's speaking in his report about the
11 AR-15 being an appropriate weapon for civilians in
12 general. FBI agents, if they're issued an AR-15, have a
13 certain level of training that they're going to have. In
14 general, any firearm ideally is going to have some
15 training associated with it. An AR-15 is very close to
16 an issued weapon to our military, and certain people may
17 have enough training to handle it -- handle a weapon like
18 that. The average person -- it probably goes for most
19 firearms. It would be better if they had some
20 marksmanship training for -- in the case of errants
21 rounds or something like that. So that was one thing.

22 He was making a broad statement about "AR-15s
23 are fine." The military issues these weapons and they --
24 they have marksmanship training. Law enforcement issues
25 weapons like this. We have training. I don't know that

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1 there's any training standards here in California or
2 elsewhere that are similar to what either members of the
3 military or members of law enforcement have to do to
4 maintain proficiency with these things.

5 Q. So is it fair to say that you do not disagree
6 with Mr. Boone's opinion that AR-platform rifles are good
7 weapons for self-defense; you take issue that you have to
8 have a certain level of training for it to be a good home
9 defense weapon.

10 Is that fair to say?

11 A. Any weapon would be better off in the hands of a
12 trained user. Could it be the most appropriate weapon in
13 some scenarios? Maybe. In all scenarios? Probably not.

14 Q. Does Mr. Boone opine that it is the best home
15 defense weapon in all scenarios in his report to your
16 recollection?

17 A. The way I took his report, it was sort of a
18 blanket approval for -- regardless if they lived in a
19 homeless encampment or they lived in a cabin on top of a
20 hill miles from anybody else. It sort of seemed like a
21 blanket, in a sense, approval from him solely because,
22 well, FBI uses it, so everybody else should be able to
23 use it for the same purposes. But there's a lot of
24 different reasons an AR-15 might be used by law
25 enforcement or the military than the average citizen as

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1 we discussed earlier. The average citizen is not going
2 to encounter armed criminals as often as law enforcement
3 does day-to-day.

4 Q. So if I'm hearing you right, an AR-platform
5 rifle can be good for home defense but is not necessarily
6 in all situations?

7 A. Right. Absent appropriate training or absent --
8 if you're at the ATM getting money out, it's probably
9 inappropriate to have an AR-15 around yourself. If
10 you're -- if you have a concealed weapons permit and you
11 have a handgun, that's probably the most appropriate
12 weapon for that specific type of self-defense.

13 If you're living in a rural environment and you
14 might have large animals, you might find a rifle of some
15 use. That's potentially more appropriate for that
16 setting. If you're in an apartment building or close
17 proximity to other houses and you shoot and let some
18 rounds off and they get -- either go through the person,
19 they can continue on and hurt neighbors, etcetera.

20 Q. I am putting in front of you Exhibit 13 which
21 has been previously marked as such, and it is a series of
22 slides prepared by the ATF.

23 Have you seen this document before?

24 A. I don't believe so.

25 Q. So in responding to Mr. Boone's report, which he

1 referenced this ATF report in, you did not look at the
2 report that he relied on?

3 MR. CHANG: Objection. Mischaracterizes the
4 facts. That's not what he relied on. That's not what
5 Mr. Boone relied on.

6 MR. BRADY: The ATF document is not what
7 Mr. Boone relied on?

8 MR. CHANG: The test that Mr. Graham is
9 referring to -- and I'm assuming you're talking about
10 paragraph 7 of Mr. Graham's rebuttal report -- Mr. Boone
11 did not rely on that particular set of slides for the
12 portion of the -- of Mr. Boone's report that Mr. Graham
13 was rebutting in paragraph 7. If you want to provide
14 Mr. Graham a copy of Mr. Boone's report, you may get more
15 specific answers.

16 BY MR. BRADY:

17 Q. Okay. So in paragraph 6 of your rebuttal
18 report, you object to Mr. Boone's opinion that handgun
19 rounds underperform regardless of circumstance; is that
20 right?

21 A. Yes.

22 Q. And what is your issue with that? With his
23 opinion on it?

24 MR. CHANG: Go ahead. If you need to see a copy
25 of Mr. Boone's report --

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1 MR. BRADY: No. I'm referencing -- I mean,
2 here. Here's Mr. Boone's report, if you want it. It's
3 Exhibit 22. But I'm asking you about your rebuttal
4 report, paragraph 6.

5 THE WITNESS: Right.

6 BY MR. BRADY:

7 Q. You say that you disagree with Mr. Boone's
8 opinion that handgun rounds underperform regardless of
9 circumstance.

10 Why is that?

11 A. I felt it was a broad -- too broad of a
12 statement for him to make. The test, as you see -- I
13 think it's line 24 within paragraph 6. It's based on a
14 test conducted during his time during the -- with the
15 BRF, which is the group he was part of. And he talks
16 about a particular round, and I didn't see any data to
17 say how long the barrel was, and it gets into page 2.

18 Q. Okay. So I believe I gave you a copy of
19 Mr. Boone's report.

20 A. Okay.

21 Q. If you -- can I see it really briefly, please?
22 Because I don't think I grabbed enough of these for me.

23 A. Sure.

24 (Pause on the record.)

25 ///

1 BY MR. BRADY:

2 Q. Okay. So this is what I'm going to be referring
3 to.

4 First off, in your paragraph 6 of your rebuttal
5 report, the -- part of the reason you take issue with his
6 opinion that handgun rounds underperform regardless of
7 circumstance is that you say that it was based on a test
8 conducted during his time with the BRF that showed a
9 particular 115-grain plus P plus 9 millimeter bullet,
10 presumably fired out of an unarm-type of handgun
11 penetrated approximately 11 inches in a bare tissue
12 stimulant.

13 What is your issue with him referencing that
14 bullet?

15 A. So I get into my reasons in paragraph 7 and
16 paragraph 8.

17 Q. Okay.

18 A. Can we go to that?

19 Q. Sure.

20 A. It's on page 2. So how the projectile performs
21 will really depend on the type of projectile itself. Is
22 there a full metal jacket? There are hollow points and
23 various other types of bullets which are projectiles. He
24 said one particular type, but I didn't understand from
25 his statement here. He says "bullet," but he doesn't say

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1 if it's a full metal jacket. He doesn't say if it's
2 hollow point that I can tell, anyway.

3 I would have been potentially more inclined to
4 maybe agree or not have an objection if he had identified
5 the bullet type that was going to travel through, you
6 know, the substance. Maybe it was an omission or
7 whatever, but I wanted more information about the bullet
8 type. That's -- that's my issue with No. 7.

9 Q. Okay.

10 A. No. 8. Let's see. The main part of -- well,
11 another part of his report, he's talking about the
12 likelihood of a 9 millimeter being a good round -- it was
13 not a good round basically to use. But since that time,
14 there's been an FBI report that says the ballistics for 9
15 millimeter have improved because of changes in technology
16 with the ammunition manufacturers. That was a -- I don't
17 know. It was like a 2014, I think, FBI report.

18 Q. Do you know -- so you referenced in your --
19 you're familiar with an FBI report that said that -- that
20 you believe contradicts Mr. Boone; is that correct?

21 A. Yeah. I mention it on page 3, top of -- so
22 paragraph 9, and I think it's -- it's referenced --
23 there's a footnote to the bottom of page 3 about that, I
24 guess, source, if you will. That 2014 report. FBI
25 report.

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1 Q. Okay. So what relevance does this have that --
2 in nine -- what relevance does it have that the FBI went
3 back to 9 millimeter for handguns?

4 A. So he's making a statement that when he did this
5 test in the past, I think it was possibly page 6 -- the
6 over penetration thing here with a particular bullet out
7 of a particular cartridge was inappropriate. I don't
8 know if he factored in this -- I believe he retired in
9 2012. This is about two years after he retired. He may
10 have access to this. I don't know. But if he had access
11 to this, I wonder if he would have had the same
12 statement, I guess, on the bottom of his page 6. That
13 was a difference that I had with him over that.

14 At the end of the day, he may agree ultimately
15 that I felt that this modern -- well, 2014 FBI report
16 says some things that may be at odds with his statement
17 at the bottom of page 6.

18 Q. Okay. Was that report comparing handgun rounds?
19 Ammunition for handguns -- the 40 Smith & Wesson, the .45
20 auto, and the 9 millimeter -- or was it also comparing
21 ammunition for handguns with rifles?

22 A. I recall it being a handgun-based sort of report
23 that rolled out. I don't have a copy of it in front of
24 me, and it's been probably a month and a half since I've
25 looked at the thing, so...

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1 Q. Is this footnote on the bottom of page 3, is
2 that the FBI report that you --

3 A. Yes.

4 Q. Okay. But so assuming it's only comparing
5 handgun rounds and not comparing the ammo that they're
6 using in handguns with rifles, then isn't that report
7 apples and oranges with Mr. Boone's report that was
8 comparing .223 rounds out of a rifle with handgun rounds?

9 A. His statement to me sort of leads the reader
10 to -- down a path that doesn't bring into the fact of a
11 more recent report by his own former agency. Maybe that
12 was an oversight or maybe it was his intention. I don't
13 know. I've never met the man. I didn't have a way to
14 ask him that.

15 But I was concerned that he didn't factor in
16 this -- it's been a fairly big news that the FBI has gone
17 to the 9 mil, and a lot of agencies are switching back to
18 it because of the improvement in the 9 millimeter round
19 over the last few years.

20 So I don't know if he's still going to have the
21 same opinion that the 9 millimeter is inadequate or it's
22 going to overpenetrate those types of things.

23 Q. And in your paragraph 8, you indicate that since
24 2007, the terminal effectiveness of projectiles has
25 dramatically increased; is that right?

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1 A. Yes.

2 Q. Where -- on what do you base that?

3 A. I based it on the statement from within the 2014
4 FBI report. A series of bullets -- pardon the pun, but
5 literally it's bulleted out. Various findings. And one
6 of them is that sentence.

7 Q. Okay. Do you have any -- in that report, did it
8 say whether the FBI ballistic research facility, the BRF
9 had any -- any contribution to making projectiles more
10 effective?

11 A. I don't remember reading anything to that
12 effect.

13 Q. So you're saying since 2007 -- that report says,
14 "Since 2007, the terminal effectiveness of projectiles
15 has dramatically increased," right?

16 A. Yes.

17 Q. Do you know who had daily oversight over the
18 FBI's BRF from 2007 to late 2012?

19 A. I would think it would have been Mr. Boone.

20 Q. Mr. Boone.

21 A. Yes. The author of the report in 2014 wasn't
22 Mr. Boone, from what I could tell, so the statements from
23 that may or may not have had -- he may not have had total
24 knowledge of everything that came out in that 2014
25 report. So that's why I was like, "I don't know about

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1 this," so I wanted to bring that up.

2 Q. Okay. So in other words, this basically raises
3 questions in your mind about the accuracy of Mr. Boone's
4 report; it doesn't necessarily contradict it?

5 A. Yes. He may have -- his statement may still be
6 accurate, but I see something here that makes me question
7 it, and I don't -- I don't know why the FBI two years
8 after he retired would -- there's no benefit for them
9 putting out false info or whatever.

10 I don't think it was his intention to put out
11 false info in his report, either. I know that over time,
12 new information comes available. And if you don't know
13 about a particular new bit of information, you may -- you
14 may not answer the question the same way.

15 Q. So I just want to focus in on what exactly that
16 FBI says that causes issues with what Mr. Boone is saying
17 in your -- in your opinion.

18 A. Okay. So on his page 6, the bottom of it, it
19 has the overpenetration paragraph. I take some
20 information from the 2014 FBI report on page 3,
21 paragraph 9. There's mention here about halfway down
22 line 6 or so.

23 "The report concludes that with modern, properly
24 designed, expanding handgun bullets, the objective of
25 penetrating 12 to 16" -- "12 to 18 inches, depending on

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1 the size of the individual and the angle of the bullet
2 path, is realized." In his page 6, he's talking about
3 approximately 11 inch in bare tissue stimulant, and then
4 there's a change in what might happen after going through
5 the plywood.

6 So I don't know if this is totally -- I'm not
7 sure how to say this. But the -- the data in the 2014
8 FBI report caused me to question that area of his report.

9 Q. Okay. Question but not necessarily contradict,
10 right?

11 A. I think the -- I've not been able to ask
12 Mr. Boone that particular question.

13 Q. What question would you ask him if you could?

14 A. "When you wrote this paragraph starting with
15 overpenetration, did you have knowledge of this 2014 FBI
16 report? And does -- if so, how does this statement
17 within the report regarding the 12 to 18 inches compare
18 with your statement talking about 11 inches in bare
19 tissue?"

20 Q. Okay. And to be clear, the 2014 report did not
21 talk about .223 ammunition at all, right?

22 A. I don't recall that it did.

23 Q. And was it talking about the difference in
24 penetration when hitting an -- an intermediate barrier?

25 A. I don't know if this had intermediate barrier

1 language in it. I believe the -- his page 6 comments
2 deal with hitting plywood and then the effects of it
3 after that. I don't remember if this was an exact
4 apple-for-apple test.

5 Q. Do you disagree with Mr. Boone about the
6 penetration effects of .223 versus the 9 millimeter and
7 40 Smith & Wesson rounds he was comparing in his report?

8 A. He is a ballistics expert. I am not. My role
9 here is, in a sense, to review his report and point out
10 things that cause me concern. I don't have a -- the
11 credentials to question his ballistics statements.

12 Q. Got it. So there is potentially -- he could
13 potentially answer the question you raised in a way that
14 would alleviate your concerns about -- that you raised
15 about his report is that --

16 A. Possibly. Yeah. It might be a very simple
17 answer to one sentence or -- I don't know, you know.

18 MR. BRADY: Okay. So in sum -- strike that.

19 I think I'm done.

20 EXAMINATION BY MR. CHANG

21 Q. Okay. I have a few redirect questions while you
22 have the reports in front of you. You're looking at
23 Mr. Boone's report, Exhibit 22.

24 A. Okay.

25 Q. Actually, look at your rebuttal report,

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1 paragraph 6.

2 A. This is No. 99, page 6.

3 Q. Correct. Or paragraph 6, page 1.

4 A. Paragraph 6. Okay.

5 Q. So according to paragraph 6, his -- Mr. Boone's
6 report -- he opined that a test result -- excuse me.

7 His opinion that handgun rounds underperform,
8 regardless of circumstance, is based on a test conducted
9 during his time with the BRF, correct?

10 A. That's my understanding.

11 Q. And it's your understanding he retired from the
12 BRF in 2012?

13 A. Yes.

14 Q. And Mr. Boone's report on page 6, as you pointed
15 out earlier, stated that in a test he conducted, the
16 handgun round penetrated 11 inches in bare tissue
17 stimulant, correct?

18 A. Yes.

19 Q. And then in the 2014 report, FBI report that you
20 also discussed in your report, the 2014 FBI report
21 reported that the handgun round -- 9 millimeter handgun
22 round that they tested penetrated 12 to 18 inches,
23 correct?

24 A. Yes.

25 MR. BRADY: Objection. Asked and answered.

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1 BY MR. CHANG:

2 Q. So based on the timing of the data, when the
3 report was released, does this -- does this suggest to
4 you that Mr. Boone relied on outdated data in his expert
5 report?

6 MR. BRADY: Objection. Calls for speculation.
7 Beyond the scope of the witness's expertise.

8 THE WITNESS: The dates on the various batches
9 of data are what appears to be. It's entirely possible
10 he did factor in the 2014 report, but it's not clear in
11 his document. That's why I questioned it. I'd love to
12 know the answer, but I don't know at this time.

13 BY MR. CHANG:

14 Q. Well, in the report, the part that you rebutted,
15 he referenced that it was a test he conducted. He relied
16 on the test he conducted at BRF, correct?

17 A. Yes.

18 Q. Okay. And in a different matter, I think you
19 were previously asked whether the -- in the number of --
20 if I mischaracterize anything, please let me know.
21 Please clarify the record.

22 You were previously asked in the number of
23 AR-15s that you have seized or the Department of Justice
24 has seized, how common are rimfires -- rimfire
25 AR-15-platform rifles, and I think -- I think you had

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1 said five to ten percent, correct?

2 MR. BRADY: Objection. Asked and answered.

3 THE WITNESS: I believe out of 1,000, I think I
4 said 50 to 100 possibly, which I think if you did the
5 math would be five to ten percent.

6 BY MR. CHANG:

7 Q. And I believe -- and this is just a set up for
8 the question. And I believe you were also asked whether
9 that number you think is reflective of the percentage of
10 rimfire AR-15s versus centerfire AR-15s in California
11 overall.

12 MR. BRADY: Objection. Misstates the --

13 BY MR. CHANG:

14 Q. Do you recall your answer to that question?

15 MR. BRADY: Objection. Misstates the question.

16 BY MR. CHANG:

17 Q. Do you recall that question being asked?

18 A. I vaguely recall the question. I don't
19 necessarily recall my answer.

20 Q. I'll just ask you, then.

21 Do you know what the -- in California, do you
22 know what the percentage of AR-15s are rimfire AR-15s
23 versus centerfire AR-15s?

24 MR. BRADY: Objection. Beyond the scope of what
25 the expert was called to testify about. Asked and

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1 answered, and beyond the scope of appropriate redirect.

2 THE WITNESS: My -- my answer at the time to
3 Mr. Brady was dealing with weapons that the bureau agents
4 have seized. As I said, some of our databases can
5 capture certain data, and some are incapable of doing
6 that. I don't have access, you know, at this time to
7 pull the data for specific .22 versus non-.22 at this
8 time.

9 BY MR. CHANG:

10 Q. Okay. Previously, we had talked about the
11 definition of flash suppressors, and you were asked about
12 the -- the definition of flash suppressors in the
13 regulations. And I think at the end of your questioning,
14 you said something about there's -- the definition of
15 flash suppressors was virtually the same as it was before
16 SB880 except there was a new regulation included hybrid
17 devices.

18 Do you recall --

19 MR. BRADY: Objection. Mischaracterizes the
20 testimony.

21 BY MR. CHANG:

22 Q. -- that line of questioning?

23 A. I vaguely remember talking about flash
24 suppressors. As to what was new versus the old
25 definition, I don't know that I spoke in a whole lot of

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1 detail about -- I did say the word "hybrid" at some point
2 today, and it's in the -- it's in the registration
3 definition.

4 Q. Let me ask you, then. What is the difference
5 between a hybrid device versus a flash suppressor as it
6 was defined under the previous regulation?

7 MR. BRADY: Objection. Beyond the scope of
8 redirect. It was not discussed in the deposition.

9 THE WITNESS: The -- the hybrid devices that
10 I've seen advertised sometimes purport to be a flash
11 suppressor. Sometimes they purport to do one or more
12 other functions such as act as a muzzle break. Things
13 like that. So the -- the regulation speaks to the reader
14 in the sense that if there are advertised, I guess,
15 features of the muzzle device that have a flash
16 suppressing component and other components, it would be
17 deemed to be a flash suppressor.

18 BY MR. CHANG:

19 Q. Okay. If you could turn to your report, page 9.
20 I think there is -- some time was spent on discussing
21 Rifles A and B.

22 A. Just a second.

23 Q. Sure. This is Exhibit --

24 A. 97?

25 Q. 97.

1 A. Okay. Let me find those pages. Okay. So I'm
2 on page 9 of my report.

3 Q. Right. Correct. And we had discussed Rifles A
4 and B with Rifle A being the top rifle, one that is --
5 that is not -- it's considered featureless in terms of
6 Penal Code Section 30515, correct?

7 A. Yes.

8 Q. And Rifle B has the 30515 features?

9 A. Yes.

10 Q. Okay. You had talked about -- there was some
11 discussion about the accuracy.

12 Does the rifle grip -- or does the pistol grip
13 affect the accuracy of firing Rifle B versus Rifle A?

14 MR. BRADY: Objection. Is there a question?

15 BY MR. CHANG:

16 Q. Yes. Does it affect the accuracy of the
17 shooter?

18 MR. BRADY: Then, objection. Asked and
19 answered. Beyond the scope of proper redirect.

20 THE WITNESS: Depending on the shooter, there
21 may be some benefit to accuracy. It may not apply to
22 every single shooter. Hopefully that's responsive.

23 BY MR. CHANG:

24 Q. Does it -- is the accuracy of Rifle A versus
25 Rifle B, does it affect -- is it affected -- or does the

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1 number of rounds fired or the rate of fire affect the
2 accuracy in -- in -- of having a pistol grip in Rifle B
3 versus no pistol grip in Rifle A?

4 A. I think I need a different -- that question
5 is --

6 Q. Sure. I'll rephrase.

7 A. Thank you.

8 Q. So if someone has Rifle B and -- you know, you
9 have two shooters, one with Rifle A and one with Rifle B.

10 A. Okay.

11 Q. And they're each asked to make, you know, two
12 shots with, you know, two seconds in between each shot.

13 A. Okay.

14 Q. Would the pistol grip rifle be -- make the
15 shooter be more likely to be accurate than the shooter
16 holding Rifle A?

17 MR. BRADY: Objection. Incomplete hypothetical.
18 Beyond the scope of appropriate redirect. Vague.

19 THE WITNESS: Depending on the shooter, it may
20 or may not. If there's that much time allowed between
21 shots, you're going to have more time to aim, etcetera.

22 BY MR. CHANG:

23 Q. What about then -- you mentioned the time
24 between shots.

25 What if the shots -- the timing between shots is

1 reduced? Let's say in another hypothetical, two
2 shooters, one with Rifle A, one with Rifle B, and they're
3 both asked to shoot as quickly as they can at a specific
4 target. Would the shooter holding Rifle B with the
5 pistol grip be more or less likely to be accurate than
6 the shooter holding Rifle A?

7 MR. BRADY: Objection. I'm going to make an
8 objection to all this line of questioning on the record,
9 Peter, because I've been trying to drop hints that this
10 line of questioning is inappropriate, but you didn't want
11 to take me up on it. We're not here to redepose Mr.
12 Graham. He has provided answers to virtually all of
13 these questions. You may not have liked the answers.
14 You're welcome to take those answers in briefing from his
15 deposition transcript and explain whether he -- what he
16 said was or was not how you interpret it. But to
17 redepose Mr. Graham is simply not appropriate.

18 MR. CHANG: You may answer.

19 THE WITNESS: I'm going to -- can she read the
20 question back? With all that, I lost track.

21 MR. CHANG: Yes.

22 (Whereupon the record was read back.)

23 MR. BRADY: Objection. Incomplete hypothetical.
24 Calls for speculation. Vague. Confusing.

25 THE WITNESS: So I can say that I'm likely going

1 to be more -- more accurate with Rifle B. The average
2 shooter -- I don't know the answer to every shooter out
3 there in the world, but I believe I would be more
4 accurate with this Rifle B because it's most closely in
5 characteristics to my duty weapon. Duty long gun.

6 BY MR. CHANG:

7 Q. Okay. You were previously asked whether you can
8 definitively say -- and this was within the context of
9 discussing paragraph 40 -- the incidents you listed in
10 paragraph 40.

11 You were previously asked whether you can
12 definitively say whether the shootings listed in
13 paragraph 40, whether the fact that -- whether you can
14 definitively say that the fact they used an AR-15 type of
15 weapon did not contribute to the -- the -- the outcome of
16 those shootings.

17 In your expert opinion, is it more likely than
18 not that the fact that these shooters used an AR-15 type
19 of weapons with, you know -- with the features, if they
20 used the features -- in your expert opinion, is it more
21 likely than not that the fact that they used those
22 assault rifles contributed to the -- the lethality or the
23 damage that was done by those shooters?

24 MR. BRADY: Objection. Incomplete hypothetical.
25 Calls for speculation. Vague. Confusing.

1 THE WITNESS: Assuming these weapons had a
2 pistol grip and one or more of the other features or just
3 a different feature, the pistol grip, in my experience,
4 aids me in being more accurate, quicker to reload,
5 etcetera. I would think these shooters would have the
6 same benefit from a pistol grip if there was a reloading
7 that happened during their particular shootings. Those
8 reloads probably happened slightly faster than a weapon
9 without a pistol grip.

10 MR. CHANG: Okay. Thank you, Mr. Graham.
11 That's all I have.

12 COURT REPORTER: Counsel, would you like a
13 transcript?

14 MR. BRADY: Yes, please.

15 MR. CHANG: Yes.

16 (Deposition concluded at 5:57 p.m.)

17 --oOo--

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1 I, BLAKE GRAHAM, do hereby declare under penalty
2 of perjury that I have read the foregoing transcript,
3 that I have made any corrections as appear noted, in ink,
4 initialed by me, or attached hereto; that my testimony as
5 contained herein, as corrected, is true and correct.

6
7
8 EXECUTED this 7th day of February, 2019, at
9 Sacramento, CA.
(City) (State)

10
11
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13 

14 BLAKE GRAHAM

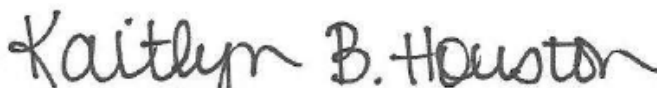
VOLUME I

1 I, the undersigned, a Certified Shorthand
2 Reporter of the State of California do hereby certify:
3 That the foregoing proceedings were taken before me at
4 the time and place herein set forth; that any witnesses
5 in the foregoing proceedings, prior to testifying, were
6 duly sworn; that a verbatim record of the proceedings was
7 made by me using machine shorthand which was thereafter
8 transcribed under my direction; that the foregoing
9 transcript is an accurate transcription thereof.

10 I further certify I am neither financially
11 interested in the action nor a relative or employee of
12 any attorney or any of the parties.

13 IN WITNESS WHEREOF, I have this date subscribed
14 my name.

15
16 Dated: January 11, 2019
17

18 
19

KAITLYN B. HOUSTON

20 CSR No. 14170
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25

[& - 2012]

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Federal Rules of Civil Procedure

Rule 30

(e) Review By the Witness; Changes.

(1) Review; Statement of Changes. On request by the deponent or a party before the deposition is completed, the deponent must be allowed 30 days after being notified by the officer that the transcript or recording is available in which:

(A) to review the transcript or recording; and

(B) if there are changes in form or substance, to sign a statement listing the changes and the reasons for making them.

(2) Changes Indicated in the Officer's Certificate. The officer must note in the certificate prescribed by Rule 30(f)(1) whether a review was requested and, if so, must attach any changes the deponent makes during the 30-day period.

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COMPANY CERTIFICATE AND DISCLOSURE STATEMENT

Veritext Legal Solutions represents that the foregoing transcript is a true, correct and complete transcript of the colloquies, questions and answers as submitted by the court reporter. Veritext Legal Solutions further represents that the attached exhibits, if any, are true, correct and complete documents as submitted by the court reporter and/or attorneys in relation to this deposition and that the documents were processed in accordance with our litigation support and production standards.

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