

EXHIBIT 52 part 2 of 3

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1 in flight. When it hits a person, it tumbles along
2 the long axis of the round.

3 Q So is it your opinion that all of those
4 projectiles perform ballistically the same?

5 A I do not know if they all -- I am not
6 familiar with all the ballistics that Mr. Boone is
7 familiar with. What I am familiar with is that the
8 rifling of the barrel that all those rounds are fired
9 through creates a yaw, which stabilizes in flight and
10 impacts a person's skin and starts to tumble along the
11 long axis. Regardless of which round is put -- unless
12 you change the rifle barreling, the round's going to
13 behave the way the rifle is designed.

14 Q Do you know the name of the round that you
15 were issued in combat, the 5.56 NATO round, what it
16 was called?

17 A In terms --

18 MR. ECHEVERRIA: Objection. Vague and
19 ambiguous as to the definition of round in this
20 question.

21 BY MR. BRADY:

22 Q Sure. Round is the projectile, right? So
23 if -- you can have a 5.56 NATO cartridge, right,
24 Colonel?

25 A Correct.

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1 Q And then that 5.56 NATO cartridge can have a
2 different round projectile bullet, correct?

3 A Correct.

4 Q And if that variance in projectile would be
5 referred to -- could be referred to by a different
6 name. Even though they're all 5.56 NATOs, they can
7 have different projectiles which would give them a
8 different name, correct?

9 A Correct.

10 Q Are you familiar with the name of the
11 projectile on the 5.56 NATO rounds that you were using
12 in Iraq?

13 A I use anti-personnel rounds, we called them.
14 We had green tip, which allegedly penetrated steel,
15 and we had red tip, which were our tracer rounds.

16 Q Does the designation M855 sound familiar?

17 A Yes, it does. That's the nomenclature.
18 Yeah, I'm sorry, Sean. I didn't understand. You're
19 talking about the nomenclature, and I would not have
20 remembered the nomenclature M855. That's the DODIC
21 for the weapon, for the ammunition.

22 Q So the M855, that jogged your memory that
23 that is the nomenclature for the ammunition you were
24 using?

25 A Correct. They call it a DODIC, but it's an

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1 ammunition-specific term that identifies a specific
2 type of ammunition. So a 5.56 round that had a tracer
3 round on it would have a different DODIC than the one
4 that doesn't.

5 Does that make sense?

6 Q Yes.

7 A Okay.

8 Q Do you know if the M855 round is still being
9 used by the U.S. military today?

10 A I do not know. My last live fire event that
11 I participated in or was part of was three years ago.
12 And at that point, they were still using 5.56 NATO.

13 Q Okay. I want to show you -- let me know when
14 it's on your screen -- [Exhibit 3](#) -- excuse me,
15 page 10. And this is Mr. Buford Boone's report that
16 was responding to your report.

17 A Correct.

18 Q And beginning at line 21, it says, ".223/5.56
19 is on the lower end of terminal performance potential
20 of the vast calibers available in centerfire rifles."

21 Do you dispute that statement?

22 A I'm sorry, Sean. I'm lost. What page are we
23 on?

24 Q Yeah, sure. Page 10 --

25 A Okay.

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1 Q -- of [Exhibit 3](#).

2 A I can come down here faster. Okay. I'm
3 catching up here. All right.

4 Q And line 21.

5 A Okay.

6 Q It says, ".223/5.56 is on the lower end of
7 terminal performance potential of the vast calibers
8 available in centerfire rifles."

9 Do you agree or disagree with that statement?

10 A I disagree with that statement.

11 Q On what basis? What is your disagreement?

12 A I have a couple. One is how do you define
13 terminal performance? Terminal performance is
14 different when you're striking a target, and it's
15 different than when strike a gel meant to look and act
16 like human flesh. So if you're talking about the .223
17 and 5.56 is on the lower end of terminal performance
18 and it's based on how much damage it causes to gelatin
19 or to another target and then you equate that to the
20 fast performance potential of calibers available of
21 centerfire rifles, well, you can find a .50 caliber
22 round projectile in a centerfire rifle, and that's a
23 half-inch size round.

24 So, yes, if you can put a .50 caliber round
25 through somebody, it's going to make a little more

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1 damage than that 5.56 round did. So that's my first
2 concern about it.

3 The second one is the .223/5.56 as a
4 standalone ammunition -- I'm sorry. The .223 and a
5 5.56 as an automatic rifle ammunition is completely
6 irrelevant to the allowable minimum cartridges for
7 deer hunting in some states.

8 Q I'm sorry. I don't follow, Colonel.

9 A Okay. So you have allowable minimum
10 cartridges for deer hunting. It's based on whatever
11 it happens to be. So if the minimum allowable -- if
12 you can't use a .22 Long Rifle to shoot a deer because
13 it's not going to cause enough damage and you're going
14 to hurt it, then that's going to apply to a .223 and a
15 5.56. They're not looking at its destruction
16 potential. They're not looking at it as a weapon
17 designed for efficient, effective killing. They're
18 looking at it as a target, as a number that has no
19 relationship to what happens to the round once it
20 leaves the barrel.

21 So you could say I've got a .223 round here
22 and .50 caliber round here, and the .223 has -- causes
23 less damage. I would argue with that. I haven't
24 seen -- many times seen the damage caused by .223/5.56
25 rounds. .50 caliber round would put a hole through

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1 your body.

2 So, I mean, that's a little bit, I think --
3 that's a wide basis to make a comparison on for that
4 particular point.

5 Q So do you agree that there are states that
6 prohibit the use of .223 ammunition for deer hunting
7 because it is not a powerful-enough round to ethically
8 harvest a deer?

9 MR. ECHEVERRIA: Objection to the extent the
10 question calls for a legal conclusion.

11 THE WITNESS: I have no knowledge of
12 minimum-caliber rounds for hunting anyplace. My only
13 exposure to it has been in his comment right here and
14 then looking at what New Mexico's were, so...

15 BY MR. BRADY:

16 Q So I'm sorry. I'm looking for -- I want to
17 go to your [Exhibit 4](#), which is your surrebuttal, your
18 response to Mr. Boone.

19 A Okay.

20 Q You say in there -- paragraph 26, which is on
21 page 7.

22 A Okay. Paragraph 26?

23 Q Yes.

24 A Okay.

25 Q So you say, "Assault weapons serve no

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1 legitimate hunting purpose because the terminal
2 ballistics of the projectile ruin the meat."

3 Is that an accurate description of what you
4 said?

5 A Yes.

6 Q Do you agree with that statement as you sit
7 here today?

8 A I do.

9 Q Can you explain on what bases you are making
10 that statement?

11 A I make it on two bases. The first basis is
12 seeing what that projectile does to a human being when
13 it hits flesh and starts tumbling around inside the
14 body. And I've seen that many times.

15 And, secondly, I've seen an individual take
16 down a deer with an AR-15 at one point before he was
17 arrested. I've seen -- the round impact on the deer
18 has the same effect as a round impact on a human. It
19 destroys blood vessels. Can knock organs off balance.
20 Can shatter bones.

21 Q Now, do you know, are you -- in the military,
22 like the M855 round, is that what is described as a
23 full metal jacket?

24 A I do not know -- I do not know the term "full
25 metal jacket." In my 26 years in the Marine Corps,

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1 I'd say about the only time I've heard that term used
2 was in the movie. So I don't know what a full metal
3 jacket is.

4 Q Okay. So your determination that "Assault
5 weapons serve no legitimate hunting purpose because
6 the terminal ballistics of the projectile ruin the
7 meat," are you assuming that the projectile is the
8 same projectile that you use in your weapon in the
9 Marine Corps?

10 A No, I am assuming that the projectile has
11 traveled through the rifling barrel of -- if it's
12 hunting, an AR-15, yawed on the way to the target, and
13 when it hit the target, it hit the target broadside
14 and started to tumble and, in the process, cavitated.

15 Q So is it your position that regardless of
16 what projectile is coming out of an AR-15, because of
17 its rifling, it's going to cause that type of damage,
18 severe damage?

19 A I am not aware of a round in an AR-15 that
20 would not cause that severe damage.

21 Q To your knowledge, are there gradations of
22 damage depending on the round? Like, from severe to
23 extremely severe?

24 A My understanding of that is based on my --
25 having an understanding of what's happening to my

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1 Marines when they are hit and being given kind of a
2 nonmedical term to give me a sense on what the
3 prognosis is. And that prognosis, the factors --
4 there are so many factors at play that it's very, very
5 difficult to see any one particular thing in that one
6 specific case.

7 Q So it's your position that -- is it your
8 position, I should say, that there is no way to use an
9 AR-15 to hunt in a way to harvest meat ethically?

10 A To my knowledge and understanding based on my
11 personal experience and my study, I do not know of an
12 AR-15 that fires a round that would not, one, I think
13 cause some ethical issues in the hunting world and,
14 two, would cause damage to the meat in the vicinity of
15 its entrance and exit wounds.

16 Q And your experience in that is what? You
17 base that, you said, on your experience. What is your
18 experience?

19 A I have experience using assault weapons to
20 hunt people, but I also have a great deal of
21 experience hunting. Prior to going to Iraq, I hunted
22 quite a bit, and usually large animals.

23 Q And what type of hunting?

24 A Rifle. Caribou mostly.

25 Q Caribou?

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1 A Caribou and bear.

2 Q Have you ever used an AR-15 in that type of
3 hunting?

4 A No.

5 Q Have you ever seen it used?

6 A No.

7 MR. BRADY: I'd like to mark as [Exhibit 12](#) a
8 "TIME" -- I guess it's no longer a magazine -- article
9 titled "Here Are 7 Animals Hunters Kill Using an
10 AR-15."

11 A Mm-hmm.

12 ([Exhibit 12](#) was marked for identification
13 and is attached hereto.)

14 BY MR. BRADY:

15 Q The first one here is a coyote.

16 A Mm-hmm.

17 Q And there's an image of a dispatched coyote,
18 correct?

19 A I see it.

20 Q Do you see any major wounding on the animal?

21 MR. ECHEVERRIA: I'm going to object to this
22 line of questioning to the extent the Colonel has not
23 seen this article before or is familiar with the
24 circumstances of these incidents that are discussed in
25 this article.

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1 THE WITNESS: So, yes, I see what appears to
2 be an entrance wound behind the front left hock.

3 BY MR. BRADY:

4 Q Okay. Does the animal to you appear to be
5 generally intact?

6 MR. ECHEVERRIA: Objection. Ambiguous, and I
7 repeat my objection that the Colonel was not involved
8 in the killing or dispatch of this particular animal.

9 But you may answer, Colonel, if you're able.

10 THE WITNESS: It looks like there was no exit
11 wound that I can see, so the animal is relatively
12 intact on the outside. If they wanted to prove their
13 point, I would like to see the animal skinned.

14 BY MR. BRADY:

15 Q And why is that?

16 A So I can see what's going on inside. Inside
17 the animal.

18 Q Got it.

19 So I'm going to go down to --

20 A Sean, are you running this now?

21 Q Yes.

22 A Okay.

23 Q Yeah, can you see the pages moving?

24 A Yes.

25 Q Okay. Good.

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1 MR. ECHEVERRIA: And, Sean, you're not in
2 control of my exhibit, right?

3 MR. BRADY: I'm only in control of Agile.
4 Like, can you see me scrolling down, John?

5 THE WITNESS: I'm scrolling.

6 MR. ECHEVERRIA: No, I'm in control of
7 viewing the document, but it sounds like
8 Colonel Tucker is not in control of viewing the
9 document. You're in control; is that right, Sean?

10 MR. BRADY: Yeah, I'm supposed to be in
11 control just so everybody can see what I'm doing. I
12 don't mind. You know, as long as you're following
13 along, I don't really care, but that's sort of the
14 idea, so...

15 MR. ECHEVERRIA: Okay.

16 BY MR. BRADY:

17 Q I'm going down to page 6, it looks like, of
18 this document. It says, "Gary Marbut, Montana:
19 Hunting Elk." And it says, "Many hunters say the
20 standard caliber or diameter of the bullet of an AR-15
21 is preferable for hunting smaller animals. The
22 average power of the shot can be less than a standard
23 hunting shotgun."

24 Do you disagree with that statement?

25 A I don't have any knowledge --

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1 MR. ECHEVERRIA: I'm going to state the
2 objections that I stated on the record previously
3 regarding this particular document.

4 But the witness may answer.

5 THE WITNESS: First of all, I don't know if
6 the AR-10 had the same rifle barreling that the AR-15
7 does, so it might be a moot analogy. You can have an
8 automatic rifle. AK-47 is an automatic rifle, and it
9 does not have rifling in it. So without knowing what
10 the AR-10's rifling is and what the expected
11 characteristic of that weapon is, I would
12 anticipate -- well, that -- I can't make any judgment
13 as to whether Gary Marbut knows what he's talking
14 about or not.

15 Rifle velocity, or the power of the shot,
16 again, this goes back to people talking about an
17 assault rifle outside of its purpose and its only use.
18 It's similar to what we were talking about earlier
19 with the -- well, I'll just go with the assault rifle.

20 So the average power of the shot can be less
21 than a standard hunting shotgun. But that's not what
22 matters. What matters is what happens after the round
23 impacts flesh, regardless of how fast it's moving.
24 And so it's a little bit -- well, that's my answer to
25 that one.

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1 BY MR. BRADY:

2 Q And to that point, what are the -- what are
3 the variables other than rifling, that affect the
4 wound caused by the round?

5 MR. ECHEVERRIA: Objection. Calls for
6 speculation.

7 THE WITNESS: You get a penetrating wound
8 plus a tumbling wound, is how I describe it.

9 BY MR. BRADY:

10 Q So do you know what a soft nose bullet is?

11 A I have heard the term "soft nose bullet,"
12 yes.

13 Q Do you know what that is?

14 A No, not particularly. Didn't pay much
15 attention to it.

16 MR. BRADY: I'd like to mark as [Exhibit 13](#)
17 this article pulled off of the California Department
18 of Fish and Wildlife's website.

19 ([Exhibit 13](#) was marked for identification
20 and is attached hereto.)

21 BY MR. BRADY:

22 Q It has a Q & A session. And if you go down
23 to the second page, it says, "Big game rifle."

24 And the question is: "Could you help me with
25 information regarding the use of an AR 5.56/.223 rifle

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1 for hunting? It's a California-compliant rifle with a
2 5-round magazine. Would this be a legal setup for
3 hunting?"

4 The answer from the California Department of
5 Fish and Wildlife: "Yes, you can use the rifle you
6 described as long as it's California compliant.
7 California hunting regulations restrict the cartridge
8 and bullet type for hunting big game, but not the
9 firearm itself. In short, big game may only be taken
10 by firearms using centerfire cartridges with soft nose
11 or expanding projectiles per California Code of
12 Regulations."

13 It then says, "Pay close attention to be sure
14 your .223 bullets fit this description as most .223
15 bullets are manufactured with full metal jackets,
16 which would be unlawful to use."

17 Do you know why California would allow soft
18 nose .223's for hunting but not full-time metal jacket
19 rounds?

20 MR. ECHEVERRIA: Objection to the extent that
21 the witness has not seen this document before, and
22 objection to the extent this calls for a legal
23 conclusion or speculation.

24 THE WITNESS: My understanding -- well, could
25 you repeat the question again, Sean?

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1 BY MR. BRADY:

2 Q Sure.

3 So in the California Department of Fish and
4 Wildlife's response about using an AR 5.56/.223 for
5 hunting, it's saying the rifle is fine. .223 is fine
6 to hunt with. However, it depends on the projectile
7 of the .223.

8 Is that your understanding of what's being
9 said here?

10 MR. ECHEVERRIA: Objection. Mischaracterizes
11 the exhibit.

12 You may answer.

13 THE WITNESS: The fact that the bullets are
14 soft core or expanding projectiles does not change the
15 yaw or the impact of the terminal velocity. The
16 reason folks go -- the reason states go to soft nose
17 bullets or expanding projectiles so that if you miss,
18 that round doesn't travel 700 yards downrange and kill
19 somebody. It's all about reducing the max effective
20 range of the weapon system so that it's not traveling
21 a thousand meters or so past what you were shooting at
22 because you missed.

23 BY MR. BRADY:

24 Q So it's your understanding that the laws
25 about bullet type for hunting has to do with range and

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1 not effect on the animal?

2 A That is my understanding. It's going to have
3 the same effect on the animal.

4 Q Regardless of bullet type, it will have the
5 same effect? That's your testimony?

6 A My testimony is that regardless of the
7 projectile going downrange, it will yaw. If it comes
8 out of an AR-15 with that rifling, it will yaw on its
9 way downrange, and when it impacts flesh, it will
10 start to tumble.

11 MR. BRADY: I'd like to mark as [Exhibit 14](#)
12 Court decision in the matter of Thompson v. Virginia
13 Department of Game & Inland Fisheries. This decision
14 was rendered on March 30, 2007, by the United States
15 District Court for the Western District of Virginia.

16 ([Exhibit 14](#) was marked for identification
17 and is attached hereto.)

18 BY MR. BRADY:

19 Q So if you see -- let me go back up on page 4.

20 A We're on page 4?

21 Q Yeah, at the very bottom, there's highlight
22 in the bottom right corner.

23 Do you see that?

24 A It looks like it's on page 3 to me.

25 Q Okay.

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1 A VDGIF?

2 Q Correct.

3 A Okay. There. Okay. It's open now. I can
4 see it.

5 Q So it says, "VDGIF," which is the Virginia
6 Department of Game & Inland Fisheries as we saw in the
7 title, "applied this statute in denying Thompson's
8 request to use a .223 caliber gun. This statute
9 explicitly outlaws the use of guns of less than
10 .23 caliber in dispatching deer. The Virginia" -- and
11 it goes to the next page --

12 A Right.

13 Q "The Virginia Administrative Code also
14 outlaws the use of a .223 caliber gun. It shall
15 be" -- quote, 'It shall be unlawful to use a rifle of
16 a caliber less than .23 for the hunting or killing of
17 bear and deer.'

18 Going down to the next highlighted paragraph
19 where it has a "13" at the beginning of it.

20 A Mm-hmm.

21 Q It says, VDGIF argues that section 29.1 --
22 the statute at issue -- "and the agency regulations,
23 quote, 'serve to effectively manage the deer
24 population in Virginia, reasonably promote the humane
25 harvesting of wild game, and ensure hunter safety.'

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1 The caliber regulation is necessary because, quote,
2 'the use of rifles of a caliber less than .23 to
3 dispatch a deer would result in an unacceptable number
4 of crippled, wounded, and/or lost deer.'"

5 Is it your understanding what Virginia was
6 saying in this case is that the reason it wants --
7 that it requires hunters to use rounds larger than
8 .223 is so that the deer is not wounded?

9 MR. ECHEVERRIA: Objection.

10 I'm sorry. You can complete the question,
11 Sean.

12 BY MR. BRADY:

13 Q Is it your understanding of this that the
14 reason for the Virginia law is to avoid inhumane
15 crippling or wounding of a deer being hunted?

16 MR. ECHEVERRIA: I am going to object to the
17 extent the witness has not viewed this document
18 before, is unfamiliar with the reasons why an agency
19 for a different state may have enacted a particular
20 law or regulation to the extent that it calls for
21 speculation.

22 THE WITNESS: My understanding of this law is
23 that it's much easier to designate a caliber .23 and
24 say anything less than that which covers .2
25 Long Rifles. It covers pistols in many cases. It

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1 covers a whole range of rifles that shoot a round
2 smaller than a .23 that do not have the rifle barrel
3 of an AR-15. They do not differentiate the AR-15 from
4 those other weapons.

5 My understanding based on my personal
6 experience on what a .223 round can do to a human
7 being and to an animal, I think this is referring more
8 to the smaller weapons used by less experienced
9 hunters.

10 BY MR. BRADY:

11 Q Are you aware of any law in the country
12 prohibiting the use of an AR-15 for hunting?

13 MR. ECHEVERRIA: Objection to the extent it
14 calls for a legal conclusion and speculation.

15 THE WITNESS: I am not aware.

16 THE SHORTHAND REPORTER: Is this a good time
17 to take five again?

18 MR. BRADY: Absolutely.

19 (Recess.)

20 MR. BRADY: Back on the record after a short
21 break.

22 BY MR. BRADY:

23 Q Colonel Tucker, I want to clarify, is it your
24 testimony that the damage caused by a round from an
25 AR-15 or M16 that you've described in your report,

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1 that that damage occurs regardless of the type of
2 projectile being fired from that rifle?

3 A I say that the characteristics of the bullet
4 that travels through the barrel through the air as it
5 hits flesh are the same regardless.

6 Q So it's your testimony that regardless of
7 what projectile is being used on a 5.56 NATO round,
8 once it hits a target, it's going to have the tumbling
9 effect and cause the sort of devastating wounds you're
10 describing?

11 A It's going to start to tumble, yes. There's
12 a lot of other factors that go into how that occurs or
13 what happens with that, but yes.

14 MR. BRADY: I'd like to mark as [Exhibit 15](#) an
15 article titled "An Army Outgunned."

16 ([Exhibit 15](#) was marked for identification
17 and is attached hereto.)

18 BY MR. BRADY:

19 Q Have you ever reviewed this article,
20 Colonel Tucker?

21 A It's coming up now. Do you know what the
22 source is, which magazine?

23 Q It is --

24 A "Military Review"?

25 Q Yes.

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1 A No, I have not seen this particular article.

2 Q Are you familiar with the "Military Review"?

3 A I am familiar with the "Military Review."

4 Q Is it a reputable source?

5 A It is a reputable peer-reviewed journal, to
6 my knowledge.

7 Q Are you familiar with the author,
8 Joseph P. Avery?

9 A Hold on. That name sounds familiar to me,
10 but I could not tell you which of my -- where I would
11 have seen it before.

12 Q So I want to go down to -- let me see what
13 the page number is on the document. So it's page 5 of
14 the document. It should be up on your screen if I'm
15 still able to control what's on your screen.

16 Do you see a "5" on the page at the bottom
17 right corner?

18 A I've got five. I'm sorry. I'm on seven.
19 Hold on, please. Okay.

20 Q So I'm scrolling up. The first full
21 paragraph on this page, starting with the words "by
22 contrast."

23 Do you see that?

24 A I do.

25 Q The author says, quote, "There have been many

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1 instances, especially in close quarters,
2 house-to-house combat in Iraq, when the small
3 5.56 millimeter projectile with a high velocity of
4 3,000 feet per second would zip through an enemy
5 combatant center mass without causing effective
6 incapacitation, allowing further attacks on our
7 forces. The projectile's entrance and exit occurred
8 so quickly (the ice pick effect) that the enemy
9 combatant did not realize he had been shot until later
10 when either additional rounds or internal blood loss
11 finally downed him." It goes on to say, "Soldiers
12 have been clamoring for a new caliber (and more
13 reliable) weapon to ensure single-shot knockdowns at
14 close range and to effectively address the diverse,
15 longer-range shooting environments current and future
16 combat forces experience as they face significantly
17 heavier caliber weapons of significant range and
18 energy."

19 Do you disagree -- let me ask you this first.
20 Did you hear from any of your Marines concerns about
21 the performance of the 5.56 in combat?

22 MR. ECHEVERRIA: Objection to the extent this
23 question calls for hearsay testimony.

24 You may answer. I think you did.

25 THE WITNESS: No, I did not hear any issues

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1 with that.

2 BY MR. BRADY:

3 Q Okay.

4 A In 14 months of combat in 22 different
5 infantry battalions.

6 Q And nobody ever expressed to you that these
7 rounds aren't putting down the bad guy?

8 MR. ECHEVERRIA: Objection. Hearsay.

9 THE WITNESS: To my knowledge, we had no
10 problem killing bad guys with M4s and M16s, and it
11 would have come to my attention very, very quickly if
12 it was an issue.

13 BY MR. BRADY:

14 Q So in your opinion -- let's strike that.

15 So is it your testimony that you were unaware
16 of this claim, that the 5.56 is not performing
17 sufficiently in combat because --

18 A It's my testimony that if this individual is
19 going to make this claim, he better put a cite on it,
20 because right now I think he's making stuff up.

21 Q Okay.

22 A I don't see a source for either one of his
23 claims. If there was -- there would be a study
24 somewhere if there was a -- if there were challenges
25 with the 5.56 round in its current capacity with the

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1 M4 or M16. There would be something to source there.

2 MR. ECHEVERRIA: Sean, what page are you on,
3 again? I was trying to find it.

4 MR. BRADY: I believe it was 4. I just moved
5 out of it, but -- hold on.

6 MR. ECHEVERRIA: This is the "by contrast"
7 paragraph? I see it.

8 MR. BRADY: Yes. Yes, and then it basically
9 goes on, but those two paragraphs.

10 THE WITNESS: I have been involved in many
11 instances of close quarters, house-to-house combat,
12 and this is not my experience. This individual, to my
13 understanding, has not been involved in close
14 quarters, house-to-house combat, nor does he source --
15 or cite his sources for his claims in this paragraph.

16 May I make one caveat on this, though?

17 BY MR. BRADY:

18 Q Yes.

19 A Okay. So as I've said before, there are many
20 factors that go into killing somebody, frankly. But
21 many factors go into combat, and one of those is
22 adrenaline.

23 Q What? I'm sorry?

24 A One of those is adrenaline, properly
25 challenged adrenaline. And the chemicals of

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1 adrenaline can keep you going for a long while after
2 you should have been keeled over dead.

3 So an individual, for example, who has
4 internal blood loss because of what the round does
5 when it penetrates, he or she may travel on for a
6 period of time longer than you and I would if it
7 happened to us right here because of the adrenaline
8 push. So sometimes people see things, they don't
9 understand what they're seeing because they don't have
10 the experience base.

11 MR. BRADY: I want to mark as [Exhibit 16](#) this
12 article from -- I believe it's NBC News.

13 ([Exhibit 16](#) was marked for identification
14 and is attached hereto.)

15 BY MR. BRADY:

16 Q Yes, it's NBC News. The URL is in the bottom
17 left corner. The author is Richard Lardner. The
18 title is "U.S. Bullets May Be Ill-suited for New
19 Wars." And I'm going to scroll down to the first
20 page. It starts out: "As Sergeant Joe Higgins
21 patrolled the streets of Saab al-Bor, a tough town
22 north of Baghdad, he was armed with bullets that had a
23 lot more fire power than those of his 4th Infantry
24 Division buddies. As an Army sniper, Higgins was one
25 of the select few toting an M14. The long-barreled

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1 rifle, an imposing weapon built for wars long past,
2 spits out bullets larger and more deadly than the
3 rounds that fit into the M4 carbines and M16 rifles
4 that most soldiers carry."

5 I just read that so you understand who
6 Sergeant Joe Higgins is to have background.

7 A Sure.

8 Q It's not just some random NBC reporter
9 person.

10 A Correct.

11 Q On the next page -- or on the same page. I'm
12 sorry --

13 MR. ECHEVERRIA: Which page are we on, Sean?

14 MR. BRADY: So the second page of the
15 document, but it's, like, the first page of writing.
16 The first page is an image with a title and the
17 byline. It's the first page with text, yeah.

18 MR. ECHEVERRIA: Thank you.

19 BY MR. BRADY:

20 Q And I was reading the very first two
21 paragraphs. Now I'm scrolling down on that where it
22 says, starting with "in 2006" -- and it says, "In
23 2006, the Army asked a private research organization
24 to survey 2600 soldiers who had served in Iraq and
25 Afghanistan. Nearly one-fifth of those who used the

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1 M4 and M16 rifles wanted larger caliber bullets."

2 And on the next page -- sorry. I'm trying to
3 find -- so it says here -- so "Paul Howe was part
4 of" -- and this is on one, two, three, four -- fourth
5 paragraph down on the next page.

6 A Mm-hmm.

7 Q Under "Shortcomings aren't surprising":
8 "Paul Howe was part of a U.S. military task force
9 15 years ago in Mogadishu, Somalia's slum-choked
10 capital when he saw a Somali fighter hit in the back
11 from about a dozen feet away with an M855 round."
12 Quote, 'I saw it poof out the other side through his
13 shirt,' says Howe, a retired master sergeant and a
14 former member of the Army's elite Delta Force. 'The
15 guy just spun around and looked at where the round
16 came from. He got shot a couple more times, but the
17 first round didn't faze him.'"

18 It says, "With the M855, troops have to hit
19 their targets with more rounds, said Howe, who owns a
20 combat shooting school in Texas. That can be tough to
21 do under high-stress conditions when one shot is all a
22 soldier might get." Quote, "'The bullet is not big
23 enough,' he says. 'If I'm going into a room against
24 somebody that's determined to kill me, I want to put
25 him down as fast as possible.'"

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1 MR. ECHEVERRIA: Is there a question, Sean?

2 MR. BRADY: Yeah, I'm trying to find --

3 BY MR. BRADY:

4 Q Is it your testimony that you've never heard
5 criticisms of the 5.56 rounds such as the ones made by
6 these military folks?

7 MR. ECHEVERRIA: I'm going to have to object,
8 Colonel, to the extent that the question is referring
9 to round in an ambiguous way. But I believe this
10 exhibit is referring to a projectile.

11 MR. BRADY: My understanding is
12 Colonel Tucker uses round as the same as projectile,
13 and we're talking specifically about the M855 round
14 projectile bullet, which is the round on the 5.56 NATO
15 that Colonel Tucker used in combat.

16 BY MR. BRADY:

17 Q Correct, Colonel?

18 A Correct, yes. I will try to start using
19 "projectile." It's a more accurate term.

20 So I'm sorry, sean. What was the question
21 again?

22 Q So you just never heard these sorts -- is it
23 your testimony you never heard this criticism of the
24 M855 by other military folks?

25 A I've heard anecdotal and unverified, uncited,

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1 and generally discreet individuals complaining about
2 the ability of M855 to take down -- take down an
3 enemy. The comments in here are, for example, when
4 Mr. --

5 Q Howe, H-O-W-E.

6 A -- Mr. Howe shoots a guy in the back, well,
7 that guy's insides are disintegrating. It's going to
8 take him a while to die. He's going to turn around
9 and get shot a few more times. That's what happens in
10 combat. You get shot, you look at it, and you either
11 die or someone comes and gets you and patches you back
12 up.

13 So, again, I get frustrated by these
14 anecdotal complaints about uncited, unverified, and
15 without objective or critical analysis done to the
16 problem or for the problem being actually identified
17 in the article. My personal experience in 14 months
18 of combat is there was very few challenges. I can't
19 remember a single complaint about the 5.56 round,
20 NATO -- 5.56 round not being an effective killer.

21 Q Is there a source that might change your
22 mind? What source, if any, might change your mind, or
23 would you -- strike that. I'm not going to ask you of
24 a change of mind because I'm asking you to speculate.

25 What source would you take seriously

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1 criticizing the M855 round as not being very effective
2 on human targets?

3 MR. ECHEVERRIA: Objection. Calls for
4 speculation. Ambiguous.

5 THE WITNESS: Somebody at the same level or
6 close to the same level of combat experience as I do.
7 Somebody who is in a position to have done something
8 about those reports when they came up. For example, a
9 regimental commander, a battalion commander.

10 If your weapon is not killing bad people when
11 you shoot it at them, people make that known very,
12 very quickly. I do not recall that being an issue
13 either in the intense combat at both Fallujahs or in
14 the less, still intense with smaller fights that were
15 occurring in other parts of Iraq during my 14 months
16 there.

17 BY MR. BRADY:

18 Q I believe earlier in your testimony you
19 mentioned -- I think it's a rank of gunner.

20 A Correct.

21 Q Is that a rank?

22 A That's a rank.

23 Q And I believe you said that a gunner is a
24 weapon specialist, right, for the Marine Corps; is
25 that correct?

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1 A That's correct. Ground weapon specialist.

2 Q I'm sorry?

3 A I'm sorry. Ground weapons. We have air
4 weapons, too, so...

5 Q They stay on the ground. They don't jump in
6 planes?

7 A He's not an expert on attack helicopter
8 weapons, for example.

9 Q But the M4, yes?

10 A Yes.

11 Q Would you say that a gunner would have more
12 technical knowledge of the M4 than yourself?

13 A Yes. Because I rely on him for advice, yep.
14 That's his job.

15 MR. BRADY: I'd like to mark as [Exhibit 17](#) an
16 article from -- I don't know -- I just pulled this up
17 in my feed. I think it's "The Federalist." Yeah, the
18 URL is at the bottom of the page.

19 ([Exhibit 17](#) was marked for identification
20 and is attached hereto.)

21 BY MR. BRADY:

22 Q It's titled "Here Are All The Problems With
23 California's Expert Witness Testimony In Gun Ban
24 Case."

25 So the author is talking about this case and

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1 the preceding part and the case law, all the stuff
2 around these types of rifles and the lawsuits around
3 the country going on. And on page -- let's see
4 here -- on page 6, I don't think there's pages because
5 it's an Internet article, but on page 6 of the
6 document here, the version on Agile, it's 6.

7 John, do you see it?

8 MR. ECHEVERRIA: I am on 6. The first
9 paragraph says, "So I spoke to"?

10 MR. BRADY: Yes, correct. Okay. So it's the
11 author talking in first person. "So I spoke to two
12 Marine Corps veteran friends of many years of whose
13 experience I'm certain, and one of them introduced me
14 to another Marine whose credentials are also
15 unassailable. The three are Chief Warrant Officer 5
16 Jeffrey L. Eby," E-B-Y, "28 years in the Marines, 11
17 as a Marine gunner, combat veteran in Iraq." There's
18 some other -- "Officer-in-Charge of the USMC Small
19 Arms Instructor Course, which developed the USMC
20 Combat Marksmanship Program."

21 It goes to the next paragraph.

22 "Chief Warrant Officer 5 Mike Musselman,
23 Infantryman for 25 years of his 30 years with the
24 Corps. Marine Gunner and Infantry Weapons Officer.
25 Three combat deployments to Iraq, one to Afghanistan."

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1 There's a picture of them.

2 So the next page, it goes on to say,
3 "Staff Sergeant Jack Leuba," I assume, L-E-U-B-A,
4 "Infantry Rifleman, Marksmanship and Small Arms
5 Weapons Instructor. Combat veteran in Iraq, in
6 Afghanistan. Staff Non-Commissioned Officer-in-Charge
7 and Chief Instructor, USMC Small Arms Weapons
8 Instructor School."

9 So I believe two of them are gunners. I
10 don't see gunner in the third individual, Mr. Leuba's
11 description.

12 Are these three individuals whose opinion on
13 the subject matter of the M4 and the ammunition that a
14 M4 uses -- are these individuals whose opinions you
15 would say carry weight?

16 A Yes. Go ahead. I'm sorry.

17 MR. ECHEVERRIA: Objection to the extent that
18 Colonel Tucker does not know these individuals. And
19 objection to the extent the Colonel Tucker is
20 unfamiliar with this article and has not had an
21 opportunity to review this article in full context.

22 BY MR. BRADY:

23 Q Have you reviewed this article,
24 Colonel Tucker?

25 A I have not.

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1 Q Are you familiar with any of the three
2 individuals I just named?

3 A I've heard of those names, yes.

4 Q But, I guess, regardless of whether you know
5 them, you know their -- assuming that their
6 credentials are what are put here, are these
7 credentials of an individual you would -- whose
8 opinion you would take seriously --

9 (Simultaneous speakers.)

10 THE WITNESS: Yes, I trust --

11 BY MR. BRADY:

12 Q -- on the subject matter of AR-15, M16, M4s,
13 and the ammunition they use?

14 A I do respect their opinions, yes.

15 Q Okay. I'm scrolling down. So on page 13 of
16 this -- again, this was off the Internet, so it's
17 all -- there's no pages. But page 13 on AgileLaw
18 says, "Power of the Bullets," and it has your position
19 about the capability of severing the upper body from
20 the lower body, or decapitation, which we --

21 A What page are we on?

22 Q Thirteen.

23 MR. ECHEVERRIA: I think Colonel Tucker
24 should be given an opportunity to look at this
25 document rather than select discrete pages that may be

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1 taken out of context.

2 Could we go off the record for five minutes
3 to give the Colonel an opportunity to look at this
4 document given that he's not familiar with it?

5 MR. BRADY: I mean -- I guess. I don't mind,
6 but, you know, we're going to be here a little bit
7 longer. I mean, I can tell you, I'm not going to be
8 asking questions about the entirety of the article,
9 and I think it's pretty long. There's a lot of
10 stuff -- the author is talking about the case law and
11 all that sort of thing. I just wanted to focus in on
12 the individuals he was talking to, which is a small
13 part of the article.

14 MR. ECHEVERRIA: So if the Colonel is
15 comfortable answering questions about the select
16 portions that you're examining him about, I'll let him
17 answer without going off the record.

18 THE WITNESS: I'm comfortable doing so.

19 BY MR. BRADY:

20 Q So the first paragraph here quotes, I
21 believe, the NBC report or, I guess, article that we
22 were previously looking at with Mr. Howe and those
23 individuals, right? And it has a quote from there,
24 which we don't have to go over because I think we
25 already did. It has that same quote about the M855

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1 rounds continue to be a weak spot in the American
2 arsenal, right.

3 Staff Sergeant Leuba says, quote, "Standard
4 ballistics gelatin tests prove that the 5.56,
5 5.45 millimeter NATO projectiles are not capable of,
6 quote, 'severing the upper body from the lower body,
7 or decapitation,'" close quote.

8 CWO5 Musselman says, quote, "In my combat
9 experience, I never saw a 5.56 millimeter projectile
10 cause the damage Colonel Tucker claims."

11 CWO5 Eby says, quote, "The Marine Corps
12 abandoned the M16/M4 ammunition used in Afghanistan
13 and Iraq due in part to its failure to perform against
14 enemy personnel in short-range combat engagements."

15 I'd like to focus on the last statement real
16 quickly. Were you aware or do you have any knowledge
17 about the Marine Corps having abandoned the ammunition
18 that was used in Iraq and Afghanistan?

19 A To my knowledge, the Marine Corps has not
20 abandoned the ammunition that was used in Iraq and
21 Afghanistan. I believe what the gunner is referring
22 to here is the next follow-on rifle has a little
23 larger caliber than the 5.56.

24 Q So it's your position that -- or to your
25 knowledge, it is not correct to say that the

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1 Marine Corps has abandoned the ammunition for the M4
2 and M16 that it was using in Afghanistan and Iraq?

3 A It has not abandoned it at this point. I
4 know what he's referring to is in the next follow-on
5 weapon system, which he was actually involved in
6 putting together, they went to a different round of
7 ammunition, a different caliber of ammunition.

8 Q He was involved in putting it together?

9 A He was involved in the early stages of the
10 new rifle design. Very early stages.

11 Q How do you know that?

12 A Because I studied the rifle design. And I
13 was part of the executive group based on my combat
14 experience and my time at TTECG that reviewed the
15 information that came from the various committees that
16 were looking at different aspects of the new assault
17 rifle.

18 Q So are you saying that the Marine Corps has
19 not yet made a transition but intends to? Is that
20 what is going on?

21 A The Marine Corps is buying a new assault
22 rifle. They are getting rid of the M16 and the M4.

23 Q And were you saying that CW05 Eby was
24 involved in that decision?

25 A He was involved in the early stages of making

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1 the transition to a new automatic weapon system. I
2 don't know if he was involved in the caliber decision
3 or not.

4 Q Is it your understanding that the reason for
5 the Marine Corps making that transition, whether it's
6 been made or is going to be made, is, as Mr. Eby says,
7 due in part to the previous ammunition's failure to
8 perform against enemy personnel in short-change combat
9 engagements?

10 A I don't -- I'm not -- in my experience, that
11 was not the case.

12 Q Were you a part of the discussions of the
13 transition of ammunition, or this transition?

14 A In terms of what was required for the rifle?
15 The new assault rifle?

16 Q Yes. Were you a part of the conversation as
17 to why and the decision-making into transitioning to a
18 new rifle in the Marine Corps?

19 A In the very, very early stages before it was
20 even a concept drawn on paper when they were still
21 going through requirements, yes.

22 Q So does Mr. Eby's statement about the
23 ammunition used in Iraq and Afghanistan failing to
24 perform against enemy personnel in short-range combat
25 engagements -- does that change your opinion in any

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1 way about the effectiveness or the severity of wounds
2 caused by 5.56 rounds?

3 A No, it doesn't.

4 Q And why not?

5 A Because in my personal experience, most you
6 hit with -- pepper with .223 rounds go down. I have
7 not observed what Gunner Eby says he has observed
8 here.

9 Q I want to go briefly back to your report,
10 [Exhibit 2](#), paragraph 14. It goes from page 5 to 6.
11 So it's the very last line on page 5 of your report,
12 line 28. You say, "It is my opinion, based on my
13 military service, that these features" -- and I
14 believe you just got done describing the features --
15 or let me ask you. Let me step back, actually.
16 Strike all that.

17 You understand that you are here as an expert
18 about -- what are you here to be -- what do you
19 consider yourself to be an expert on, why the State of
20 California asked you to be an expert witness in this
21 matter?

22 A Because of my extensive experience with the
23 M4 and the M16 and my knowledge that the AR-15 as
24 we're discussing it here and the M4 and the M16 are
25 essentially all the same weapon.

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1 Q And why do you say they're essentially the
2 same weapon? What makes them the same weapon?

3 A Cycles of functioning are the same. The use
4 of the pistol grips and the rails, flash suppressor,
5 all those accoutrements that are necessary for assault
6 rifle designed for efficient killing have been
7 transferred to the AR-15.

8 Q And do you understand that in this matter the
9 plaintiffs are challenging the constitutionality of
10 California's so-called Assault Weapon Control Act,
11 correct?

12 MR. ECHEVERRIA: Objection to the extent the
13 question includes the phrase "so-called."

14 But the witness may answer.

15 THE WITNESS: I am aware of the case, yes.

16 BY MR. BRADY:

17 Q And in your report -- I'm sorry to do this.
18 I'm going to go up to paragraph 12, which is on the
19 preceding page. You state that you have reviewed the
20 definitions of an assault weapon under California's
21 assault and control act; is that correct?

22 A Yes. What page are we on?

23 Q This is page 4 of your --

24 A Okay.

25 Q And it is paragraph 12.

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1 A Okay. I see it.

2 Q And so you reviewed the definitions of what
3 is considered an assault weapon under California law,
4 correct?

5 A Correct.

6 Q And here -- you understand that there's a
7 list of specific makes and models of firearms that
8 California considers assault weapons; is that right?

9 A I have seen that list, yes.

10 Q Okay. And then there is another statute that
11 defines assault weapons by their characteristics,
12 correct?

13 A I do not know that I'm aware of that statute.

14 Q Can you go to paragraph 12 of your report?

15 A If it says I read the statute, then I did
16 read the statute. I just don't remember the number.

17 Q Sure.

18 Is it your understanding that California is
19 defining firearms, rifles as assault weapons if they
20 have certain features?

21 A That is my understanding.

22 MR. ECHEVERRIA: Objection to the extent that
23 it calls for a legal conclusion.

24 THE WITNESS: That is my understanding.

25 ///

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1 BY MR. BRADY:

2 Q Okay. And do you know what those features
3 are that would make a rifle an assault weapon under
4 California law?

5 A My understanding is they're listed -- I
6 listed them in the "Opinions" paragraph, starting with
7 line 17, "if it has any of the following features."

8 Q Okay. So those are the features that make --
9 and it has to be a semiautomatic centerfire rifle,
10 correct? Rim fire?

11 A Yes, I see that. Yes.

12 Q Single shots are not included, right?

13 MR. ECHEVERRIA: Objection to the extent that
14 question calls for a legal conclusion.

15 But the Colonel may answer.

16 THE WITNESS: I'm sorry. I didn't hear the
17 question.

18 BY MR. BRADY:

19 Q I was just saying we're talking about
20 semiautomatic centerfire rifles, not rim fire or
21 single-shot rifles, right?

22 A Correct.

23 MR. ECHEVERRIA: Same objection.

24 BY MR. BRADY:

25 Q Is it your understanding that that only

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1 applies to -- that those features, that definition
2 only applies to AR-15s?

3 MR. ECHEVERRIA: Objection to the extent it
4 calls for a legal conclusion.

5 THE WITNESS: How are we defining an AR-15,
6 again?

7 BY MR. BRADY:

8 Q The way you used it in your report.

9 A Okay.

10 Q Semiautomatic version.

11 A Right. So it's my understanding that --
12 could you repeat the question?

13 Q Yes. Is it your understanding that this
14 statute is limited to the AR-15?

15 MR. ECHEVERRIA: Objection.

16 BY MR. BRADY:

17 Q Or does it -- additional rifles? Would it
18 apply to other rifles as well?

19 MR. ECHEVERRIA: Objection to the extent that
20 the question is calling for legal conclusions about
21 the applicability of the statute to other weapons.

22 THE WITNESS: My read of this is that it
23 would apply to any weapon that had these features.

24 BY MR. BRADY:

25 Q Okay. And to your knowledge, are there

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1 rifles that meet that definition that are not AR-15s?

2 MR. ECHEVERRIA: Objection to the extent that
3 calls for a legal conclusion.

4 THE WITNESS: AK-47s.

5 BY MR. BRADY:

6 Q Okay. Any others?

7 A Give me a moment. The new Army version of
8 the assault rifle is now sold in a civilian market.
9 It meets all these also.

10 Q So you were not assuming in writing your
11 report that California's assault weapon law only
12 applies to AR-15s, correct?

13 A That is correct. I read that it applies to
14 any weapon that has those characteristics.

15 Q Okay. So when you say in paragraph 14, what
16 we were reading previously, why I came back to this
17 page -- it says, "It is my opinion, based on my
18 military service, that these features."

19 When you say "these features" in that
20 sentence, you're talking about the features listed in
21 paragraph 12 --

22 A Correct.

23 Q Okay. So I'm going to read it in its
24 entirety without that. I just want to make clear that
25 those are the features we're talking about.

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1 So you say, "It is my opinion, based on my
2 military service, that these features individually and
3 in combination make semiautomatic rifles more lethal
4 and most useful in combat settings."

5 Do you agree with that statement as you sit
6 here today?

7 A I do.

8 Q I previously asked if you could identify any
9 military in the world that uses semiautomatic-only
10 rifles, right?

11 A Right.

12 Q As assault rifles, right?

13 A United States Army.

14 Q Well, I believe your testimony was that they
15 are considering getting semiautomatic --

16 A No, they bought the weapon. They're going to
17 be issued next year -- two years.

18 Q And they have machine guns in those units
19 with the semiautomatic?

20 A Yeah -- correct. The semiautomatic rifles,
21 and then there is a machine gun variant that assumes
22 the machine gun -- well, it used to be the squad
23 automatic weapon role.

24 Q And I believe you also identified the
25 Israelis, the Uzi, as a possible one?

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1 A Correct.

2 Q Okay. So if there is only one, maybe two
3 examples of militaries employing semiautomatic-only
4 rifles, how can you say that a semiautomatic-only
5 rifle is most useful in combat settings?

6 A The automatic on the military M4 has been an
7 anachronism since right after Vietnam. In the later
8 versions of the M16, it was kept on there more as a --
9 I won't say a comfort level, but it was kept on there
10 to ensure that there was the capability to have an
11 automatic rifle located in the Marine fire team and
12 rifle squad. In those days, that person who was
13 designated as the automatic rifleman had his M16, and
14 he just had more magazines. So he would fire his M16
15 on automatic, and then everybody else would be on
16 semiautomatic.

17 As that progressed, they developed
18 specialized weapons for the squad and fire team
19 automatic weapon capacity, and at that point, much of
20 my career in the Marine Corps, the automatic fire on
21 the M4 and M16 was irrelevant. I did not hear it used
22 once in my entire 14 months of combat experience in
23 Iraq. It's a -- it does not -- it does not change the
24 nature of the weapon. If I have an M4 that's got
25 automatic, semi, and safe on it and I'm firing that

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1 thing on automatic and automatic breaks, I still have
2 an assault weapon capable of firing 45 rounds in a
3 minute, one every 1.33 seconds. That is a much more
4 effective combat capability than firing an automatic.

5 Automatic out of any weapon is an area fire
6 weapon. You can't aim it with any degree of precision
7 outside of saying a left and right lateral limit.
8 It's not used because it's inefficient use of
9 ammunition. It's inefficient use of a killing
10 machine, and it's much more efficient to stay in
11 semiautomatic and use aimed fire at the max sustained
12 rate of fire to be effective killers in combat.

13 Q I'd like to go to Mr. Boone's report, which
14 is [Exhibit 3](#) to page -- I believe it's 12.

15 Is everybody there? We're going to start at
16 line 18.

17 A Okay.

18 Q Actually, we're going to start at 19 because
19 I just want to make sure this is what made me come
20 here. I believe you just said even in semiautomatic
21 mode, you'd be able to shoot 45 rounds a minute, which
22 is equivalent to approximately one round in
23 1.33 seconds; is that right?

24 A Correct. That's a tactical way to fire. If
25 they're given a fire command to fire at the maximum

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1 sustained rate, then those Marines will fire 45 rounds
2 in a minute.

3 Q Okay. Is there a difference between rate of
4 fire and volume of fire?

5 A I have no idea -- volume of fire only applies
6 to -- in my experience, it applies to machine guns.
7 I've never heard volume of fire referenced in an
8 AR-15, M4, or M16. The tactical, correct term is rate
9 of fire.

10 Q Okay. So Mr. Boone says, "Time is of the
11 essence in situations wherein one's life is in
12 danger."

13 Would you disagree with that statement?

14 A No, I would not disagree with that statement.

15 Q The next line, he says, "It is certainly
16 reasonable to believe that a person in a self-defense
17 situation would have a need to fire one round every
18 1.333 seconds," which is more or less, he says,
19 "3 rounds in about 4 seconds."

20 Do you disagree --

21 A Where are we now?

22 Q So we're still on page 12, same paragraph.
23 Go to line 21.

24 A Okay. The full sentence.

25 Q So do you disagree with that statement, that

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1 it is reasonable to believe that a person might need
2 three rounds in about four seconds in a self-defense
3 situation?

4 MR. ECHEVERRIA: Objection to the extent the
5 question calls for speculation.

6 THE WITNESS: I think that's a very
7 unreasonable statement.

8 BY MR. BRADY:

9 Q Can you explain why?

10 A The requirement to fire 45 rounds in one
11 minute in a self-defense situation means you are
12 either in combat or you're missing your target.
13 45 rounds in a minute, that's a round every
14 1.3 seconds. If you're firing that many rounds in a
15 self-defense situation, you either don't know what
16 you're doing or you're dead.

17 Q I think in 99.9 percent of the cases, I'm
18 going to go ahead and concede that point to you. I
19 don't think that's the point being made here, and
20 that's why I want to refocus. What he's saying or
21 what's being said here is that the rate of fire,
22 1.3 seconds, is a reasonable rate of fire at low
23 amounts of rounds, in other words, volume of fire. So
24 he gives the example of three rounds in four seconds.

25 If your rate of fire is 1.3 seconds -- is one

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1 round every 1.3 seconds, that means three rounds in
2 about four seconds.

3 A Correct. Okay. I get it. I'll bring it
4 back down. There's three rounds.

5 Q Is it unreasonable to believe that a person
6 might need three rounds in four seconds to defend
7 themselves?

8 MR. ECHEVERRIA: Objection to the extent that
9 it calls for speculation.

10 THE WITNESS: A well-trained individual could
11 put down three rounds in four seconds. It's not
12 unreasonable.

13 BY MR. BRADY:

14 Q And so -- I know you don't know of a term,
15 and I'm not suggesting that there is a term of "volume
16 of fire," that that's some technical term, but when
17 I'm using that, I'm talking about the 45 rounds,
18 right?

19 A Got it.

20 Q Is it fair to say that your contention about
21 the capacity of an AR-15 with its rate of fire is that
22 it has the ability to shoot up to 45 rounds that
23 quickly, not that it can shoot three rounds in
24 four seconds? Is that fair to say?

25 A So when I talk of rate of fire or volume of

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1 fire, I think that's the same word for the same thing
2 here. I talk about it in two tactical terms and one
3 mechanical.

4 So the two tactical are the sustained rate of
5 fire, which is 12 to 15 rounds for an M16 or an M4 and
6 an AR-15. And then the maximum sustained rate, which
7 is 45 rounds in one minute. Those two tactical are --
8 I mean, they are specifically directed. He may tell
9 Smith, "You fire max sustained rate." "Jones, you
10 fire a sustained rate." And so it's actually
11 orchestrated -- rates of fire orchestrated based on
12 the enemy situation and how much ammunition you have.

13 The mechanical rate of fire is how many
14 rounds you can push through that thing, is
15 700-something. You can get through that thing just by
16 itself. So I can get out... I think my point is you
17 don't need to have an AR-15 to get out one round every
18 1.4 seconds if that's what's needed for self-defense.

19 Q But that rate of fire -- if it was restricted
20 to five rounds and you couldn't go to 45, that rate of
21 fire, 1.3 seconds, is not your concern, correct? It's
22 that you would be able to do 1.3 rounds a hundred
23 times -- I'm sorry. A hundred rounds at 1.3 seconds,
24 right?

25 A Correct. I have -- yeah.

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1 Q Going on to Mr. Boone's, the next line, it
2 says, "In any event, Colonel Tucker's point is
3 irrelevant because none of the features that can
4 qualify as semiautomatic, centerfire rifle with a
5 non-fixed magazine as an assault weapon," and he gives
6 the examples, a pistol grip, a flash suppressor or
7 adjustable/holding stock, "affects the rifle's rate of
8 fire or its capacity for ammunition."

9 Do you disagree with that statement?

10 A I do, yes.

11 Q And what's your disagreement?

12 A So what affects the rifle's rate of fire is
13 the function of the weapon system. And a weapon
14 system for an AR-15 and an M16 and M4 functions in a
15 certain manner. And that mechanical functioning
16 allows that weapon system to fire at a sustained or a
17 maximum sustained rate for a certain period of time.

18 If you are firing a rate of fire coming out
19 of a shotgun, for example, the same thing applies as
20 it does to the M16. The capability to fire so many
21 rounds out of that weapon is based on the design of
22 the weapon system. So you may be able to put out a
23 round out of a shotgun every 1.3 seconds, and you
24 might break the shotgun because it's not designed for
25 that.

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1 The M16, M4, AR-15, they're designed to fire
2 one round every 3.3 seconds for a fixed period of time
3 and one round every 12 to 13 minutes [sic] forever.
4 I'm sorry. 12 or 15 rounds per minute for an extended
5 period of time.

6 So a rate of fire, first of all, it's
7 tactical. Secondly, it's based on the purpose of a
8 weapon, the design of the weapon, and the type of
9 ammunition that's in the weapon, and that's going to
10 be different based on different weapon systems.

11 You're not going to achieve a -- for example,
12 you're not going to achieve a sustained rate of fire
13 12 to 15 rounds per minute for an extended period of
14 time with a shotgun or even a 30-06. The weapon is
15 not made for that.

16 Q Got it.

17 As we established, California talks about
18 features on these rifles, right, that would -- that
19 trigger -- pardon the use of that word -- that qualify
20 a semiautomatic centerfire rifle as an assault weapon,
21 right?

22 A Correct.

23 Q So my question is how does a pistol grip on a
24 rifle affect that rifle's rate of fire, or does it?

25 MR. ECHEVERRIA: Objection to the extent that

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1 it mischaracterizes the testimony in the report.

2 But, Colonel Tucker, you may answer.

3 BY MR. BRADY:

4 Q Just to clarify, I'm asking -- I'm not saying
5 you said anything. I guess, I'll say, does a pistol
6 grip affect a rifle's rate of fire?

7 A The pistol grip impacts the accuracy of your
8 rate of fire.

9 Q Accuracy but not the actual rate of fire?

10 A No, the pistol grip is not -- it's not part
11 of the cycle function of the weapon. The cycle
12 functioning of the weapon is what allows the rate of
13 fire. So what the pistol grip allows you is the
14 ability to pull the weapon in tight and accurately
15 employ those 45 rounds that are coming out in one
16 minute.

17 Q So the pistol grip affects controllability
18 and accuracy of the rifle?

19 A The pistol grip improves the stability of the
20 rifle and the stability of the shoulder well in less
21 steady positions, and it allows you to lock that stock
22 into your shoulder well tight and prevent what we
23 would call a lateral motion in a weapons fire.

24 Q So it has no impact on the rate of fire,
25 meaning how quickly rounds are coming out of the

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1 firearm, correct?

2 A The pistol grip itself?

3 Q Yes.

4 A It's not related to the number of rounds
5 coming out of the rifle.

6 Q And what about stocks? Does a stock --

7 A I'd like to talk -- I'm sorry. Go ahead,
8 sir.

9 Q Just really quick, I just want to run
10 through. We can talk about things that you want to
11 raise, but I just want to get the rate of fire thing
12 established with each of the features so we're clear.

13 Does a stock on a rifle affect the rifle's
14 rate of fire? Setting aside a bump stock or something
15 like that, right? A stock that we're talking about
16 that doesn't move, does it affect a rifle's rate of
17 fire?

18 A I'm a little -- the reason I'm a little
19 uncomfortable with this is because of my -- because it
20 takes all of those things to accurately execute a rate
21 of fire. So if you take them in isolation, the stock
22 itself actually does have an impact on the rate of
23 fire because the -- well, Carrier Group retreats into
24 the stock. So it's -- but in and of itself minus that
25 operating piece, it does not affect the rate of fire.

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1 Q And let's be clear. Does the fact that the
2 stock is move -- adjustable, moveable alter the
3 rifle's rate of fire in any way?

4 A Moveable stock would not alter a rifle's rate
5 of fire.

6 Q Okay. Would a flash suppressor alter a
7 rifle's rate of fire in any way?

8 A No. And the reason I hesitated is you can
9 get a buildup on that, on the flash suppressor that
10 will -- carbon that will sometimes flame out with the
11 gas, but it doesn't impact the rounds at all.

12 Q Okay. Speaking of rounds, actually, I want
13 to ask that same question. Do you have anything about
14 any features, making note I'm happy to hear you out on
15 them. I just want to get these questions out because
16 you raise round.

17 Does a pistol grip on a rifle affect what the
18 bullet fired from that rifle does to a target in any
19 way?

20 A Yes, it does, in proving the accuracy and the
21 stability of the shooter.

22 Q Okay. Let's assume we're talking about two
23 rifles that are being held by vices, right?

24 A Got it. Okay.

25 Q I hear you. You're talking about -- I'm not

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1 talking about placement or accuracy. We've already
2 established that accuracy is affected -- or your
3 opinion is that accuracy is affected by the pistol
4 grip.

5 Setting aside accuracy, just the effect of
6 the round upon impact, is that -- does the pistol grip
7 affect what a round does to a target in any way?

8 A No.

9 Q Does a stock in any way affect what a round
10 does to a target?

11 A No.

12 Q Does a flash suppressor affect what a round
13 does to a target in any way?

14 A No.

15 Q Focusing in on stocks, I might be getting --
16 I know you wanted to ask a question about that or
17 raise a point, and perhaps my question will get to
18 that. And if it doesn't, you're more than welcome to
19 include it in your answer.

20 Your report talks exclusively about, quote,
21 "folding stocks." Are you aware of or do you consider
22 that the same as telescoping or adjustable stocks?

23 A So I use those interchangeably. They started
24 with the folding stocks in my younger days, and that
25 just became the term I used when they went to the

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1 extendable stock and the telescoping stocks.

2 Q So is it --

3 A I am referring to the telescoping and the --

4 Q Okay. That's what I wanted to know. So your
5 report is equally talking about telescoping stocks and
6 adjustable stocks as to folding stocks?

7 A Correct.

8 Q Is there a difference in purpose between a
9 folding stock and a telescoping stock, to your
10 knowledge?

11 A The telescoping stock was an improvement on
12 the folding stock, and that's -- and it also reduced
13 weight, and that's why they went to what you see now
14 on the telescoping stock.

15 Q And what is the purpose of the telescoping
16 stock? What is your understanding of the purpose of
17 the telescoping stock?

18 A In the military, the purpose of a telescoping
19 stock is to give those Marines who are in a tank -- a
20 larger weapon system. It could be a helicopter, a
21 tank, a fighter jet, an armored vehicle, a light
22 armored vehicle. If their weapon system, which is
23 that vehicle or that aircraft, is hit and is no longer
24 functioning, then the telescoping stock on the M4
25 allows for a fairly -- allows it to be stored kind of

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1 out of the way inside of a tank, where there's not a
2 whole lot of room, and it allows it to be removed from
3 a damaged tank much easier than the longer even M4
4 could be in terms of getting it out of a turret, for
5 example.

6 Q Okay. And that's your understanding of the
7 adjustable stocks that are being prohibited by
8 California on these rifles?

9 A I didn't understand that question.

10 Q That's your understanding of the adjustable
11 stocks that are being targeted by California in the
12 assault and control act, are those sort of stocks that
13 are designed to make the weapon more compact for those
14 purposes?

15 A No, I see no reason to develop a civilian
16 version of either an M4 or an M16 to have a
17 telescoping or folding stock.

18 Q What about a non-M16 or a non-AR-15 rifle
19 that just has an adjustable stock that moves 2 inches?
20 Would you have a concern about that?

21 A I have -- my concern -- I do have concerns
22 about folding stocks of any type because of the reason
23 that I reference in here. And the concern that that
24 could be translated to a flash of adrenaline in a
25 very, very dangerous situation in a civilian world.

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1 Q Let me ask you this. Are you familiar with
2 the term "fit" for a rifle or a shotgun or any
3 shoulder-fired weapon in?

4 A What was the term again?

5 Q Fit, F-I-T.

6 A If it's not an acronym for something, I don't
7 know.

8 Q Are you familiar with the term "length of
9 pull"?

10 A Length of -- no, I'm not.

11 Q Okay. When you're firing a rifle, and I
12 assume you've fired a rifle many times. Is that the
13 case?

14 A That's correct.

15 Q There are certain rifles that might fit the
16 length of pull on a 5'6 individual --

17 A Got it. I'm sorry. Yes. Length of pull.
18 I've got it in the right framework now. I was
19 thinking combat. I couldn't figure it out, but now I
20 know what you're talking about. It's not a phrase
21 that's used in the military, but I do understand it.

22 Q If the adjustable stocks that we're talking
23 about or that are included in California's
24 restrictions are ones that simply slide up and down a
25 couple inches on the buffer tube to accommodate a

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1 different size length of pull, a different size
2 individual, or a person wearing a heavy coat versus a
3 T-shirt, would that be a function that you would say
4 is military -- that civilians should not have because
5 it's military featured?

6 A I do not think civilians should have any
7 automatic rifles -- I'm sorry -- AR-15s in their
8 world, but I will say that the -- give me the question
9 one more time, Sean.

10 Q Is there a negative -- setting aside, right,
11 we don't like automatic guns. We don't like
12 semiautomatic firearms.

13 A Right.

14 Q We're just simply talking about practical use
15 of a firearm. Think about it like an adjustable seat
16 in your car as you're driving. You can move it closer
17 to the steering wheel or back. Just because you don't
18 want people driving a NASCAR on public streets -- and
19 NASCARs probably don't have those adjustable seats
20 because they're probably custom-made for the driver,
21 but going along with the fantasy analogy -- just that
22 ability to give the person, the user of the rifle, the
23 proper fit, is there any negative that you can see or
24 that would make that a military function?

25 MR. ECHEVERRIA: Objection. Incomplete

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1 hypothetical.

2 THE WITNESS: First of all, I think that it's
3 important that people that are purchasing weapons
4 purchase weapons that they can fire given their length
5 of pull without having to make adjustments to the
6 weapon. So I professionally and personally think that
7 folding stocks, the preference to a folding stock that
8 would allow a length of pull to be adjusted would be
9 to get a weapon system that the length of pull -- and
10 they make those. Find a weapon that your length of
11 pull works with and use that instead of one that's in
12 pieces.

13 BY MR. BRADY:

14 Q Can length of pull change depending on what
15 you're wearing? Coat versus a T-shirt? Time of year?

16 A In my experience, if you're holding the
17 weapon properly, it doesn't because the angle is not
18 from your shoulders. It's from your elbow in. That's
19 the -- and that can be adjusted, and it is adjusted
20 depending upon body type by moving your elbow.

21 MR. ECHEVERRIA: I think we've been going for
22 over an hour since our last break. I just want to
23 check with the court reporter and with the Colonel and
24 also you, Sean, how you're all feeling.

25 MR. BRADY: Now is fine with me if you all

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1 want to do it. I could do some other questions, or we
2 can take a few minutes. It's up to you all. Don't
3 worry about me.

4 THE WITNESS: I wouldn't mind a break.

5 MR. ECHEVERRIA: Yeah, five minutes?

6 MR. BRADY: Sure.

7 THE WITNESS: Sure.

8 (Recess.)

9 MR. BRADY: Back on the record.

10 BY MR. BRADY:

11 Q So we were talking about the features that
12 California restricts on these rifles, and I just
13 wanted to get down to the point here, if an AR-15 had
14 the pistol grip and the flash suppressor and the
15 moveable stock removed, would you still consider it to
16 be a rifle most useful for military purposes?

17 A So if the pistol grip, the flash suppressor,
18 and the stock were removed?

19 Q Yeah, let's say it's a fixed stock, right?
20 Fixed stock, no pistol grip, no flash suppressor.

21 A Would I still consider it viable for military
22 use?

23 Q Yes.

24 A No, I would not.

25 Q So without those features, the rifle would

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1 not be most useful in combat settings as you think the
2 AR-15 is in its standard form?

3 A I got confused on that one, too.

4 Q Oh, you want me to restate the question?

5 A Please.

6 Q Yes. So if it does not have those features,
7 then the rifle would not be most useful in combat
8 settings even though you think an AR-15 with those
9 features would be, correct?

10 I'll restate.

11 A What pieces are missing from each rifle, I
12 guess, is --

13 Q I think you already answered. I just wanted
14 to clarify.

15 A Okay.

16 Q You said that without the pistol grip and the
17 flash suppressor and an immobile stock, the rifle
18 would not be most useful in combat settings; is that
19 correct?

20 A That's correct because those features are
21 what -- part of what allows it to be fired at the
22 rapid fire.

23 Q In your report in the first paragraph, you
24 talked about having reviewed California's Assault
25 Weapon Control Act and what it defines as assault

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1 weapons, correct?

2 A Correct.

3 Q And you noted that they had a list of
4 firearms that it considered assault weapons, correct?

5 A Correct.

6 Q Are you aware that California considers
7 rifles on that list to be assault weapons regardless
8 of whether it has a pistol grip or a flash suppressor
9 or an adjustable stock?

10 MR. ECHEVERRIA: Objection to the extent it
11 calls for a legal conclusion.

12 BY MR. BRADY:

13 Q I was just asking if you're aware.

14 A No, I'm not aware.

15 Q Would your position about those features not
16 being present on those rifles be the same as they are
17 for the AR-15? It would make them not useful for
18 combat?

19 A It depends on how the weapon is structured or
20 how the weapon is built. For example, the AK-47 has a
21 rear pistol grip, but it does not have a front pistol
22 grip and cannot take a front pistol grip, but it has
23 grooves in the barrel shields that allow you to use it
24 for the same function you could use a front pistol
25 grip for. So not knowing what other features might be

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1 on those weapons that are built in to provide that --
2 that stability, I can't really comment on that.

3 Q Okay. I want to go to paragraph 22. I'm
4 sorry. Let me make sure -- yeah -- of [Exhibit 2](#).

5 A We're going back to 2. Okay.
6 Paragraph 22?

7 Q Yes. I'm going to get to that. I'm sorry.
8 I'm trying to find it on my --

9 A I got it.

10 Q Okay. So you start off that paragraph with
11 "The AR-15 is an offensive combat weapon no different
12 in function or purpose than an M4," right?

13 A Correct.

14 Q Do you stand by that opinion as you sit here
15 today?

16 A I do.

17 Q Okay. There is at least one difference
18 between them, though, right? The M4 is select fire
19 and the AR-15 is not?

20 A M4 has automatic fire. The AR-15 does not.

21 Q So when you say there's no difference in
22 function or purpose, there is at least one difference,
23 right, and that is one has automatic capabilities and
24 one does not?

25 A So I'm talking about the purpose and nature

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1 of the weapon. It's not changed. Whether it has an
2 automatic capability or not, it's -- the weapon is
3 designed to function the same way and to efficiently
4 kill as effectively as possible.

5 Q So is it your opinion that automatic fire and
6 semiautomatic fire are not different functions?

7 A No, they are both controlled by the same
8 functions in the weapon system. The same cycle of
9 function control both.

10 Q The next line says, "In my opinion, both
11 weapons are designed to kill as many people as
12 possible as efficiently as possible."

13 Is that correct?

14 A Correct.

15 Q And do you stand by that opinion today?

16 A I do.

17 THE WITNESS: Hold on, folks. Something is
18 going on with my Zoom here. For some reason, Bing
19 decided to show me the news. Hold on, please. I'm
20 sorry about that.

21 MR. BRADY: No problem. Are you able to hear
22 me still?

23 THE WITNESS: Yes, I have you again.

24 MR. BRADY: Because you are kind of getting a
25 little, like -- it's definitely some technical,

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1 weird -- I can still see and hear you, but I can tell
2 there's an issue. Can you still hear me?

3 THE WITNESS: I can hear you, yes. If it
4 gets worse, let me know, and I can take these
5 headphones off.

6 (Discussion held off the record.)

7 BY MR. BRADY:

8 Q So I was asking, the sentence, "In my
9 opinion, both weapons are designed to kill as many
10 people as possible as efficiently as possible."

11 And your response was you agree with that
12 statement as you sit here today?

13 A I do.

14 Q It is -- were you trained in the Marine Corps
15 that the purpose of using a weapon is to kill?

16 A Yes, the purpose of using a weapon is to
17 kill.

18 Q So if you were to shoot somebody in combat
19 and they were to be wounded and no longer a threat,
20 would you continue firing on that person?

21 A No. Because the threat has been neutralized.

22 Q Okay. So isn't it fair to say that the
23 purpose of a weapon is to neutralize a threat, not
24 kill it?

25 A In combat, you're firing that weapon to kill.

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1 If you wounded somebody, then you screwed up.

2 Q So the second part of this sentence says --
3 I'm adding "both weapons" because it's a two-part
4 sentence -- "serve no legitimate sporting or
5 self-defense purpose," right?

6 A That is my professional opinion, yes.

7 Q And what do you base that on?

8 A I base the first one on, as we discussed
9 before, there are weapons that are much more effective
10 for hunting than the M4, the M16, or the AR-15, which,
11 because of the nature of how the round impacts flesh,
12 can damage that flesh. Whether it's visible on the
13 outside or not, what happens on the inside is what is
14 important.

15 On the sporting piece of that, it's my
16 personal belief that weapons of war have no legitimate
17 sporting purpose in civil society.

18 Q I want to focus more on the self-defense
19 piece. So what are you -- why would a round -- or why
20 would a weapon that apparently is very effective at
21 neutralizing a threat not be a good weapon for
22 self-defense purposes?

23 A First of all, there's weapons that are much
24 more effective for self-defense than an offensive
25 combat rifle.

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1 Q And what do you base that opinion on?

2 A I base that opinion on the ability of a
3 shotgun and a pistol to provide more effective
4 self-defense, in my professional opinion, than an
5 automatic -- than an AR-15, which is either sitting in
6 the house loaded and ready to fire or has to be
7 loaded, aimed, and fired in the darkness. Yeah, it's
8 difficult if you are not well trained, and it's very
9 difficult to maneuver with an M4 or an M16 or an AR-15
10 inside your house. You do not need that much
11 ammunition to have an effective self-defense role.

12 You've got an M4 that can fire a round
13 700 meters. You're not going to hit -- if you go out
14 there shooting a machine gun, you're not going to hit
15 the bad guy every single time. Rounds are going to be
16 flying downrange. That is probably one of the biggest
17 reasons why the use of a shotgun or a pistol is much
18 more effective in self-defense in the house because it
19 is as effective as a machine gun, and you take less
20 risk at killing your child in the next bedroom or your
21 neighbor down the street.

22 Q Let's assume for this part that we are
23 talking about semiautomatic AR-15s because that is
24 what's at issue here.

25 A Right.

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1 Q Does your opinion change in any way, assuming
2 that it is a semiautomatic versus an automatic?

3 A There is -- it doesn't change at all, no.

4 Q What training or source or experience are you
5 relying on in making your opinion that a handgun or a
6 shotgun is superior for self-defense?

7 A My own personal experience and my study and
8 my research.

9 Q For example?

10 A For example, if you look at a large picture,
11 the ability that people with a shotgun -- if you want
12 to talk about the human factor, people with a shotgun
13 and a pistol tend on aim before they fire. People
14 with a machine gun do not. So that's one piece of it.

15 But the ability to maneuver with -- first,
16 the ability to gain competence in a shotgun or a
17 pistol is much easier than it is to gain competence in
18 an AR-15. The ability to use that pistol or that
19 shotgun in an effective manner if you are not highly
20 well trained in it is much easier to employ than an
21 AR-15. And there's other examples I could give, too.

22 Q Have you taken any defense courses with a
23 shotgun?

24 A No, only had offensive course with a shotgun.

25 Q What about a self-defense course with a

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1 handgun?

2 A I have taken a self-defense course with a
3 handgun.

4 Q Have you consulted any -- would you consider
5 yourself a self- -- civilian self-defense expert?

6 A I don't know what that means when you talk
7 about civilian self-defense. For one thing, I really
8 don't worry about it a whole lot. I don't consider
9 that a -- you know, necessarily a profession that's,
10 frankly, worthy of the title. But I am perfectly
11 capable of defending myself or anybody else that needs
12 defending and doing it well.

13 Q I'm asking about the study of self-defense
14 tactics. Have you taken any courses in self-defense
15 tactics outside of a military setting?

16 A Nope, I have not. Mostly because they don't
17 make any sense to me.

18 Q And why is that?

19 A Well, primarily because most of them teach
20 about using an AR-15 as a self-defense weapon. And
21 that's -- that's -- I believe there's a responsibility
22 when you're training people to give them the best
23 option available to them given their abilities and
24 what they're able to handle emotionally, mentally, and
25 physically in a moment of crisis. That's the deciding

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1 factor.

2 Q And an AR-15 could alter somebody's
3 decision-making versus a handgun or a shotgun?

4 MR. ECHEVERRIA: Objection. Calls for
5 speculation.

6 THE WITNESS: Yeah, I'm having trouble
7 answering that because I'm ratcheting through study
8 after study we did for the police, our decision-making
9 course.

10 BY MR. BRADY:

11 Q You don't have to answer the question. Let
12 me back up and ask you about police.

13 I believe you testified earlier, other than
14 your military police training by the Army early on in
15 your career, you have no law enforcement experience;
16 is that correct, as a peace officer?

17 A That is correct.

18 Q So you've never taken any peace officer
19 training?

20 A I have taken law enforcement training in my
21 capacity of emergency management.

22 Q Okay. And did that entail firearm use?

23 A No. I taught post-certified classes that did
24 involve firearms usage in decision-making. But I was
25 not a member of law enforcement. I was a contractor.

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1 Q I believe we talked about this earlier. You
2 are aware -- you don't dispute that law enforcement
3 agencies in this country employ the AR-15 -- some, the
4 M4, but let's just stick with the AR-15.

5 Law enforcement agencies do employ the AR-15
6 in this country, correct?

7 A Law enforcement agencies employ the AR-15
8 with their offensive tactical units.

9 Q With their SWAT teams?

10 A SWAT teams, correct. Yes.

11 Q I want to go back real briefly to [Exhibit 17](#),
12 which is the article with the three former Marines. I
13 know you're not supposed to say "former." You're
14 always, right, but --

15 A I gotcha.

16 Q On page -- let's see here. Starting at -- it
17 goes on in two pages. It's the last paragraph in the
18 article. And it says, "I'll close with a final
19 observation by Staff Sergeant Leuba," L-E-U-B-A.

20 Have you seen it? Are we all on that page?

21 MR. ECHEVERRIA: Which page are you on, Sean?

22 MR. BRADY: It's the last -- on mine it says
23 16 of, like, 22 because I think the whole bottom is,
24 like, ads they got.

25 MR. ECHEVERRIA: I see it.

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1 MR. BRADY: Okay.

2 MR. ECHEVERRIA: Colonel, are you on there?

3 THE WITNESS: Yes, I'm on there. I'm
4 reading.

5 BY MR. BRADY:

6 Q Okay. And Staff Sergeant Leuba says,
7 "Tucker's most egregious errors are his claims that
8 M4s and AR-15s are not useful for individual
9 self-defense. As a graduate of the USMC Close
10 Quarters Battle Course, with significant experience in
11 military operations in urban terrain and enclosed
12 spaces, I can attest that not only is the M4, and,
13 therefore, an AR-15, a suitable firearm for use in
14 compressed spaces, it is preferred. It gives a
15 defender -- military or private citizen -- a greater
16 ability to end a threat at close range without
17 endangering others in close proximity."

18 Do you disagree with Staff Sergeant Leuba?

19 A I do.

20 MR. ECHEVERRIA: Objection to the extent that
21 that statement mischaracterizes Colonel Tucker's
22 testimony.

23 BY MR. BRADY:

24 Q Do you think that that mischaracterizes your
25 testimony, Colonel Tucker?

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1 A It does.

2 Q How so?

3 A It conflates combat training and operations
4 with operations in a civilian environment, and they
5 are completely different. Not the same. There is no
6 comparison. You cannot talk about a graduate of the
7 USMC Close Quarters Battle Course and significant
8 experience in military operations in closed spaces and
9 urban train and translate that into "I'm an expert in
10 self-defense at somebody's house." They're two
11 completely different missions and operations.

12 Staff Sergeant Leuba failed to mention in his
13 USMC Close Quarters Battle Course that he's never
14 alone in those situations. If I'm battling five bad
15 guys in my house room to room, then by all means, yes,
16 I'd say what he's talking about is valid. Other than
17 that, I think it's egregious when there are weapons
18 that are much better suited for self-defense, much
19 easier to use for those people who may need to use
20 them for self-defense, than an offensive combat rifle.

21 Q And have you conducted any studies or surveys
22 or seen any by people about whether the AR-15 is
23 easier to operate than other firearms?

24 A I mean, it's designed to be easy to operate.
25 It's an industrial weapon designed to teach tens of

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1 thousands of people how to use it. Using it properly
2 is a whole different story.

3 MR. BRADY: Let's take a couple minutes. I
4 might be able to wrap up here. I just want to go over
5 my notes to make sure I have no more questions.

6 (Recess.)

7 MR. BRADY: Back on the record.

8 BY MR. BRADY:

9 Q I just have a couple more questions. On
10 page 8 of your surrebuttal, which is [Exhibit 4](#), you
11 state that "It rarely takes more than a couple of
12 rounds to incapacitate an intruder."

13 Is that your opinion as you sit here today?

14 A My point there is, is that a well-trained
15 individual, the one who wants a shot to be used in
16 weapons in self-defense, should not need more than two
17 rounds per bad person, maybe three if it's dark.

18 Q And what do you base that on?

19 A I base that on what's expected out of
20 somebody who knows how to fire a weapon and kill a
21 human being. Two rounds. One in the chest, one in
22 the head.

23 Q Outside of SWAT teams -- or let me ask you
24 this.

25 Would you consider what SWAT teams do to be

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1 combat?

2 A There are elements of combat to what we ask
3 SWAT teams to do just like there are elements of
4 combat with what we ask normal law enforcement to do
5 in those cases where they are first or second person
6 into a situation where there is a bad guy with an
7 AR-15. So there are differences, and the primary
8 difference is that in SWAT teams, they normally have
9 control of the situation.

10 But in terms of going in that door, going in
11 the door for a SWAT team is no different than going in
12 the door for one of my squads in Fallujah. At that
13 moment, you're involved in urban combat. You don't
14 know what's behind that door. And the same level of
15 guts it takes my guys to do it, same level of guts and
16 training it takes those SWAT guys to do it, so that
17 element is just like combat.

18 Q So when they go into structures, they take
19 with them sometimes M4s or AR-15s?

20 A They almost exclusively. It's an offensive
21 operation.

22 Q I believe in a hypothetical you provided
23 where you were explaining your concerns about the use
24 of an AR-15 for self-defense in the home, you
25 indicated killing your neighbor or your loved one in

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1 the next room; is that correct?

2 A Yes, I was referring to rounds that are able
3 to travel with the max effective range, yes.

4 Q So is there a way to avoid that with
5 ammunition, certain types of ammunition to avoid
6 overpenetration?

7 A The best way to avoid an overpenetration is
8 to have very, very highly trained shooters. That's
9 it. And SWAT, in my observation, are very, very
10 highly trained shooters, and that's the difference.
11 Somebody who understands the weapon system, practices
12 daily to employ an offensive operations, and practices
13 probably daily on how to incapacitate a threat.
14 That's different than your basic homeowner.

15 Q Sure. A person in a SWAT team is almost
16 certainly going to be able to put rounds on target
17 better than John Q. Citizen, right? But if a round
18 hits a wall, whether it's coming out of a rifle being
19 held by a SWAT member or John Q. Citizen, that round
20 is going to do the same thing, correct?

21 MR. ECHEVERRIA: Objection to the extent it
22 calls for speculation.

23 BY MR. BRADY:

24 Q Is it speculating to say that it does not
25 matter who's holding the rifle as to what the round

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1 does when it hits a wall?

2 A Yes, I think that it is immaterial. If the
3 two rounds are hitting the same infrastructure,
4 whether it came from a law enforcement officer or from
5 a citizen, it would have the same effect.

6 Q Okay. So --

7 A But I want to clarify.

8 Q Go ahead.

9 A Well, my clarification is that the training
10 is the difference, not -- nothing to do with the
11 weapon system. It's the training and the ability to
12 use the --

13 Q Got it. So there's not necessarily a concern
14 with the AR-15 over other firearms about penetration
15 through walls. It's about missing your target?

16 A No. I think what you will find is with the
17 SWAT teams, they won't shoot if they aren't certain of
18 where their round is going to go. And that's -- same
19 thing with Marines in urban combat under the rules of
20 engagement we had. You don't fire that weapon unless
21 you know where the round is going to go. And if it's
22 going to go someplace where it could cause more
23 damage, then you don't fire it. And sometimes you
24 take the shot. I mean, that's the nature of the
25 beast.

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1 So I think that in that comparison, to me,
2 the difference is an individual who is not trained,
3 woken up in the middle of the night, grabs their
4 machine gun, and now what are they going to do?

5 Q Would you --

6 A They're in a position where they need to have
7 that level of training to be effective, and they
8 don't.

9 Q Okay. Would you consider peace officers who
10 are not on SWAT to be engaged in combat?

11 A I believe that a police officer -- and I will
12 give an example, if I may. I believe that the first
13 police officer in the building at Uvalde was engaged
14 in combat. And at the end of the day, they were all
15 engaged in combat in that situation, but it was an
16 environment that was created by the presence of a
17 machine gun.

18 So the -- yes, law enforcement officers can
19 find themselves involved in combat.

20 Q And are law enforcement officers trying to
21 kill as many people as possible as effectively as
22 possible?

23 A They're trying to neutralize the threat as
24 efficiently and effectively as possible. If that
25 requires killing one person, then that's it.

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1 Q Got it.

2 MR. BRADY: Thank you for your time,
3 Colonel Tucker. I appreciate it. I believe I am
4 finished.

5 THE SHORTHAND REPORTER: Mr. Echeverria, do
6 you need a copy?

7 MR. ECHEVERRIA: I actually do have some
8 questions for redirect.

9 THE SHORTHAND REPORTER: Okay.

10 MR. ECHEVERRIA: I won't take too much time,
11 I promise you all.

12

13 EXAMINATION

14 BY MR. ECHEVERRIA:

15 Q Colonel, you testified that you retired from
16 the U.S. Marine Corps in 2006; is that right?

17 A Correct.

18 Q And when you were -- when you retired, that
19 would also qualify as being discharged from the
20 Marine Corps; is that right?

21 A Correct.

22 Q And what was the status of your discharge?

23 A Honorable.

24 Q I'd like to look at [Exhibit 17](#), which was
25 marked by plaintiffs' counsel during this deposition.

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1 This is the Federalist article entitled "Here are all
2 the problems with California's expert."

3 Do you see that exhibit, Colonel?

4 A Yes.

5 Q If you look at the first page, do you see the
6 date that the article was published?

7 A I lost Agile. Give me one moment, please.
8 Oh, it brought me right back in. Okay.

9 Q Do you see the first page of [Exhibit 17](#)?

10 A I see the first page. And the date is
11 March 16th, 2023.

12 Q And what's today, Colonel?

13 A March 16, 2023.

14 Q You described having been shot by at least
15 two rounds fired from an AK-47 rifle; is that right?

16 A Correct.

17 Q Were you injured in either of those
18 instances?

19 A The first round caught my flak jacket and
20 traveled the flak jacket. It was in my shoulder, and
21 it essentially tore a deep furrow in my shoulder but
22 did not penetrate.

23 The second round was towards the end of its
24 max effective range, and it knocked me on my back and
25 broke a rib, but that was it.

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1 MR. ECHEVERRIA: Okay. I don't have any
2 further questions, Colonel. Thank you for your time.

3 THE SHORTHAND REPORTER: Anyone else?

4 MR. BRADY: No.

5 Should we go off the record, John?

6 MR. ECHEVERRIA: Yeah, off the record.

7 THE SHORTHAND REPORTER: Now can I ask if you
8 need a certified copy?

9 MR. ECHEVERRIA: Yes, please.

10 MR. BRADY: Yes. Please. And thank you.

11 MR. ECHEVERRIA: And thank you, Vicki, for
12 enduring today.

13 (Proceedings concluded at 4:53 p.m.)

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DECLARATION UNDER PENALTY OF PERJURY

I hereby declare under penalty of perjury under the laws of the State of California, that the foregoing is my deposition under oath; are the questions asked of me and my answers thereto; that I have read same and have made the necessary corrections, additions or changes to my answers that I deem necessary.

In witness thereof, I hereby subscribe my name this ____ day of _____, 20____, at _____, California.

COLONEL CRAIG TUCKER

ERRATA SHEET

DEPOSITION OF: COLONEL CRAIG TUCKER
DATE OF DEPOSITION: March 16, 2023

PAGE#	LINE#	CORRECTION
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I, the undersigned, declare under penalty of perjury that I have read the above-referenced deposition transcript and have made any corrections, additions, or deletions that I was desirous of making and that the transcript contains my true and correct testimony.

EXECUTED this day

of _____, 2023.

at _____, _____.

(city) (state)

COLONEL CRAIG TUCKER

1
2 I, VICKI RENEE RESCH, RPR, CSR No. 6645,
3 certify: that the foregoing proceedings were taken
4 before me at the time and place herein set forth; at
5 which time the witness was duly sworn; and that the
6 transcript is a true record of the testimony so given.
7

8 Witness review, correction and signature was
9 (X) by Code. (X) requested.
10 () waived. () not requested.
11 () not handled by the deposition officer due to
12 party stipulation.
13

14 The dismantling, unsealing, or unbinding of the
15 original transcript will render the reporter's
16 certificate null and void.

17 I further certify that I am not financially
18 interested in the action, and I am not a relative or
19 employee of any attorney of the parties, nor of any of
20 the parties.

21 Dated this 24th day of March, 2023.

22
23 

24 VICKI RESCH
25