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IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

CALEB BARNETT, et al.,)	
)	
Plaintiffs,)	
)	
vs.)	No. 3:23-cv-209-SPM
)	
KWAME RAOUL, et al.,)	
)	
Defendants.)	

The deposition of SALAM FATOHI, called by the Defendant for examination taken pursuant to the Federal Rules of Civil Procedure of the United States District Courts pertaining to the taking of depositions, before Valerie Calabria, CSR, RPR, taken at 330 North Wabash Avenue, Suite 3300, Chicago, Illinois, on May 22, 2024, at 9:08 a.m.

Page 2

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 15 (via videoconference)
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 19
 * * * * *
 20
 21
 22
 23
 24 Reported By: Valerie M. Calabria, CSR, RPR
 License No.: 084-003928

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1 (Witness duly sworn.)
 2 SALAM FATOHI,
 3 called as a witness herein, having been first duly
 4 sworn, was examined and testified as follows:
 5 EXAMINATION
 6 BY MR. WELLS:
 7 Q. Could you state your name for the
 8 record, please.
 9 A. Salam Fatohi.
 10 Q. Can you spell it, please.
 11 A. S-a-l-a-m, as in "Mike," F-a-t-o-h-i.
 12 Q. So my name is Chris Wells. We met for
 13 the first time today.
 14 A. Yes.
 15 Q. I'm an attorney with the Illinois
 16 Attorney General's Office, and I represent the
 17 governor of Illinois; the attorney general of
 18 Illinois; and the director of the Illinois State
 19 Police, Brendan Kelly.
 20 Have you testified in a deposition
 21 before?
 22 A. I have provided testimony before, but I
 23 believe this is the first time I'm providing
 24 deposition -- or being deposed, yeah.

Page 6

1 Q. Where have you testified before?
 2 A. In Oregon for NSSF's challenge to -- I
 3 think it's Motion 114 or something 114. I forgot
 4 the exact name, but it was 114.
 5 Q. Was that in-court testimony?
 6 A. Yes.
 7 Q. So although we're not in court today,
 8 you were just sworn in. So you're under oath.
 9 A. Yes.
 10 Q. And it's like you're in court. Do you
 11 understand that?
 12 A. I do understand.
 13 Q. Great. And like in court, we've got a
 14 court reporter who is here taking down what's being
 15 said. The challenge, as you may know, is that you
 16 have to wait for me to finish, and I have to wait
 17 for you to finish. Because it makes her life a lot
 18 easier, and it makes the transcript a lot more
 19 readable.
 20 So I would ask you to just wait until
 21 I get the question out and then respond.
 22 Inevitably, witnesses forget and interrupt, and
 23 that's okay. I'll remind you again. But if you
 24 could just try to wait, that would be much

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1 appreciated.
 2 Your attorney -- you're being
 3 represented by Mr. Lothson today; is that right?
 4 A. That's correct.
 5 Q. He may object. Generally speaking,
 6 you'll still need to answer the question that I
 7 ask. If you don't understand the question, please
 8 let me know. If you answer the question, I will
 9 assume, and everybody reading the transcript will
 10 assume, that you understood the question as asked;
 11 is that fair?
 12 A. That's fair.
 13 Q. There may be a circumstance in which he
 14 objects based on privilege, the attorney-client
 15 privilege. That touches on conversations that you
 16 have with your attorneys and privileged
 17 information. That's the one exception to the
 18 you-have-to-answer rule. And we'll take that up as
 19 it comes. I don't anticipate a lot of that today,
 20 but we'll see, obviously.
 21 Are you on any medication today that
 22 would prevent you from giving full, truthful
 23 testimony?
 24 A. No.

Page 8

1 Q. And you're here today testifying based
 2 on a notice that I served on the National Shooting
 3 Sports Foundation, Incorporated, which I'll refer
 4 to as NSSF. You're familiar with NSSF?
 5 A. I am familiar.
 6 Q. NSSF is a nonprofit organization that
 7 has sued the parties that I represent, so Attorney
 8 General Kwame Raoul and ISP director Brendan Kelly.
 9 The name of the lawsuit is Barnett versus Raoul.
 10 That's No. 23-cv-209 pending in the US District
 11 Court of Illinois for the Southern District of
 12 Illinois.
 13 There are three other cases that have
 14 been consolidated with the Barnett case: The
 15 Harrel versus Raoul case, 23-cv-141; Langley versus
 16 Kelley, 23-cv-192; Federal Firearms Licensees of
 17 Illinois versus Pritzker, 23-cv-215. All of those
 18 are pending in the Southern District of Illinois.
 19 The deposition you're giving today is
 20 relevant to and may be used in all of those cases,
 21 fair enough?
 22 A. That's fair.
 23 Q. So I've previously handed you what's
 24 been marked as Deposition Exhibit No. 1. Have you

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1 seen this document before?
 2 A. Yes.
 3 (NSSF Deposition Exhibit 1 was
 4 marked for identification.)
 5 BY MR. WELLS:
 6 Q. What is it?
 7 A. I believe these are the questions asked
 8 by us that we provided interrogatory responses to.
 9 Q. And would you read the title of the
 10 document.
 11 A. "In the United States District Court for
 12 the" --
 13 Q. I'm sorry. Skipping down, the amended.
 14 A. "Amended Rule 30(b)(6) Notice of
 15 Deposition of National Shooting Sports Foundation,
 16 Inc."
 17 Q. Okay. And flipping to the second page,
 18 have you seen this page before?
 19 A. Yes.
 20 Q. So there's a list of 12 topics here;
 21 would you agree?
 22 A. Yes.
 23 Q. Okay. And are you prepared to testify
 24 on these 12 topics?

Page 10

1 A. Yes.

2 MR. LOTHSON: And I'll -- only to the extent

3 that we haven't lodged an objection; written that

4 to you, I believe, in an e-mail of May 17, 2024,

5 limited objections, topics 1 and 8.

6 BY MR. WELLS:

7 Q. Correct. So you're prepared to testify,

8 subject to the objections that NSSF served to

9 topics 1 and 8; is that fair to say?

10 A. I'm sorry. Can you repeat that.

11 Q. You're prepared to testify to topics 1

12 through 12, subject to the two objections that NSSF

13 provided us --

14 A. Yes.

15 Q. -- by e-mail?

16 A. Yes.

17 Q. Again, just wait for me to finish.

18 A. I'm sorry.

19 Q. No, I know it's hard.

20 A. I'm making your job harder.

21 MR. WELLS: And can counsel for NSSF please

22 confirm that the witness is designated to testify

23 on behalf of NSSF on the topics, as just described,

24 subject to your objections.

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1 MR. LOTHSON: The witness is designated under

2 Rule 30(b)(6) on topics that are within the notice,

3 subject to Rule 30(b)(6), of course, and the

4 obligation to reasonably prepare to testify on such

5 topics.

6 BY MR. WELLS:

7 Q. All right. So since you've been

8 designated to testify on behalf of NSSF today, what

9 you say here today will be treated as NSSF's

10 testimony; is that fair?

11 A. That is fair.

12 Q. For the topics that have been

13 identified, and as Mr. Lothson just laid out,

14 you're speaking for NSSF today. Do you understand

15 that?

16 A. I do understand that.

17 Q. Okay. I'm going to cover a couple of

18 pieces of terminology that I think will make our

19 lives easier and perhaps the court reporter's, too.

20 So you're familiar with caliber?

21 A. Yes, I'm familiar with caliber.

22 Q. What is caliber?

23 A. Caliber is the designation for size for

24 the chambering of a firearm.

Page 12

1 Q. Size of what?

2 A. Size of the ammunition that the firearm

3 accepts.

4 Q. And is it the entire cartridge, or is it

5 something else?

6 A. It is the -- typically the diameter of

7 the projectile.

8 Q. Projectile means the bullet?

9 A. Projectile is the bullet.

10 Q. So when I refer to "caliber" today, I

11 may say things like "22." Do you have an

12 understanding of what "22" means in terms of

13 caliber?

14 A. Yes.

15 Q. What is that understanding?

16 A. So .22 is the designation of the size of

17 the bullet diameter from full -- sorry -- full

18 diameter of the bullet being 0.22 inches.

19 Q. And for the sake of the court reporter,

20 you said "point 22." So sometimes people will use

21 the phrase "22" to refer to .22; is that fair to

22 say?

23 A. That's correct.

24 Q. So if I use "22" today in reference to

Page 13

1 caliber, will you understand that I'm referring to

2 .22-caliber ammunition?

3 A. Yes.

4 Q. Similar questions for 5.56. Are you

5 familiar with 5.56-caliber ammunition?

6 A. Yes.

7 Q. And when I say "556," oftentimes folks

8 are referring to 5.56-caliber ammunition, correct?

9 A. It's 5.56-millimeter instead of the

10 inches portion. So it's got NATO designation and

11 the commercial designation. So I understand the

12 two interchangeably.

13 Q. So if I say "556" today, I will

14 generally be referring to 5.56-millimeter NATO

15 caliber; is that fair?

16 A. That's fair.

17 Q. And what does NATO mean?

18 A. A NATO designation, as I understand it

19 here today, is an international standard for a

20 particular type of cartridge parameters.

21 Q. Do you understand NATO to stand for the

22 North Atlantic Treaty Organization?

23 A. I believe that's what it's called. Not

24 having it in front of me today, I believe that's

Page 14

1 what it's called.
 2 Q. If I say "380" in reference to caliber,
 3 will you understand what that means?
 4 A. Yes.
 5 Q. And that refers to .380-caliber
 6 ammunition; is that fair to say?
 7 A. Yes.
 8 Q. Similar question for 7.62. If I say
 9 "762-caliber," will you understand what I'm saying?
 10 A. I understand it's a 30-caliber
 11 projectile, 7.62. But which 7.62 are you talking
 12 about?
 13 Q. So 7.62 by 39 millimeters.
 14 A. Okay.
 15 Q. And what does that mean, 7.62 by
 16 39 millimeters?
 17 A. 7.62 by 39 is a common AK-platform
 18 cartridge.
 19 Q. And the 7.62 refers to what?
 20 A. 7.62 refers to the diameter of the
 21 bullet.
 22 Q. And what does the 39 refers to?
 23 A. 39 is the length of the case.
 24 Q. Also sometimes called the cartridge?

Page 15

1 A. Cartridge case, yes.
 2 Q. Yeah, cartridge case. So if I use "762"
 3 today, unless I say otherwise, I'll generally be
 4 referring to the 7.62 by 39-millimeter caliber; is
 5 that fair?
 6 A. That sounds good.
 7 Q. Are you familiar with the term "MSR"?
 8 A. Yes, I am.
 9 Q. What's your understanding of the term
 10 "MSR"?
 11 A. That MSR means modern sporting rifle.
 12 Q. So at times today I may say "modern
 13 sporting rifle" and I may say "MSR." I'll be using
 14 those terms interchangeably; is that fair?
 15 A. No problem with that.
 16 Q. And NSSF sometimes uses the abbreviation
 17 MSR in its publications, correct?
 18 A. That's correct.
 19 Q. And in its internal correspondence?
 20 A. Yes, common vernacular.
 21 Q. If I say "NFA firearms," are you
 22 familiar with what I'm referring to?
 23 A. I'm familiar with the NFA.
 24 Q. What is the NFA?

Page 16

1 A. The National Firearms Act, I believe in
 2 1968. It's a regulation that controls firearms
 3 outside of the Gun Control Act.
 4 Q. So the National Firearms Act, you
 5 understand, is a federal law?
 6 A. Yes.
 7 Q. And it regulates certain types of
 8 firearms; is that fair to say?
 9 A. Yes.
 10 Q. So when I say "NFA firearms" today,
 11 that's what I'll be referring to; is that fair?
 12 A. Yeah.
 13 Q. Could you describe for me your
 14 educational background.
 15 A. I have a bachelor's of business
 16 administration from Wayne State University, and I
 17 have continued education in the fields of research
 18 survey methodology and statistics.
 19 Q. You said research survey methodology and
 20 statistics?
 21 A. That's correct.
 22 Q. And how did you describe that? You said
 23 continuing education?
 24 A. Yes.

Page 17

1 Q. What's the nature of that continuing
 2 education?
 3 A. Seeking out education through AMA. I
 4 believe it's American Management Association. They
 5 are a training organization for different
 6 variations of continuing education. And also
 7 seeking out my own education through LinkedIn and
 8 other sources. LinkedIn Learning and other
 9 sources.
 10 Q. Is the American Management Association
 11 an accredited institution of higher learning?
 12 A. I believe so, but I don't know for sure.
 13 Q. Are you pursuing a degree from American
 14 Management Association?
 15 A. No. It's strictly one-off classes about
 16 different subjects.
 17 Q. What's the format of those classes?
 18 A. Typically posted over Zoom. I have not
 19 attended any in-person with them.
 20 Q. What's the content of the courses that
 21 you've taken from the American Management
 22 Association?
 23 A. Writing, business management. I believe
 24 those are the two I've taken.

Page 18

1 Q. I think you said you've done some
 2 continuing education in survey methods; is that
 3 right?
 4 A. Yes.
 5 Q. Could you describe what that education
 6 is.
 7 A. Yes. Going through LinkedIn Learning.
 8 There's various classes that I've taken that have
 9 continued and expanded my knowledge on those
 10 subjects.
 11 Q. And have you received any degree in
 12 survey methodology?
 13 A. Not a degree.
 14 Q. Are you pursuing a degree in survey
 15 methodology?
 16 A. No.
 17 Q. How about statistics? What coursework
 18 have you done in statistics?
 19 A. At this point in time, I don't recall
 20 the exact courses that I've taken. But just
 21 general learning on LinkedIn Learning for expanding
 22 my current knowledge.
 23 Q. So is it fair to say that for both
 24 statistics and survey methodology, the coursework

Page 19

1 that you've done has been exclusively through
 2 LinkedIn Learning?
 3 A. Yes.
 4 Q. And, generally speaking, what is
 5 LinkedIn Learning?
 6 A. LinkedIn Learning is a platform that
 7 NSSF subscribes to to provide learning material to
 8 employees.
 9 Q. What statistical techniques have you
 10 studied?
 11 A. As I sit here today, I can't recall
 12 specific methods.
 13 Q. Can you describe your career history
 14 since graduating from college.
 15 A. Sure. At the time that I graduated,
 16 which I believe was 2017, I was working for a
 17 mining company in the extent that I was surveying
 18 and drilling for that company. And I then left to
 19 work for a heavy machinery company called Michigan
 20 CAT. And then transitioned to NSSF.
 21 Q. And when you graduated from -- or prior
 22 to graduating from college, did you take any time
 23 off in between graduating from high school and
 24 starting college?

Page 20

1 A. I'm sorry. Can you say that again.
 2 Q. Did you go straight from high school to
 3 college?
 4 A. Oh, yeah, other than the summer in
 5 between graduating and starting in the fall.
 6 Q. So what year did you graduate from
 7 college?
 8 A. I believe it was 2017.
 9 Q. And what year did you graduate from high
 10 school?
 11 A. 2007.
 12 Q. And in between 2007 and when you started
 13 college at Wayne State, what did you do?
 14 A. I was working full-time and going to
 15 school.
 16 (NSSF Deposition Exhibit 2 was
 17 marked for identification.)
 18 BY MR. WELLS:
 19 Q. I'm handing you what has been marked as
 20 Deposition Exhibit 2. Does this information look
 21 familiar to you?
 22 A. Yes.
 23 Q. And what is it?
 24 A. It's a collection of my education and

Page 21

1 work history.
 2 Q. So I can represent to you that this is a
 3 printout of information that's on your LinkedIn
 4 profile. Does this, generally speaking, look like
 5 an accurate representation of the information on
 6 your LinkedIn profile?
 7 A. Yes.
 8 Q. Okay. And I see here that you have a
 9 bachelor of science in business administration and
 10 management from Wayne State. Is that what you were
 11 referring to earlier?
 12 A. Yes.
 13 Q. Do you have any other degrees?
 14 A. No.
 15 Q. Other than a high school diploma?
 16 A. Yes.
 17 Q. Why did you decide to join NSSF?
 18 A. It's an industry and a topic that I'm
 19 passionate in, and I had a lot of personal
 20 experience with firearms, and it was something that
 21 I wanted to pursue.
 22 Q. Why are you passionate about firearms?
 23 A. It's just something that I enjoy doing,
 24 enjoy using.

<p style="text-align: right;">Page 22</p> <p>1 Q. How do you use firearms?</p> <p>2 A. For recreational purposes, competition,</p> <p>3 hunting, and home protection.</p> <p>4 Q. How long have you used firearms?</p> <p>5 A. Honestly, about 15 or 16 years.</p> <p>6 Q. How did you come to develop an interest</p> <p>7 in firearms?</p> <p>8 A. Exposure through hunting, invitations to</p> <p>9 go to the range with friends.</p> <p>10 Q. And what types of firearms do you have</p> <p>11 experience handling and discharging?</p> <p>12 A. How do you want me to answer that? In</p> <p>13 platform or...</p> <p>14 Q. Let's start by tell me what handguns</p> <p>15 you've used, and then tell me what rifles you've</p> <p>16 used, and then tell me what shotguns you've used.</p> <p>17 A. I think we need a lot of time --</p> <p>18 Q. Okay.</p> <p>19 A. -- going through every single one, but I</p> <p>20 can broadly speak to platforms --</p> <p>21 Q. Sure.</p> <p>22 A. -- if that's okay.</p> <p>23 Q. That's fine.</p> <p>24 A. Okay. Handguns; revolvers; rifles;</p>	<p style="text-align: right;">Page 24</p> <p>1 A. Reports, training opportunities,</p> <p>2 connecting them with different entities in order to</p> <p>3 be compliant with, say, ATF regulations.</p> <p>4 Q. What's your title at NSSF?</p> <p>5 A. Director of research.</p> <p>6 Q. What are your responsibilities at NSSF?</p> <p>7 A. I run the research department.</p> <p>8 Q. How big is the research department at</p> <p>9 NSSF?</p> <p>10 A. It is three employees.</p> <p>11 Q. Who are those employees?</p> <p>12 A. It is myself, Dianne Vrablic, and</p> <p>13 Courtney Willis.</p> <p>14 Q. How long have you worked at NSSF again?</p> <p>15 A. It will be four years in June.</p> <p>16 Q. So you started in 2020; is that fair to</p> <p>17 say?</p> <p>18 A. Yeah, June 2020.</p> <p>19 Q. During that time, the four years you've</p> <p>20 been at NSSF, have you always been the director of</p> <p>21 research?</p> <p>22 A. No.</p> <p>23 Q. What other roles have you had at NSSF?</p> <p>24 A. Manager of legislative and policy</p>
<p style="text-align: right;">Page 23</p> <p>1 shotguns; muzzle-loaders, even though they're not</p> <p>2 technically a firearm.</p> <p>3 Q. When you say muzzle-loaders are not</p> <p>4 technically a firearm, what do you mean?</p> <p>5 A. The Gun Control Act does not -- Gun</p> <p>6 Control Act and ATF does not recognize them as a</p> <p>7 firearm. They're a permitted weapon.</p> <p>8 Q. So is federal definitions for firearms</p> <p>9 what you look to to define what is and is not a</p> <p>10 firearm?</p> <p>11 A. Yes.</p> <p>12 Q. What is NSSF?</p> <p>13 A. The National Shooting Sports Foundation.</p> <p>14 Q. What -- is it an organization?</p> <p>15 A. NSSF is a trade organization for the</p> <p>16 firearm industry.</p> <p>17 Q. What does it do? What does NSSF do?</p> <p>18 A. We advocate on behalf of the industry,</p> <p>19 we create safety programs, we provide research and</p> <p>20 resources for our members, and we -- I think I</p> <p>21 already said this -- provide resources for our</p> <p>22 members.</p> <p>23 Q. What types of resources do you</p> <p>24 provide -- does NSSF provide for its members?</p>	<p style="text-align: right;">Page 25</p> <p>1 research. And manager of research.</p> <p>2 Q. Manager of legislative and policy</p> <p>3 research. What did that role entail?</p> <p>4 A. Largely administrative functions to</p> <p>5 compile, organize data, and update fact sheets.</p> <p>6 Kind of doing the nuts-and-bolts work of the</p> <p>7 research department.</p> <p>8 Q. And it's legislative and policy research</p> <p>9 within the research department at NSSF?</p> <p>10 A. I'm sorry?</p> <p>11 Q. Is the legislative -- is legislative and</p> <p>12 policy research a function that falls within the</p> <p>13 research department, broadly, at NSSF?</p> <p>14 A. It's one of the things that we do, yes,</p> <p>15 in research.</p> <p>16 Q. So in the research group right now,</p> <p>17 among the three employees that you named, is</p> <p>18 someone responsible for legislative and policy</p> <p>19 research?</p> <p>20 A. That would be Courtney Willis.</p> <p>21 Q. And do you supervise Courtney Willis?</p> <p>22 A. Yes, I do.</p> <p>23 Q. And why does NSSF do legislative and</p> <p>24 policy research?</p>

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1 A. Because our industry is one of the most
 2 highly regulated industries in the US, and we are
 3 usually the subject of an additional regulation.
 4 Q. Does NSSF advocate for certain
 5 legislation or policy?
 6 A. I know that we have a lobbying group in
 7 our federal and state affairs that does that kind
 8 of work.
 9 MR. LOTHSON: And I'll object just to the
 10 scope of this as outside of the scope of what's in
 11 the notice, as agreed to and not objected to at
 12 this juncture.
 13 MR. WELLS: Understood.
 14 BY MR. WELLS:
 15 Q. I just have one more question on this
 16 topic, which is is the research that's generated by
 17 your group, the research group at NSSF, used for
 18 the legislative advocacy that NSSF does?
 19 MR. LOTHSON: And I'll object just because I
 20 think that's an area of inquiry that's objected to.
 21 BY MR. WELLS:
 22 Q. You can answer.
 23 A. Oh, okay. Our research creates fact
 24 sheets and other resources for our lobbyists and

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1 also for our members to be educated on topics, and
 2 those can be used for a variety of reasons.
 3 Q. Who are NSSF's members, broadly
 4 speaking?
 5 A. Broadly speaking, firearm and ammunition
 6 manufacturers, distributors, retailers. We have, I
 7 believe, some media and natural -- not natural
 8 resources -- conservation groups.
 9 Q. What are some examples of conservation
 10 groups that are NSSF members?
 11 A. I don't want to name any particular one
 12 because I don't want to make it sound like an
 13 endorsement or anything else like that. So I'd
 14 like to not name particular members in that regard,
 15 if that's okay with you.
 16 Q. So you're politely refusing to answer;
 17 is that fair to say?
 18 MR. LOTHSON: I think on the concern of
 19 disclosure of membership identities with
 20 specificity.
 21 THE WITNESS: There are not many conservation
 22 groups, and I don't know if it's appropriate for me
 23 to sit here today and name off the ones that come
 24 to mind and make it seem as if it's an endorsement

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1 of a particular member.
 2 BY MR. WELLS:
 3 Q. Understood. Are you able to share what
 4 members of -- what firearms manufacturers are
 5 members of NSSF? Not all of them, but examples?
 6 A. I mean, I can definitely name some of
 7 the top manufacturers of firearms. They are
 8 represented in our reports, and I'm happy to go
 9 over that, if you'd like.
 10 Q. Okay. So as we examine the reports, I
 11 would ask that, as we go through it, if there are
 12 particular companies that you know are definitely
 13 not members of NSSF, you know, please let me know.
 14 Because my understanding is that, generally
 15 speaking, a lot of the information that NSSF relies
 16 on comes from manufacturers that are NSSF members;
 17 is that fair to say?
 18 A. Yeah, that's fair. I would be
 19 hard-pressed to find a major manufacturer that's in
 20 our reports that's not a member.
 21 Q. Do you have an understanding as to why
 22 manufacturers are members of NSSF?
 23 A. Typically, it's for access to those
 24 resources and other benefits that I stipulated to

Page 29

1 earlier.
 2 Q. How does NSSF receive revenue?
 3 A. I believe through membership dues.
 4 Q. Any other sources of revenue?
 5 MR. LOTHSON: I'll object; just beyond the
 6 scope of the notice of the deposition.
 7 But to the extent you know, Salam, go
 8 ahead.
 9 THE WITNESS: Membership dues just for being a
 10 member and then also from SHOT Show.
 11 BY MR. WELLS:
 12 Q. What is the SHOT Show?
 13 A. It is our Shooting, Hunting, Outdoor
 14 Trade Show that we host in Vegas annually.
 15 Q. So S-H-O-T --
 16 A. Stands for --
 17 Q. -- stands for Shooting, Hunting, Outdoor
 18 Trade Show; is that fair to say?
 19 A. Correct.
 20 Q. And the acronym SHOT invokes a shot from
 21 a firearm, right?
 22 A. I believe so. I would --
 23 Q. Does it come to mind when you hear --
 24 A. Yes.

<p style="text-align: right;">Page 30</p> <p>1 Q. -- the word "shot"?</p> <p>2 A. Yes.</p> <p>3 MR. WELLS: Fair enough. Okay.</p> <p>4 (NSSF Deposition Exhibit 3 was</p> <p>5 marked for identification.)</p> <p>6 BY MR. WELLS:</p> <p>7 Q. So I've just handed you what's been</p> <p>8 marked as Deposition Exhibit 3. Have you seen this</p> <p>9 document before?</p> <p>10 A. Yes.</p> <p>11 Q. What is it?</p> <p>12 A. These are the answers to the</p> <p>13 interrogatory questions.</p> <p>14 Q. And do you agree with me that on the</p> <p>15 first page in bold it says "National Shooting</p> <p>16 Sports Foundation, Inc.'s, Answers and Objections</p> <p>17 to Defendants' First Set of Interrogatories"?</p> <p>18 A. Yes.</p> <p>19 Q. And directing your attention to the page</p> <p>20 that looks like this, which is the page that</p> <p>21 immediately follows numbered page 9, do you see</p> <p>22 your signature on this page?</p> <p>23 A. Yes, sir.</p> <p>24 Q. So -- and where your signature is</p>	<p style="text-align: right;">Page 32</p> <p>1 rifle (MSR) is an AR- or AK-platform rifle and</p> <p>2 variants thereof and has the same general design</p> <p>3 features of these rifles."</p> <p>4 Did I read that correctly?</p> <p>5 A. Yes.</p> <p>6 Q. And do you agree that that is an</p> <p>7 accurate definition of modern sporting rifle or</p> <p>8 MSR?</p> <p>9 A. That is a accurate definition.</p> <p>10 Q. Are there other definitions?</p> <p>11 A. I believe that it could be expanded or</p> <p>12 narrowed, depending on this scope. But, generally,</p> <p>13 I think that would be a apt definition.</p> <p>14 Q. And sentence two of interrogatory</p> <p>15 response No. 12 here, it says "AR- or AK-platform</p> <p>16 rifle." Do you see that?</p> <p>17 A. Yes.</p> <p>18 Q. What does AR refer to there?</p> <p>19 A. Armalite rifle.</p> <p>20 Q. What is Armalite?</p> <p>21 A. Armalite was the company that</p> <p>22 founded/started the AR design.</p> <p>23 Q. Do you know who specifically at Armalite</p> <p>24 came up with the AR design?</p>
<p style="text-align: right;">Page 31</p> <p>1 underneath a declaration stating that everything --</p> <p>2 that you were testifying to the truthfulness of the</p> <p>3 answers that are in these interrogatory responses;</p> <p>4 is that fair?</p> <p>5 A. Yes.</p> <p>6 Q. All right. I'm going to direct your</p> <p>7 attention to let's see -- page 7. And directing</p> <p>8 your attention to the answer to response number --</p> <p>9 or to interrogatory No. 12, do you see that?</p> <p>10 A. Yes.</p> <p>11 Q. So are you familiar with the contents of</p> <p>12 this answer?</p> <p>13 A. I would like a moment to --</p> <p>14 Q. Sure.</p> <p>15 A. -- go over it, if that's all right.</p> <p>16 Q. Just let me know when you're finished.</p> <p>17 A. I'm finished.</p> <p>18 Q. So I'm going to direct your attention to</p> <p>19 the second sentence of NSSF's interrogatory</p> <p>20 response No. 12. And I'm going to read it to you</p> <p>21 and ask if I read it correctly. Okay?</p> <p>22 A. Okay.</p> <p>23 Q. "Subject to and without waiving these</p> <p>24 objections, NSSF states that a modern sporting</p>	<p style="text-align: right;">Page 33</p> <p>1 A. I'm aware of it. As I sit here today, I</p> <p>2 can't recall the designer's name, but I am aware of</p> <p>3 it.</p> <p>4 Q. Are you familiar with the name Eugene</p> <p>5 Stoner?</p> <p>6 A. Yes. That's one and the same.</p> <p>7 Q. Who was Eugene Stoner?</p> <p>8 A. I'm not sure if he was the owner of</p> <p>9 Armalite at the time, but I know he was integral to</p> <p>10 the design of the AR-15 platform.</p> <p>11 Q. And would you agree with me that the</p> <p>12 AR-15 was designed by Eugene Stoner in the 1950s?</p> <p>13 MR. LOTHSON: I'll object just to the extent</p> <p>14 this is beyond the scope of the notice.</p> <p>15 But to the extent he knows.</p> <p>16 THE WITNESS: I can't recall if it was the</p> <p>17 '50s or the '60s, but it was around that general</p> <p>18 area.</p> <p>19 BY MR. WELLS:</p> <p>20 Q. Do you have an understanding that the</p> <p>21 AR-15 was adopted by the United States military and</p> <p>22 designated the M-16?</p> <p>23 A. Yes.</p> <p>24 Q. What is the typical caliber of an</p>

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1 AR-platform rifle?
 2 A. Typically, it's going to be
 3 .223 Remington/5.56 NATO.
 4 Q. You said .223 Remington/5.56 NATO.
 5 So -- and by "223," you mean .223?
 6 A. Yes, .223.
 7 Q. When you said "slash" -- .223/5.56 NATO,
 8 why the slash? What does that mean?
 9 A. The two cartridges are very similar, but
 10 they are not the same. There are certain external
 11 body dimensions that are different. I believe the
 12 neck angle is one particular dimension that
 13 designates whether it's one versus the other. And
 14 to the best of my knowledge, there are different
 15 loading parameters for the two, one being
 16 commercial and the other one being the NATO spec.
 17 Q. Are there commercially available AR-15
 18 rifles that use the 5.56 NATO spec ammunition?
 19 A. Yes, there are.
 20 Q. Again directing your attention to the
 21 second sentence in interrogatory response No. 12
 22 from NSSF, what does "AK" refer to here?
 23 A. AK platform is a design by -- I forgot
 24 the guy's first name. Last name Kalashnikov. It's

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1 the -- it's a Russian-designed rifle that is very
 2 popular today.
 3 Q. When you say the design is very popular
 4 today, what are you basing that on?
 5 A. That's based off of the vast amount of
 6 AKs that are available, either nationwide and
 7 worldwide. It's a prevalent gun. If you show
 8 someone a -- even nongun person an AK, they know
 9 it's an AK.
 10 Q. And when you're using "AK," are you
 11 referring to semiautomatic, fully automatic, or
 12 both?
 13 A. I'm referring to semiautomatic.
 14 Q. Are there full-automatic versions of
 15 AK-platform weapons?
 16 A. I believe there's full-auto versions of
 17 almost every firearm.
 18 Q. And, generally speaking, when you refer
 19 to an AK-platform firearm, do you understand that
 20 the K is referring to Kalashnikov, the Russian
 21 soldier who designed the original AK-47; is that
 22 fair?
 23 A. Yes.
 24 Q. What is the typical caliber of an

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1 AK-platform rifle?
 2 A. That would be 7.62 by 39.
 3 Q. When you say AR or AK platform in this
 4 interrogatory response, what does "platform" mean?
 5 A. Platform refers to the receiver design
 6 and body design of the particular firearm.
 7 Q. What is the receiver design?
 8 A. So you can have split receiver, nonsplit
 9 receiver. ARs are generally split-receiver
 10 platform, where an AK is a single-receiver with a
 11 top cover. Both gas-operated weapons.
 12 Q. What is a split receiver?
 13 A. Meaning that there is an upper and a
 14 lower receiver.
 15 Q. And what is a receiver?
 16 A. It's the frame of the firearm.
 17 Q. When you say gas-operated in reference
 18 to AR-platform firearms, what do you mean?
 19 A. The firearm is semiautomatic and relies
 20 on the propellant gases from the expelled cartridge
 21 in order to perform a cycle function of the
 22 semiauto action.
 23 Q. I believe you stated that "platform"
 24 also refers to body design; is that correct?

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1 A. For lack of better terms, yes. Not a
 2 super technical understanding of all the ins and
 3 outs, but that would be my jargon that I would use
 4 for it.
 5 Q. What does "body design" mean?
 6 A. So the overall design of the firearm,
 7 the frames. Trying to use vernacular that's
 8 familiar to help your understanding.
 9 Q. What is the body of a firearm?
 10 A. It would be -- I was referring -- in
 11 that response I was referring to the receivers --
 12 or receivers or receiver of the firearm, trying to
 13 help you understand.
 14 Q. Is "body design" a term that NSSF uses?
 15 A. No. That's simply me trying to
 16 communicate with you right now.
 17 Q. By "body design," do you mean how the
 18 firearm looks?
 19 A. No. Its construction.
 20 Q. Are there common attributes that
 21 AR-platform rifles have externally?
 22 A. What do you mean?
 23 Q. So, for instance, are you able to
 24 determine, from looking at a manufacturer's

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1 website, just based on a picture of a firearm,
 2 whether or not it's an AR-platform firearm?
 3 A. Yeah.
 4 Q. How do you do that?
 5 A. So it's knowing what an AR receiver set
 6 looks like; knowing that it usually has a hand
 7 guard, knowing it usually has a stock of some kind,
 8 usually has a grip, a rail for an optic.
 9 Q. When you say "grip," what do you mean?
 10 A. An interface for someone to hold the
 11 gun.
 12 Q. What about a flash suppressor? Is that
 13 a common feature for an AR-platform rifle to have?
 14 A. Yeah. It's pretty standard equipment
 15 that comes on an AR-platform firearm.
 16 Q. What other standard equipment comes on
 17 an AR-platform firearm?
 18 A. You can have varying degrees of hand
 19 guards; adjustable/nonadjustable stocks; you can
 20 have collapsible/noncollapsible stocks, which are
 21 adjustable/collapsible, collapsible meaning that it
 22 can collapse to the side, not collapse
 23 telescopingly. Different degrees of grips. I'm
 24 not sure if I covered this a second ago, but you

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1 can have a thread-in muzzle. You can have a muzzle
 2 break. You can have a flash hider. You can have a
 3 compensator.
 4 Q. How would you describe an AK-platform
 5 firearm's body design?
 6 A. An AK is typically a single receiver,
 7 not split; with a top cover; gas-operated rifle
 8 with a hand guard; and either a fixed, telescoping,
 9 or collapsible stock. Sometimes no stock.
 10 (NSSF Deposition Exhibit 4 was
 11 marked for identification.)
 12 BY MR. WELLS:
 13 Q. So I'm handing you what's been marked as
 14 Deposition Exhibit 4. Have you seen this document
 15 before?
 16 A. I've never reviewed this document in
 17 detail.
 18 Q. Can you read the title of the document
 19 in the upper right corner.
 20 A. "Annual Firearms Manufacturing and
 21 Exportation Report (AFMER) Under 18 USC Chapter 44,
 22 Firearms."
 23 Q. Based on that title, do you have a
 24 belief as to what this document is?

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1 A. This would be what a manufacturer fills
 2 out to report their AFMER reporting for the year.
 3 Q. So is it fair to say you're aware of the
 4 existence of this form and its function?
 5 A. Yes. I've just never reviewed this
 6 particular form.
 7 Q. Have you ever reviewed any example of
 8 this form before?
 9 A. Not in great detail. I typically work
 10 with a report that comes from these forms, not the
 11 individual forms.
 12 Q. All right. If I could direct your
 13 attention to the last page of this Deposition
 14 Exhibit 4.
 15 A. I'm sorry. You said the last page?
 16 Q. Yeah. I'm directing your attention to
 17 No. 5 where it says "Types of Firearms."
 18 A. Yes.
 19 Q. I would ask you to just read the pistol,
 20 revolver, and rifle examples. And let me know when
 21 you're done.
 22 A. Okay.
 23 Q. Are those definitions familiar to you of
 24 pistol, revolver, and rifle?

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1 A. Yes.
 2 Q. What's your understanding of what those
 3 definitions are?
 4 A. What do you mean?
 5 Q. Where do they come from?
 6 A. Those are regulations provided by ATF to
 7 manufacturers. Possibly the original source, I
 8 think, might be the Gun Control Act.
 9 Q. Are these the types of definitions that
 10 you rely upon in your work at NSSF?
 11 A. Yes.
 12 Q. Focusing specifically on the rifle
 13 definition, I'm going to read it to you. It says
 14 "A weapon designed or redesigned, made or remade,
 15 and intended to fire from the shoulder and designed
 16 or redesigned and made or remade to use the energy
 17 of the explosive in a fixed cartridge to fire only
 18 a single projectile through a rifled bore for each
 19 single pull of the trigger and shall include any
 20 such weapon which may be readily restored to fire a
 21 fixed cartridge. Having barrels at least 16 inches
 22 in length and at least 26 inches in overall
 23 length."
 24 Did I read that correctly?

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1 A. Yes.

2 Q. And does NSSF rely on that definition of

3 rifle in its business or in its regularly conducted

4 activities?

5 A. We have to, yes.

6 Q. Why do you have to?

7 A. Because we have a heavily regulated

8 industry, and we have to comply with all of the

9 regs by ATF.

10 Q. And does this definition of rifle

11 include caliber?

12 A. In this definition that you're having me

13 read, there is no portion on caliber.

14 Q. Is caliber part of the definition of a

15 rifle?

16 A. In this definition of rifle, I don't see

17 a portion on caliber.

18 Q. In interrogatory response 12, directing

19 your attention back to that -- and that's the

20 interrogatory response that you verified, correct?

21 A. Yes.

22 Q. Is there any reference to caliber?

23 A. I don't see one, unless you want me to

24 look at a particular portion.

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1 Q. Does the definition of NSS -- does the

2 definition of modern sporting rifle that NSSF uses

3 in its activities rely on caliber as part of the

4 definition?

5 A. No. To the best of my knowledge, I

6 don't believe we do.

7 Q. Do you have an understanding as to why

8 not?

9 A. I can only, you know, give you my

10 opinion on that. I believe that because, while

11 most of these platform firearms are centerfire,

12 there's also a lot of rimfire variants. As

13 popularity of these MSRs grows, manufacturers will

14 offer, you know, training, plinking versions of

15 these firearms but in a more affordable cartridge.

16 They could be in rifle cartridges, pistol

17 cartridges, rimfire.

18 Q. Generally speaking, are centerfire 5.56

19 and .223-caliber AR-platform rifles more prevalent

20 than .22-caliber AR-platform rifles?

21 A. .22 being rimfire?

22 Q. Yes.

23 A. .22 being rimfire, I would assume the

24 vast majority -- or the best of my knowledge, the

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1 vast majority of ARs out there come in .223.

2 Q. Would you agree with me that a modern

3 sporting rifle does not include handguns?

4 A. I would agree with you that it doesn't

5 include handguns.

6 Q. So the category "modern sporting rifle"

7 does not include handguns?

8 A. Correct.

9 Q. So the category "modern sporting rifle"

10 does not include pistols, correct?

11 A. No. You said handgun.

12 Q. Okay. What is the difference between a

13 handgun and a pistol?

14 A. So a pistol can be a handgun. A handgun

15 doesn't have to be -- I'm sorry. A pistol doesn't

16 have to be a handgun, but a handgun can be a

17 pistol.

18 Q. What are examples of pistols that are

19 not handguns?

20 A. If you have an AR or AK platform as an

21 MSR platform firearm that comes in a pistol format

22 that is within the regulations of ATF that is, as

23 far as I know, very popular platform and variant

24 of, that would be regulated as a pistol per ATF.

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1 Q. So you're relying on ATF's

2 classification of pistol to determine whether a

3 particular AR-style pistol is a handgun or not?

4 A. No. I rely -- I don't rely on anything.

5 The manufacturers rely on ATF's regulations of what

6 is a pistol and what is a rifle, revolver, shotgun,

7 et cetera. Handgun is just a term for -- as far as

8 I understand, a handgun is just a term for a

9 pistol. But -- pistol -- a handgun is not

10 regulated as a particular platform. A pistol is.

11 Q. I see. Okay. So does the category

12 "modern sporting rifle" include pistols?

13 A. It can.

14 Q. How can a pistol be a rifle?

15 A. Because it can absorb and include AR-

16 and AK-platform MSRs. And for the purposes of

17 counting those platforms, you can capture pistols,

18 rifles, and frames that have yet to be built, which

19 is undeterminable at the time of production and

20 reporting what those would, for lack of better

21 words, grow up to be.

22 Q. When you say "you can capture," who can

23 capture?

24 A. In the ATF AFMER, as they're being

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1 reported, what those will be designated as.
 2 Manufacturers are regulated, in the form that you
 3 handed me with the AFMER sheet, to designate if
 4 it's a pistol, rifle, et cetera.
 5 Q. So are you saying that a manufacturer of
 6 a modern sporting rifle may include pistols in its
 7 ATF AFMER data that are modern sporting rifles?
 8 A. Can you say that again.
 9 Q. Sure. Is it your understanding that
 10 manufacturers, when completing the ATF AFMER form,
 11 there are some modern sporting rifles that they're
 12 listing in the pistol category?
 13 A. They can list them in pistol, rifle, or
 14 in the frames category.
 15 Q. How would they make that determination
 16 where to list that category?
 17 A. They are not reporting that in the
 18 AFMER. That is a determination that they make that
 19 we would have in conversations.
 20 Q. When you say "in conversations," who's
 21 having the conversations?
 22 A. That NSSF research would have with
 23 manufacturers if we ask them, in industry
 24 reporting, what of your catalog may be under this

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1 designation. They either tell us a factor or tell
 2 us a number, and we provide that.
 3 Q. So how often does NSSF have
 4 conversations with manufacturers about whether
 5 there are modern sporting rifles included in its
 6 pistol AFMER reporting?
 7 A. We don't directly ask that question.
 8 Q. Who asks that question?
 9 A. So we ask about how many MSRs are being
 10 produced. We don't ask about the designation of,
 11 hey, how many of your pistols are MSRs, how many of
 12 your rifles are MSRs, how many of your frames are
 13 MSRs that you produced in the other category. We
 14 just ask about MSRs.
 15 Q. You say "we" ask. Who is asking?
 16 A. The research department.
 17 Q. And who are you posing that question to?
 18 A. Directly to manufacturers.
 19 Q. Which manufacturers?
 20 A. Anyone that we designate may have
 21 production of MSRs through independent research.
 22 Q. How many manufacturers are in that
 23 category that you just described?
 24 A. As we sit here today, I don't know a

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1 specific number, but I know it's in the dozens.
 2 Q. And when you say NSSF has conversations,
 3 what's the format of those conversations? Are you
 4 calling them on the phone?
 5 A. Sometimes it's a phone call. Sometimes
 6 it may be an e-mail. And those are under strict
 7 confidentiality, knowing that when we ask the
 8 question, we provide them that any information that
 9 they provide will be kept confidential.
 10 Q. Where is the confidentiality agreement
 11 with the manufacturers documented?
 12 A. It's either communicated through e-mail
 13 or it's told over the phone. I'm not aware of any
 14 particular document in our files that says
 15 "confidentiality agreement."
 16 Q. Is it fair to say it's just something
 17 that NSSF indicates to the manufacturers, that
 18 their -- the information they provide in response
 19 to your inquiries will be kept confidential?
 20 A. Yes. And our manufacturers are told
 21 from the onset, anytime that we're trying to get
 22 information, that any and all communications -- or
 23 any and all answers to questions that we may have
 24 will be aggregated and then destroyed after

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1 aggregation so that no individual response will be
 2 identified.
 3 Q. So does NSSF destroy the information it
 4 collects from manufacturers that has been
 5 designated as confidential by the manufacturers?
 6 A. Some. It depends on the situation.
 7 Q. What are the criteria that NSSF uses to
 8 destroy data received from manufacturers?
 9 A. We will have had to make the promise to
 10 them that it would be aggregated, and then we would
 11 have to have finished our analysis.
 12 Q. So for some -- what is the timeline
 13 under which NSSF will destroy the information that
 14 it receives from manufacturers?
 15 A. It greatly varies. Sometimes we might
 16 be working on a particular project and have the
 17 capacity to aggregate information and get rid of
 18 it. Other times we are very swamped, and we may
 19 hold onto something for an extended period of time
 20 until we're done with a particular project,
 21 everything is confirmed, and then we get rid of it
 22 at that point.
 23 Q. Does NSSF, when it receives information
 24 from manufacturers before it's destroyed, maintain

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1 custody of the information received from
 2 manufacturers?
 3 A. I don't understand the question.
 4 Q. Is that information that you receive
 5 from manufacturers before it's destroyed, is it
 6 kept on NSSF's network?
 7 MR. LOTHSON: And I'll object just to the
 8 extent this is beyond the scope of the notice and
 9 to the extent that, you know, potentially calls for
 10 legal analysis and conclusion about what is
 11 possession, custody, control, that sort of thing.
 12 Go ahead and answer to the extent you
 13 know.
 14 THE WITNESS: We would hold onto the answers
 15 in at least a form until we get rid of them.
 16 BY MR. WELLS:
 17 Q. And "we" being NSSF?
 18 A. "We" being NSSF.
 19 Q. Would you agree with me that the term
 20 "modern sporting rifle" does not include shotguns?
 21 A. I would not agree with you on that, no.
 22 Q. Why not?
 23 A. Because there are AK-variant rifles that
 24 are chambered in shotgun calibers.

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1 Q. When you say "shotgun calibers," what do
 2 you mean?
 3 A. 12-gauge, 20-gauge, variants thereof.
 4 Q. What is a 12-gauge?
 5 A. 12-gauge is a cartridge -- is a shotgun
 6 cartridge.
 7 Q. What is a shotgun cartridge? How does
 8 it differ from a rifle cartridge?
 9 A. It is not metallic ammunition that is
 10 fed into a shotgun firearm. So you have metallic
 11 cartridges and you have nonmetallic cartridges.
 12 Shotguns are largely nonmetallic cartridges. They
 13 have a plastic hull with a brass, metal, bimetal
 14 base.
 15 Q. Is there a difference in the
 16 projectiles -- number of projectiles between a
 17 shotgun cartridge and a typical rifle cartridge?
 18 A. Yes.
 19 Q. What is that difference?
 20 A. So you can have a shotgun slug, which is
 21 a single projectile, or you can have varying types
 22 of shot that all vary by size, from triple-aught
 23 buck all the way down to 9, which all varies in
 24 size. And the size then designates how many of

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1 those projectiles can be held in that shotgun
 2 cartridge.
 3 Q. Does the category "modern sporting
 4 rifle" include bolt-action rifles?
 5 A. No.
 6 Q. Why not?
 7 A. MSRs are typically, by definition, a
 8 semiautomatic firearm.
 9 Q. By whose definition?
 10 A. By the definition that we provide in
 11 this interrogatory answer.
 12 Q. So by NSSF's definition; is that fair to
 13 say?
 14 A. We provided it in the answer, so I
 15 believe that would be fair. Since we were asked to
 16 provide a definition, we provided one.
 17 Q. You said MSRs, or modern sporting
 18 rifles, are typically semiautomatic. Are they
 19 always semiautomatic?
 20 A. I say typically just because, as I sit
 21 here today, I don't want to speak for the totality.
 22 But as my understanding as the director of
 23 research, it would be a semiautomatic platform if
 24 it's an MSR.

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1 Q. Okay. If a civilian legally owned a
 2 fully automatic M-16 that was manufactured before
 3 1986 and they had all the required paperwork under
 4 federal law for that firearm, would that firearm be
 5 a modern sporting rifle?
 6 A. No. That would be a machine gun.
 7 Q. So is it your testimony that the
 8 category of modern sporting rifle does not include
 9 machine guns?
 10 A. Correct.
 11 Q. Are there machine guns -- are there
 12 fully automatic firearms that are not machine guns?
 13 A. I don't understand the question.
 14 Q. So is the term "machine gun" equivalent,
 15 in all circumstances, to a fully automatic firearm?
 16 A. Yes. And that's actually provided in
 17 the definitions you provided me before.
 18 Q. Would a pump-action rifle be included in
 19 the category of modern sporting rifle?
 20 A. I can't totally speak to it, but I do
 21 believe there actually might be some firearms out
 22 there that utilize an AR platform and integrate a
 23 manual operation instead of a semiautomatic
 24 operation. But even though they use the -- you

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1 know, a different action type, they're just
 2 utilizing the platform, changing out the
 3 operational system, and it's kind of a gray area.
 4 Q. So a pump-action rifle may or may not be
 5 a modern sporting rifle; is that what you're
 6 saying?
 7 A. As I sit here today, it would be hard
 8 for me to take a hard line on a manually operated
 9 AR-platform firearm and designate what it goes
 10 into. I'd probably have to go back and do some
 11 research. If you want me to, I can go back and
 12 look into that, find some detail for you.
 13 MR. LOTHSON: Let me object just to the
 14 extent, what do you mean by "pump"? Are you
 15 talking about, like, true pump?
 16 MR. WELLS: Yes.
 17 MR. LOTHSON: Okay.
 18 THE WITNESS: Oh, not like side-charging?
 19 BY MR. WELLS:
 20 Q. No.
 21 A. Oh.
 22 Q. I'm talking about like a -- what you
 23 would normally see on a pump-action shotgun but
 24 applied to a rifle.

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1 A. I swear that someone makes a pump-action
 2 AR-15. I don't know how prevalent they are or how
 3 many. I don't know if it got out of concept. I
 4 vaguely remember seeing one on, like, YouTube.
 5 Q. And would that firearm be included in
 6 the definition that you provided in response to
 7 interrogatory 12?
 8 A. That's definitely a gray area. I'd have
 9 to go back and look at it and provide you a
 10 response at another time, if you'd like me to
 11 investigate that.
 12 Q. What firearms that are rifles are not
 13 modern sporting rifles?
 14 A. What firearms that are rifles are not
 15 sporting rifles -- modern sporting rifles?
 16 Q. Correct.
 17 A. Bolt-action rifles, lever-actions, for
 18 example.
 19 Q. Is it fair to say that there's a lot of
 20 bolt-action hunting rifles on the market?
 21 A. Yes, that's fair.
 22 Q. And there are actually quite a few
 23 lever-action rifles on the market; is that fair to
 24 say?

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1 A. Yes. They are rising in popularity.
 2 Q. Do you have an understanding as to why
 3 lever-action firearms are rising in popularity?
 4 A. There's a carveout to more modern
 5 variations of lever-actions instead of the
 6 traditional cowboy ones with wood and just
 7 chambered in 30-30, different type of rifle
 8 ammunition. They could be chambered in something
 9 more modern, readily available, and possibly
 10 applied more -- less recoil and more modularity for
 11 usability.
 12 Q. Are .50-caliber rifles included in the
 13 definition of modern sporting rifles?
 14 A. I'm not aware if they are, as I sit here
 15 today.
 16 Q. Do you have a -- go ahead.
 17 A. I'm not sure. I can go back and
 18 investigate if there are MSRs that come in
 19 .50-caliber.
 20 Q. Do you believe that the category of
 21 modern sporting rifle should encompass .50-caliber
 22 rifles?
 23 A. I don't think I should provide my
 24 opinion.

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1 Q. Why -- what -- why would a .50-caliber
 2 rifle not be a modern sporting rifle? What
 3 differentiates it from the category of modern
 4 sporting rifle as is described in interrogatory 12?
 5 A. Strictly based off of the size of the
 6 cartridge of a 50 -- like a .50-caliber
 7 all-encompassing, most people think .50 BMG. But
 8 there are other .50-caliber cartridges, like
 9 .50 Beowulf, that work in an AR-platform firearm.
 10 So it's hard to draw a line in the sand and say one
 11 way or the other, knowing that there are other
 12 .50-caliber cartridges outside of .50 BMG.
 13 Q. What does BMG stand for?
 14 A. Browning machine gun.
 15 Q. How -- can you compare for me the size
 16 of a .50-BMG-caliber cartridge compared to a
 17 5.56-millimeter NATO cartridge.
 18 A. I could only arbitrarily do it. A
 19 .50 BMG, sitting on this table, would be taller
 20 than this glass, just about. And a .223, you can
 21 easily just hold in your hand. It's a small
 22 centerfire cartridge.
 23 Q. And let the record reflect that the
 24 witness was gesturing to a glass that's probably

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1 8 or 9 inches tall; is that fair to say?
 2 A. Maybe your 8 or 9 inches. I would not
 3 say that.
 4 MR. LOTHSON: I'll object to that. We can get
 5 a ruler out. We can get a ruler out.
 6 BY MR. WELLS:
 7 Q. How tall do you think that glass is?
 8 A. Somewhere around 6 inches.
 9 Q. Fair enough. In your response to
 10 interrogatory No. 12, you said that MSRs, meaning
 11 modern sporting rifles, typically have a
 12 semiautomatic action; is that correct?
 13 A. Yes.
 14 Q. So the examples we talked about, the
 15 gray areas of bolt-action, other things, you know,
 16 fully automatic, when you say "modern sporting
 17 rifle," most people are going to think of a
 18 semiautomatic rifle; is that your testimony?
 19 A. Yes.
 20 Q. Does the term "modern sporting rifle"
 21 include any NFA firearms?
 22 A. I think it goes back to that
 23 handgun/pistol argument. You can have a non-NFA
 24 MSR and then create an NFA item with it. I think

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1 it would still fall under, you know, the MSR
 2 platform, but it is not an MSR in the regulations
 3 of rifle and pistol. It is an NFA item. Just like
 4 a machine gun is not, like, in one tight little
 5 category. It's an expansion thereof.
 6 Q. When you say you could create, what do
 7 you mean?
 8 A. So you can -- do you know what a Form 1
 9 is?
 10 Q. No.
 11 A. A Form 1 is a ATF form that you can use
 12 to manufacture a silencer, a short-barreled rifle,
 13 a short-barreled shotgun. So if I, as Joe Citizen,
 14 have a 16-inch AR MSR and I want to create a
 15 short-barreled rifle and I want to buy an upper
 16 that would then make it a -- make my rifle a
 17 short-barreled rifle, I would have to apply through
 18 the ATF process of submitting a Form 1.
 19 They would then either approve or
 20 disapprove. If they approve it, then I would have
 21 to go under the guidance of the regulation, which
 22 then would say, all right, now you can manufacture
 23 it, but you have to register it, serialize it --
 24 you know, get it serialized -- and go through the

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1 process of the manufacturing system.
 2 Q. So is it fair to say that there's a lot
 3 more regulatory paperwork and burden associated
 4 with an NFA firearm?
 5 A. Yes.
 6 Q. Directing your attention back to
 7 interrogatory response 12, so the fourth sentence
 8 here. And it says "MSRs are modular and can be
 9 customized for various applications and body types.
 10 The ready-made retail parts without the need for
 11 specialized tools or expertise is part of what
 12 makes these rifles popular."
 13 Did I read that correctly?
 14 A. Yes.
 15 Q. So do you agree that one of the things
 16 that's appealing about modern sporting rifles, that
 17 there's no need for specialized tools or experience
 18 to use them?
 19 A. I would agree that there's no
 20 specialized tools necessary, depending on the
 21 modification that's being applied. Certainly,
 22 there could be some specialized tooling needed if
 23 you're doing a barrel change, for example.
 24 And then can you repeat the other

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1 portion of your question that I need to answer.
 2 MR. WELLS: Can you read it back, please.
 3 (Record read as requested.)
 4 THE WITNESS: The modular portion is yes, that
 5 an advantage of the MSR platform is that -- the
 6 MSRs is that you can adjust them to varying body
 7 type, sizes, and applications.
 8 BY MR. WELLS:
 9 Q. So the lack of need for specialized
 10 tools or expertise means than an untrained person
 11 can make modifications to the firearm?
 12 A. There's varying degrees of
 13 modifications. But there are some modifications
 14 that you don't need specialized tools. You can use
 15 general hand tools.
 16 Q. Would you agree that it's fairly easy to
 17 disassemble a modern sporting rifle?
 18 MR. LOTHSON: Object to the form, vague.
 19 BY MR. WELLS:
 20 Q. If you understand, you can answer.
 21 A. Can you expand on what you mean by
 22 "disassemble."
 23 Q. Sure. So, for instance, like separating
 24 the receiver from the barrel from the other

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1 attachments to the firearm.
 2 A. No. So there's varying degrees there
 3 you stated. If you wanted to separate the upper
 4 receiver from the lower receiver, it's two pins,
 5 comes right off. But if you wanted to do a barrel
 6 swap, you now have to get hand tools to remove the
 7 hand guard; use or remove the gas system; take off
 8 the barrel, put a new barrel on, put it back on
 9 with some knowledge so that it works safely; gas
 10 system; muzzle device; hand guard again.
 11 Q. So the degree of difficulty depends on
 12 the level of modification; is that fair to say?
 13 A. Yes. If you wanted to swap an upper,
 14 sure. If you wanted to do something more complex,
 15 I would disagree with your statement.
 16 Q. In your definition of modern sporting
 17 rifle here in response to No. 12, there's a
 18 citation to Miller v. Bonta. Do you know what
 19 Miller v. Bonta is?
 20 A. I know there was a law case.
 21 Q. Does NSSF use Miller v. Bonta citations
 22 in its internal documentation referring to MSR's?
 23 A. As I sit here today, I'm not aware just
 24 because I don't work in the litigation stuff, even

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1 though I sit here today. But I'm personally not
 2 privy to all of the documentation that we might
 3 have discussing legal work and the frameworks
 4 thereof.
 5 Q. I'm directing your attention to the
 6 sentence that says "MSRs are useful for more than
 7 just sport." Do you see that?
 8 A. Yes, I do. Four lines from the bottom.
 9 Q. Why was that sentence important to
 10 include in the response to interrogatory 12?
 11 MR. LOTHSON: And I'll object just to the
 12 extent that, obviously, legal citation and lawyer
 13 involvement and the assistance of counsel in
 14 preparing the answers, I think, is self-evident
 15 here.
 16 So to the extent that there's a
 17 question that wouldn't touch on what attorneys may
 18 or may not be thinking in utilizing a citation to a
 19 court case from California, I think, is probably
 20 beyond the scope of the deposition, but also
 21 probably beyond the scope of the personal knowledge
 22 of the witness, as well.
 23 BY MR. WELLS:
 24 Q. Do you agree with that statement that

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1 MSR's are useful for more than just sport?
 2 A. Yes.
 3 Q. Just going further in the definition, it
 4 says "MSR's are accurate, reliable, rugged,
 5 versatile, modular, adaptable, customizable, easy
 6 to use, and have relatively low recoil and, for
 7 those reasons, are used by millions of Americans
 8 for recreational target shooting and shooting
 9 competitions, hunting, and for home and
 10 self-defense."
 11 Did I read that correctly?
 12 A. Yes, you did.
 13 Q. So do you agree that modern sporting
 14 rifles are easy to use?
 15 A. Yes. I would say for a general person
 16 with firearm training and awareness of, you know,
 17 say, regular shooting, safety with shooting, it
 18 would be an easy platform to use.
 19 Q. Would a modern sporting rifle be easy to
 20 use if it's the first gun that someone has bought?
 21 A. It could be.
 22 Q. So if there's an 18-year-old who's never
 23 used a gun before, would it be easy to use? Would
 24 a modern sporting rifle be easy to use for that

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1 18-year-old?
 2 A. It certainly could be.
 3 Q. It says here that modern sporting rifles
 4 have relatively low recoil. Relatively low recoil
 5 compared to what?
 6 A. So if you were looking at -- earlier we
 7 were speaking about the commonality of .223 MSR's.
 8 So AR's, AK -- or AR's, in general, primary
 9 chambering being .223, that is a small caliber or
 10 intermediate caliber -- I forgot which one it
 11 actually is -- that is -- that doesn't have a lot
 12 of recoil. It's generally going to be fine for
 13 someone that's recoil-sensitive, depending on how
 14 that firearm is outfitted and how they're shooting
 15 it.
 16 Q. Do modern sporting rifles have
 17 relatively low recoil compared to a 9-millimeter
 18 pistol?
 19 A. That depends. Are you saying
 20 9-millimeter MSR versus 9-millimeter carbine -- or
 21 I'm sorry -- 9-millimeter MSR versus 9-millimeter
 22 handgun? Because the MSR that's chambered in
 23 9-milliliter, having that much more mass, will be
 24 much more -- less recoil than a 9-millimeter

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1 handgun.

2 Q. So I'm asking you to compare a

3 5.56-millimeter NATO caliber modern sporting rifle

4 to a 9-millimeter non-MSR pistol, like, for

5 instance, a Beretta.

6 A. Handgun.

7 Q. Handgun. Which one has more recoil?

8 MR. LOTHSON: And I'll object just because

9 it's not an apples-to-apples comparison. So in

10 that sense, I think it's kind of a confusing

11 question without much, if any, foundation.

12 Go ahead and answer.

13 THE WITNESS: So it largely depends on the two

14 platforms that you're using. So if you've got a

15 standard-configuration MSR, chambering .223/5.56,

16 like you stated, versus a 9-millimeter handgun,

17 then depending on the configuration of the handgun

18 and the MSR, they can be just about the same.

19 MR. WELLS: And I just ask that counsel keep

20 the objections to form and avoid coaching the

21 witness.

22 BY MR. WELLS:

23 Q. So when you said relatively low recoil

24 in the statement that you testified to under oath

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1 in response to interrogatory 12, what were you

2 comparing modern sporting rifles to?

3 A. Other rifles -- other rifles and other

4 cartridges. A .223, being a small cartridge

5 relative to the vast majority -- the vast

6 cornucopia of cartridges available, you can go

7 anywhere from a .223 MSR. You can go all the way

8 up to -- I believe there's even .30-06 MSRs. And

9 they have varying degrees of bullet weight,

10 cartridge size, and it really just kind of depends

11 on what platform you're shooting, the configuration

12 of that platform. And then that would transfer,

13 then, to its comparison.

14 Q. How does recoil affect the performance

15 of a firearm?

16 A. Can you rephrase that.

17 Q. Sure. So does recoil impact accuracy?

18 A. To an extent. But training is also a

19 factor in that.

20 Q. How can recoil impact accuracy?

21 A. So if you have a very-high-recoiling

22 cartridge, say like a long-action magnum cartridge,

23 it is going to be inherently more difficult to

24 shoot than a smaller, more forgiving, lower-recoil

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1 cartridge.

2 Q. And is it fair to say that recoil has a

3 particular impact on subsequent shots after the

4 first?

5 A. I imagine it does, depending on the

6 platform.

7 Q. So if you're firing multiple shots, you

8 want low recoil?

9 A. I wouldn't agree with that statement.

10 It just kind of depends on what you're doing. Why

11 are you -- why are you sending those shots, what is

12 the application, what are you doing.

13 Q. If you're wanting to shoot as much as

14 quickly as possible and be accurate, do you want

15 more recoil or less recoil?

16 MR. LOTHSON: I'll object. Just this is

17 beyond the scope of the deposition.

18 But go ahead.

19 THE WITNESS: I would again say it really

20 depends on the application. Are you shooting in

21 competitions where you're just trying to hit paper?

22 Are you hog hunting from a helicopter? Are you

23 trying to take out game with the ammunition that

24 you're expelling, or are you just trying to punch

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1 paper? It really just depends.

2 BY MR. WELLS:

3 Q. Okay. So if you're firing multiple

4 shots with a firearm that has lower recoil compared

5 to another firearm that has a higher recoil, would

6 you expect the lower-recoil firearm have more

7 accuracy for subsequent shots after the first?

8 A. Speaking at a high level, if there is

9 low recoil and recoil mitigation is less of a

10 factor in follow-up shots, then it could lead to

11 easier follow-up shots if there is a lower-recoil

12 cartridge.

13 Q. Does NSSF maintain a complete list of

14 the modern sporting rifles that are currently being

15 manufactured?

16 A. No.

17 Q. Why not?

18 A. Because that's an ever-expanding and

19 changing list that we don't have the capacity to

20 maintain and track.

21 Q. Is it fair to say that NSSF uses a

22 categorical definition for modern sporting rifle?

23 A. I would say that we have an

24 understanding of what MSR is.

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1 Q. And would you agree that NSSF uses a
2 definition of modern sporting rifle that's based on
3 it being a rifle with specific characteristics?
4 A. I would say it has a -- there's a
5 firearm for certain specifics, characteristics.
6 Q. And you corrected my use of the word
7 "rifle." Why?
8 A. Because for other applications of that
9 use, for my awareness of NSSF's usage, we might
10 even call a frame receiver an MSR, even though it
11 hasn't grown up to be a fully functioning firearm.
12 MR. WELLS: So I think we've been going about
13 an hour and 20 minutes. Obviously, if you need a
14 break or anything, you can let me know.
15 MR. LOTHSON: Now is a good time.
16 (Short recess.)
17 BY MR. WELLS:
18 Q. So we're back on the record. It's
19 10:44.
20 Salam, did you speak to anyone while
21 you were on break?
22 A. Yes, I did.
23 Q. Who?
24 A. These folks. My counsel.

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1 Q. Okay. Prior to the break, we were
2 discussing the definition of modern sporting rifle.
3 A. Yes.
4 Q. Would you agree that, as that discussion
5 indicated that whenever you have a definition for a
6 particular category of firearm, there's going to be
7 gray area?
8 A. Yes.
9 Q. And that is true for modern sporting
10 rifles, as any other type of firearm?
11 MR. LOTHSON: I'll object to the form.
12 MR. WELLS: Okay. I'll withdraw that one.
13 (NSSF Deposition Exhibit 5 was
14 marked for identification.)
15 BY MR. WELLS:
16 Q. All right. I have just handed you
17 what's been marked as Exhibit 5. Have you seen
18 this document before?
19 A. Yes.
20 Q. And just for the record, it's Bates
21 number NSSF 002338. Do you see that on the bottom
22 right corner of the document?
23 A. Yes.
24 Q. What is Deposition Exhibit 5?

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1 A. This is a summary document of the 2021
2 AFMER.
3 Q. And how are you familiar with this
4 document?
5 A. Can you expand on that.
6 Q. Sure. When is the first time you saw
7 this document?
8 A. Likely sometime last year when it got
9 published.
10 Q. Why would you have been reviewing this
11 document at that time?
12 A. As a course of regular execution of my
13 duties as director of research, we regularly track
14 the federal reporting by ATF of our industry's
15 manufacturing export.
16 Q. So you use the information in Deposition
17 Exhibit 5 in your work?
18 A. Partially. This is only a summary
19 document. This is great to know about. But we use
20 the detailed file that they provide on top of this
21 to actually go into some of our reporting.
22 Q. So you said this is a summary document.
23 You referenced a detailed file. What is the
24 detailed file that you're referring to?

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1 A. So the detailed file is a breakdown of
2 platform -- aka, pistol, revolver, rifle,
3 shotgun -- by manufacturer.
4 Q. When you said pistol, revolver, shotgun
5 as platforms, where did you get those categories
6 from?
7 A. Those are categories that ATF creates.
8 Q. And are there any other categories that
9 ATF has created that are reflected in Exhibit 5?
10 A. Miscellaneous.
11 Q. What's in the miscellaneous category?
12 A. Largely, frames and receivers. That's
13 to the best of my knowledge.
14 Q. When you say to the best of your
15 knowledge, why do you say that?
16 A. My understanding is that they're largely
17 frames and receivers. But sitting here today, I
18 don't know for an absolute fact if there's anything
19 other than frames or receivers in that
20 miscellaneous category.
21 Q. Would you agree that modern sporting
22 rifle is not a category that ATF uses?
23 A. That's correct. Modern sporting rifle
24 is not a designation of firearm type on this

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1 report.

2 Q. Are there any ATF reports that you are

3 aware of that use the designation "modern sporting

4 rifle"?

5 A. As I sit here today, I don't recall if

6 there was. I vaguely want to -- something tells me

7 I don't want to say no to that just because I don't

8 know if there's some reporting from ATF in one of

9 their large reports on firearms in our industry

10 that might have that vernacular inside of it. But

11 as far as the AFMER is concerned, MSR is not part

12 of this.

13 Q. As you can see on the summary document,

14 Exhibit 5, the ATF AFMER summary for 2021, you

15 would agree that pistol calibers are tracked by ATF

16 in the AFMER?

17 A. Yes. Pistols are on here as a category.

18 Q. What does AFMER stand for?

19 A. Oh, it's Annual Firearms Manufacturing

20 and Export Report.

21 Q. And is it -- is that what you just

22 described at the top of Exhibit 5?

23 A. Yeah. It's right at the top of the

24 title of the report -- or the summary document

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1 report.

2 Q. Do you have an understanding as to why

3 ATF, in the AFMER data, tracks pistol caliber?

4 A. I'm pretty sure there's a regulation

5 that we started requiring AFMER reporting of our

6 industry's manufacturers back in 1990, or possibly

7 before. But the reporting started in 1990, and

8 that's when the AFMER reports kicked off annually.

9 Q. And do you have an understanding as to

10 why different pistol calibers were included at that

11 time?

12 A. I don't.

13 Q. Do you see on the left-hand side of

14 Exhibit 5 where it says "to .22" and "to .25";

15 "to," meaning the word T-O?

16 A. Yes. I got that.

17 Q. What does "to" mean, as used here?

18 A. As my understanding, it means up to

19 .22-caliber for the first one. Say, for

20 9-millimeter as an example, if there is a possible

21 in-between between like .380 and 9-millimeter,

22 you'd put that in the designated spot in the box

23 when you fill out the AFMER form that you put in

24 front of me in Exhibit 4, as a manufacturer.

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1 Q. So the "to" reflects the fact that there

2 may be some calibers that fall in between .380, for

3 instance, and a little less than 9-millimeter, but

4 not quite 9-millimeter; is that fair to say?

5 A. Yes. Yes.

6 Q. Just looking at the 9-millimeter

7 category for pistols, in particular, you agree

8 that's the largest category, by far?

9 A. 9-millimeter is the largest category of

10 pistols, by far.

11 Q. And do you have an understanding as to

12 the rough proportion of the 4,301,814 listed in the

13 "to 9-millimeter" category that are actually

14 9-millimeter, as opposed to something on the

15 slightly-under side?

16 A. I would have to venture to guess that

17 the vast majority would be 9-millimeter. I mean,

18 I'm aware of certain cartridges like, say,

19 9-millimeter Makarov, that it's not something

20 that's widely used and widely known, but somebody

21 could be making it and put it in the 2021 AFMER or

22 another one. Then that would be -- as far as I

23 understand, that would fall between that .380 and

24 9 mil, and that would be captured in that

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1 9-millimeter.

2 Q. So is it fair to say, then, your

3 understanding is that the substantial majority of

4 the 3.4 million figure in "to 9-millimeter" is

5 actually 9-millimeter?

6 A. Yes. I would say that the vast majority

7 are actual 9-millimeter chambers.

8 Q. You would agree with me that ATF AFMER

9 data does not include data about rifle caliber?

10 A. That's correct. Rifles are not broken

11 down by caliber. Neither are shotguns or

12 miscellaneous firearms.

13 Q. And you would agree that there's no

14 caliber-based subcategories for rifles in the ATF

15 AFMER data?

16 A. I'm sorry. Could you restate that.

17 Q. There's no caliber-based subcategories

18 for rifles in the ATF AFMER data?

19 A. They're not on this sheet. I don't

20 recall if it's been updated and that they include

21 that now.

22 Q. Do you know whether ATF AFMER data

23 tracks rifles by caliber category?

24 A. I believe they just track by the

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1 designation of rifles, and subsequently, shotguns
 2 and miscellaneous.
 3 Q. When you said designation as a rifle,
 4 you mean designation as a rifle as defined by ATF?
 5 A. Yes.
 6 Q. And as we looked at earlier, that
 7 definition of rifle from ATF does not include
 8 caliber, right?
 9 A. That's correct.
 10 Q. And is it fair to say that NSSF relies
 11 on ATF AFMER data in conducting research?
 12 A. Yes.
 13 Q. How would you characterize that
 14 reliance? Is it a lot? A little?
 15 A. We heavily rely on it because it is
 16 federal reporting of our industry's mandated
 17 transparency reporting of our activity.
 18 Q. What is actually included in the ATF
 19 AFMER data, at a high level?
 20 A. At a high level, it gives a breakdown of
 21 every firearm manufacturer that produced one of
 22 these categories of firearms.
 23 Q. Where does the data come from?
 24 A. Self-reporting by industry, which is

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1 mandated.
 2 Q. Self-reporting by industry to ATF?
 3 A. To ATF. That is mandated.
 4 Q. And is it through that form that we
 5 looked at earlier in Deposition Exhibit 4?
 6 A. That's my understanding.
 7 Q. Are there limitations to ATF AFMER data?
 8 MR. LOTHSON: Object to the form.
 9 THE WITNESS: In what way?
 10 BY MR. WELLS:
 11 Q. So, for instance, would you agree that
 12 ATF AFMER data does not capture firearms that are
 13 manufactured outside the United States?
 14 A. That's correct. This is manufacturing
 15 that is in the United States by manufacturers that
 16 are here.
 17 Q. So ATF AFMER data only captures firearms
 18 manufactured in the United States, correct?
 19 A. That's my understanding.
 20 Q. And ATF AFMER data does not capture how
 21 many firearms are purchased in the United States
 22 each year?
 23 A. That's correct. This is a manufacturing
 24 and export report. It is not a sales report.

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1 Q. You would agree that ATF AFMER data does
 2 not capture how many firearms are legally purchased
 3 in the United States each year?
 4 A. I believe the last question confirmed
 5 that. This does not track sales.
 6 Q. The difference was I used the word
 7 "legally."
 8 A. Oh, okay. It doesn't capture sales of
 9 any kind.
 10 Q. Legal or illegal?
 11 A. Yes.
 12 Q. You would agree there are illegal sales
 13 of firearms in the United States each year?
 14 A. I know that there are criminals, and
 15 they commit criminal acts.
 16 Q. Do you agree with the statement that
 17 there are illegal sales of firearms in the
 18 United States each year?
 19 MR. LOTHSON: I'll object; just outside the
 20 scope.
 21 THE WITNESS: There are certainly criminal
 22 acts that include illegally purchasing firearms.
 23 BY MR. WELLS:
 24 Q. Does NSSF track information about

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1 illegally purchased firearms?
 2 MR. LOTHSON: Objection; beyond the scope of
 3 the deposition.
 4 THE WITNESS: We have a program called Don't
 5 Lie For the Other Guy. And that is a collaboration
 6 between NSSF industry and ATF and is a program that
 7 we use to highlight the actions of straw
 8 purchasing, which is an illegal purchase. And,
 9 subsequently, any type of, you know, activity that
 10 is in there, we try to make retailers aware, hey,
 11 this is a thing that people do. It's a criminal
 12 action. We want you to be aware of it, look out
 13 for it when you are conducting your transfers.
 14 BY MR. WELLS:
 15 Q. Does ATF AFMER data include firearms
 16 that are ultimately purchased by law enforcement?
 17 A. As I sit here today, I'm not positive.
 18 Q. So --
 19 A. I can certainly go back and investigate
 20 that, and I can ask our partners at ATF, and
 21 they'll be probably happy to tell me.
 22 Q. So, for instance, if a police officer
 23 purchases a weapon, a firearm, a pistol, a
 24 9-millimeter pistol, for instance, and purchases

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1 that pistol for use as a duty weapon, would that
 2 firearm -- would the manufacturer of that firearm
 3 be captured in the AFMER data?
 4 MR. LOTHSON: I'll object just to incomplete
 5 hypothetical.
 6 THE WITNESS: We've already established that
 7 this is manufacturing. This is not sales.
 8 BY MR. WELLS:
 9 Q. Right. I'm asking once the firearm is
 10 manufactured --
 11 A. Yes.
 12 Q. -- I want you to assume --
 13 A. Maybe I misheard you. I'm sorry.
 14 Q. Right. So a firearm that is
 15 manufactured, a 9-millimeter firearm that is --
 16 pistol that is manufactured and reported in ATF
 17 AFMER data --
 18 A. Yes.
 19 Q. -- that manufactured pistol could
 20 ultimately be purchased at retail by a law
 21 enforcement officer who is going to use that pistol
 22 as a duty pistol; is that fair to say?
 23 A. Thank you for clarifying. Yes, we do
 24 know that some law enforcement agencies will go to

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1 their local firearm retailer in order to acquire a
 2 firearm for duty use.
 3 Q. So in addition to the agencies, do you
 4 have an understanding that individual law
 5 enforcement officers may also go to a retailer to
 6 purchase a 9-millimeter pistol that is reported as
 7 manufactured in the ATF AFMER data?
 8 A. I think that they could do it both --
 9 are you talking about in the capacity of their job
 10 or capacity of their individual habits outside of
 11 their job?
 12 Q. So I'm representing -- I'll represent to
 13 you that, for instance, that the, like, Chicago
 14 Police Department officers actually purchase their
 15 own duty weapons, and they have certain categories
 16 of duty weapons that they can purchase. So an
 17 officer in that category who is going to purchase a
 18 duty weapon from a retailer, that would have been
 19 manufactured, and that manufacturer would have been
 20 reported in ATF AFMER.
 21 A. Yes.
 22 Q. And you agree with that, that that would
 23 be captured -- that situation would be captured in
 24 the ATF AFMER data for the manufacturer of the

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1 underlying firearm, correct?
 2 A. Yes. For your example of a 9-millimeter
 3 pistol produced on this -- produced and captured in
 4 this report by ATF, self-reported by industry,
 5 these firearms could very realistically go to a
 6 distributor, go to a retailer, and local law
 7 enforcement can then go and transfer that, purchase
 8 that, at a retail location.
 9 Q. Do you know who created the term "modern
 10 sporting rifle"?
 11 A. I don't know.
 12 Q. Do you know -- what was the first modern
 13 sporting rifle?
 14 A. I'm not really sure. I would have to
 15 assume it's the AR that was from Eugene Stoner back
 16 in the '50s or '60s.
 17 Q. Can you give any other examples of early
 18 modern sporting rifles?
 19 A. The AK was also established around that
 20 same time frame.
 21 Q. Why are the AK and AR grouped together
 22 in the definition of modern sporting rifle?
 23 A. They have a lot of similar features.
 24 They're not the exact carbon -- they're not carbon

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1 copies, by any means, but they have very similar
 2 operations and features.
 3 Q. Which companies today are leading modern
 4 sporting rifle manufacturers?
 5 A. Of who makes the most, I'd have to go
 6 back and look at some of our records and do some
 7 investigation of who would be the top. But of
 8 those that make rifles, we have that in our
 9 reports, and I can talk to you about our charts
 10 that track top manufacturers.
 11 Q. Would Ruger be included?
 12 A. They may be.
 13 Q. Springfield Armory, do they make modern
 14 sporting rifles?
 15 A. I believe they do.
 16 Q. Does Smith & Wesson make modern sporting
 17 rifles?
 18 A. I believe they do.
 19 Q. Does SIG SAUER make modern sporting
 20 rifles?
 21 A. I believe they do.
 22 Q. Does Daniel Defense make modern sporting
 23 rifles?
 24 A. I believe they do.

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1 Q. And are all those companies that I just
 2 listed, are those NSSF members?
 3 A. I believe so. I don't have a current
 4 list of all members and their current status, but I
 5 believe those are all members.
 6 (NSSF Deposition Exhibit 6 was
 7 marked for identification.)
 8 BY MR. WELLS:
 9 Q. I'm handing you what has been marked as
 10 Deposition Exhibit 6, which is Bates range
 11 NSSF 000035 to 52. Do you recognize this document?
 12 A. Yes. This is our 2023 IIR.
 13 Q. Does this appear to be a true and
 14 accurate copy of the document you just named?
 15 A. I do need a second to go through it. If
 16 this is the exact copy that we produced in our
 17 document production, then yes. I am, just high
 18 level, going through it making sure all the pages
 19 are included.
 20 Q. I can represent to you that, yes, it's
 21 the -- Bates stamp on the bottom right, it's NSSF
 22 produced this document.
 23 A. Yes, I agree that this is the document.
 24 Q. You used the term, I think, IIR?

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1 A. Yes.
 2 Q. What does that mean?
 3 A. Industry intelligence report.
 4 MR. WELLS: And let the record reflect that
 5 the witness just pointed to the top of NSSF 35.
 6 BY MR. WELLS:
 7 Q. What is an industry intelligence report?
 8 A. This is a report of firearm production
 9 from our industry's activity.
 10 Q. Are all industry intelligence reports
 11 about firearm production?
 12 A. No, they're not.
 13 Q. Are there other categories of industry
 14 intelligence reports?
 15 A. Yes.
 16 Q. What are those?
 17 A. I believe that we had one back from
 18 either 2017 or 2018 that specifically looked at
 19 optics for firearms. But that is not represented
 20 here today.
 21 Q. And the term or the kind of acronym IIR,
 22 is that an acronym that NSSF uses in internal
 23 documentation?
 24 A. Yes.

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1 Q. And is that acronym, when it's used,
 2 referring to this report and others like it?
 3 A. It particularly looks at the production
 4 report. Folks call it the production report, the
 5 IIR. There's a couple different names. It's got a
 6 very long title that's never been optimized, as far
 7 as I know.
 8 Q. What is the very long title? Not the
 9 industry intelligence reports part, but the other
 10 part.
 11 A. "Firearm Production in the United States
 12 With Fire Export and" -- I'm sorry -- "With Fire
 13 Import and Export Data, 2023 Edition."
 14 Q. So that's the very long title you're
 15 referring to?
 16 A. Yes.
 17 Q. So how is it referred to internally at
 18 NSSF?
 19 A. So it can be called the production
 20 report, it can be called the IIR, it could be
 21 called the industry intelligence report, variants
 22 thereof.
 23 Q. And all of those names generally refer
 24 to this report that's marked as Deposition

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1 Exhibit 6?
 2 A. Correct.
 3 Q. And I note that Deposition Exhibit 6 is
 4 listed as the 2023 edition. Are there other
 5 editions of the "Firearm Production in the
 6 United States" report?
 7 A. Yes. This is an annual report that I
 8 believe goes back to early 2000s, as far as my
 9 awareness.
 10 Q. Were you involved in the creation of
 11 Deposition Exhibit 6?
 12 A. Yes. I supervised the creation of this
 13 and had a direct hand in making some of the papers.
 14 Q. Which -- we'll get into that. Who
 15 else -- you said you supervised. Who did you
 16 supervise that was associated with this report?
 17 A. Dianne Vrablic, who is our manager of
 18 industry research. And she did a lot of the
 19 administrative nuts and bolts of this.
 20 Q. When you say administrative nuts and
 21 bolts, what do you mean?
 22 A. So we have a number of documents, and I
 23 believe we produced all of them. Files, Excel
 24 files, different graphs, charts, that we will use

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1 the ATF AFMER in order -- the ATF AFMER, USITC, and
2 different reports that we plug into the next year
3 in order to create the next series of reporting for
4 that next-year edition.
5 Q. So is it fair to say that, in the backup
6 documentation for this report, there are living
7 documents that get sort of added to each year when
8 new data becomes available?
9 A. That's correct.
10 Q. You mentioned Dianne Vrablic. Vrablic?
11 A. Vrablic.
12 Q. Who else was involved in the creation of
13 Deposition Exhibit 6?
14 A. Our creative services team, largely to
15 make the edits that we produce. So if there's,
16 say, for this first bullet here for key findings,
17 the production of firearms in the US was
18 5.7 million, not reading off the entire number.
19 The last-year edition would have a different number
20 there. Then we would overwrite that, highlight it.
21 Creative services would then take it and go, oh,
22 cool, we'll format that. And it's done.
23 Q. So is it fair to say that you and
24 Ms. Vrablic generate the content, and the creative

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1 services team formats it?
2 A. That's correct.
3 Q. Is there anyone else at NSSF that is
4 involved in the production of Deposition Exhibit 6?
5 A. Outside of the production, no. We do do
6 a general spell-check and other stuff to our other
7 team members where, before we publish it, we'll
8 kick it off to our other staff members and say,
9 hey, this is done. We've been looking at it for
10 months. Can you please just go through with a
11 fine-tooth comb and see if there's any spelling
12 errors or anything that we highlighted that we
13 didn't clear out so we just don't have egg on our
14 face.
15 Q. Why would you have egg on your face?
16 A. Oh, just putting out something that has
17 a typo, it looks bad.
18 Q. I hate typos.
19 A. Me too.
20 Q. Who is on the creative services team?
21 A. Deb Moran and Justin -- what is Justin's
22 last name? This is embarrassing. I'm sorry. I
23 forgot Justin's last name.
24 Q. That's okay.

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1 MR. LOTHSON: Objection; outside the scope.
2 THE WITNESS: Thank you.
3 MR. WELLS: Sorry, Justin.
4 THE WITNESS: Yeah.
5 BY MR. WELLS:
6 Q. So before -- does NSSF publish
7 Deposition Exhibit 6?
8 A. Do we publish this report?
9 Q. Yes.
10 A. Yeah. We put it on our member portal.
11 Q. What is your member portal?
12 A. Our member portal is a area for our
13 members to log into to acquire resources or look at
14 our other research reports, get in touch -- not get
15 in touch, but get access to various resources and
16 resource that we provide.
17 Q. Before NSSF publishes the -- I'll call
18 Deposition Exhibit 6 the 2023 production report.
19 A. Sure.
20 Q. Before NSSF publishes the 2023
21 production report, who would be the highest person
22 at NSSF who has to sign off on it before it's
23 published?
24 A. Probably Larry Keane.

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1 Q. Who is Larry Keane?
2 A. He's our VP of our -- or senior VP of
3 government affairs and general counsel. He's my
4 boss. And so after my team is done with this,
5 everyone's had a chance to go through it for typos,
6 we kick it to him, and he'll do just a general
7 scroll-through to make sure there's nothing, you
8 know, that stands out. And then after he goes,
9 cool, I skimmed through it and nothing looks wrong,
10 let's do it. By "do it," I mean post it.
11 Q. Understood. Who decides on the content
12 of "Firearm Production in the United States"?
13 A. So this is a long-standing report. We
14 keep trying to update everything as we get new
15 information. So as the AFMER gets updated, USITC,
16 as long as we can get access to the historic
17 reports that were relied on for previous
18 iterations, we just keep putting in the same
19 information over and over to have that
20 year-over-year trend for our members.
21 Q. Who is the audience of Deposition
22 Exhibit 6, the 2023 firearm production report?
23 A. All of our members.
24 Q. Anybody else?

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1 A. As far as I know, that's generally what
 2 we make it for. It's a benefit to our members to
 3 have accurate and, you know, objectionable data
 4 here in a summarized fashion instead of them having
 5 to go look for stuff and having them do it
 6 themselves.
 7 Q. Do you have an understanding that the
 8 "Firearm Production in the United States" 2023
 9 report is sometimes used in litigation that NSSF
 10 brings?
 11 A. I am aware.
 12 Q. Is that awareness -- and you're aware of
 13 that fact when you're preparing the report; is that
 14 fair to say?
 15 A. It's not something that is top of mind.
 16 I know that all of our reports can be utilized for
 17 various reasons, but the driving factor is to get
 18 accurate data to our members.
 19 Q. When did you first become aware that any
 20 version of the "Firearm Production in the
 21 United States" report was used by NSSF in
 22 litigation?
 23 MR. LOTHSON: I'll object just to the extent
 24 that, if you received that information from a

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1 lawyer, which I suspect you may have, I think it
 2 may be subject to attorney-client privilege, work
 3 product.
 4 I think you can ask him generally if
 5 he's seen this.
 6 BY MR. WELLS:
 7 Q. So I'm not asking for the specific
 8 communications. I'm asking the moment in time --
 9 you learned at some point that some version of
 10 "Firearm Production in the United States,"
 11 Deposition Exhibit 6, and others like it, prior
 12 versions, were being used in litigation; is that
 13 fair to say?
 14 A. Yes.
 15 Q. When did you first develop that
 16 awareness?
 17 A. When I was asked to testify to a
 18 previous version of the IIR in the Oregon case.
 19 Q. When were you asked to testify?
 20 A. I think it was last year. I want to say
 21 it was last year.
 22 Q. Okay. So directing your attention to
 23 the first page of Deposition Exhibit 6 at Bates
 24 NSSF 35, who wrote the text that's underneath the

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1 title?
 2 A. This is historic text that's been there
 3 for as far as I know. And speaking with Dianne
 4 Vrablic in preparation for this, it's stuff that
 5 she inherited, and we just go through and update
 6 the tiny tidbits that we have.
 7 Q. Do you know who Dianne Vrablic inherited
 8 the text from?
 9 A. I believe it was Jim Curcuruto at the
 10 time, who was employed by NSSF previously. And I'm
 11 not sure the single point of origin of where it
 12 came from.
 13 Q. Is Jim Curcuruto still employed by NSSF?
 14 A. No. He departed, I believe, in 2021.
 15 Q. Do you know Jim Curcuruto?
 16 A. Vaguely. We had about six to eight
 17 months that we worked in the same place, hi and bye
 18 on calls, but we never collaborated on any
 19 projects.
 20 Q. Did you take over any files that Jim
 21 Curcuruto maintained, after his departure?
 22 A. I know there were some, what they were
 23 and what he was working on, things that I was asked
 24 to work on, like the IIR, he had worked on

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1 previously. As I sit here today, I don't know the
 2 full scope of everything that he did at his time
 3 during his role in research because his role was
 4 also research related. I don't know everything
 5 that he did. Stuff that spilled over to me just
 6 because of that tiny time frame working together.
 7 Q. So I'm directing your attention to the
 8 first sentence under the title that says "Providing
 9 a comprehensive overview of firearm production
 10 trends spanning a period of 31 years, this report
 11 is based primarily on the data source from the
 12 Bureau of Alcohol, Tobacco, Firearms and
 13 Explosives' (ATF's) Annual Firearms Manufacturing
 14 and Export Reports (AFMER)."
 15 Do you see that?
 16 A. Yes.
 17 Q. And that's referring to the AFMER data
 18 that we were discussing earlier in conjunction with
 19 Deposition Exhibit 5?
 20 A. It's not Exhibit 5. It's the data that
 21 is expansion of the summary document, which is
 22 document 5.
 23 Q. Okay. So Deposition Exhibit 5 is sort
 24 of a cover sheet for a big underlying --

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1 A. Yes.
 2 Q. Wait for me just to finish.
 3 A. Sorry.
 4 Q. No problem.
 5 -- for a big underlying dataset in
 6 the form of an Excel spreadsheet; is that fair to
 7 say?
 8 A. Yes.
 9 Q. And that Excel spreadsheet that
 10 underlies the cover sheet that is Exhibit 5, that's
 11 what Deposition Exhibit 6, that sentence that I
 12 just read to you about ATF AFMER, is referring to?
 13 A. That's right.
 14 Q. And this says primarily relying on ATF
 15 AFMER data. But not exclusively, right?
 16 A. That's correct.
 17 Q. What other data sources does NSSF rely
 18 on in the generation of the "Firearm Production in
 19 the United States" report?
 20 A. USITC data. And we also do some
 21 industry reporting. I know that there's one
 22 section on here that also has some ammunition
 23 manufacturing. Let me see if I can find it here.
 24 I'll recognize the page when I see it. Here we go.

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1 The annual survey of manufacturers, which gives us
 2 the contents on page 10 for industry statistics in
 3 that in regarding to ammunition production.
 4 Q. And whose survey is that?
 5 A. The census does.
 6 Q. Okay. So it's a census survey?
 7 A. Yes. It's a government report.
 8 Q. And is that census data used in any
 9 other section of the report?
 10 A. I believe for the ASM portion, this is
 11 the only part. And then it spans over a few pages,
 12 but the main content for the ammunition production
 13 is that data.
 14 Q. You mentioned USITC data. What is that?
 15 A. United States International Trade
 16 Commission reporting that we use to do a data pull
 17 of our industry's products at a point in time.
 18 It's a snapshot. They don't put out an AFMER like
 19 ATF does. But we can -- we have access to go and
 20 draw a snapshot in time of what is reported by
 21 USITC. And that's the importing side of it.
 22 Q. Is there overlap between USITC data and
 23 ATF AFMER data?
 24 A. There may be if we're getting the

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1 exporting side. But I can't recall -- sitting
 2 right here, I can't recall if we exclusively use
 3 the exporting portion from USITC. I could look
 4 into that and get back to you, if you'd like.
 5 Q. So is it fair to say that NSSF uses ATF
 6 AFMER to determine manufacturing and export data
 7 for firearms?
 8 A. Yes.
 9 Q. And is it fair to say that NSSF uses
 10 UITS [sic] data for import information relating to
 11 firearms?
 12 A. USITC, yes. There was just an S missing
 13 there.
 14 Q. What's that?
 15 A. There was just an S missing there.
 16 Q. Oh, sorry.
 17 A. That's all right.
 18 Q. USITC. All right. You also mentioned
 19 industry reporting?
 20 A. Yes.
 21 Q. What do you mean by industry reporting?
 22 A. So there are some segments that we need
 23 further clarification and transparency from our
 24 members. And we may go to them and say, hey, LFDs

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1 for this content. Can you please give us some more
 2 information.
 3 Q. When you say some segments, what do you
 4 mean?
 5 A. So primarily the MSR chart.
 6 Q. Why do you need clarifications for the
 7 MSR chart?
 8 A. Because there are manufacturers that,
 9 like we discussed before, may make bolt-actions,
 10 they may make lever guns, and those are all
 11 captured under rifle. And we need some extra
 12 insights, under confidentiality, to get that
 13 information from our members.
 14 Q. So when NSSF gathers industry reporting,
 15 I think earlier you testified that sometimes you'll
 16 send an e-mail, sometimes it will be a phone call.
 17 And NSSF is asking questions of its members about
 18 their modern sporting rifle production in the
 19 course of those communications; is that right?
 20 A. That's correct.
 21 Q. And NSSF industry members are providing
 22 information in response to those questions that
 23 inform the modern sporting rifle report -- or chart
 24 in the "Firearm Production in the United States"

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1 document we're looking at?

2 A. Overall, yes. But it's really hit or

3 miss. We don't get 100 percent response rate. And

4 so if we don't get that response rate, then we

5 can't count them. So the MSR chart, even though

6 it's -- some people might think it's a very large

7 number. It's a conservative estimate. We're

8 sometimes not capturing everybody or we can't count

9 them at all because we can't get the transparency.

10 Q. What does NSSF do to validate the

11 information it receives from industry reporting?

12 A. What do you mean?

13 Q. So if NSSF has a conversation, either by

14 phone or e-mail, about -- in response to a question

15 that NSSF has asked of a firearm manufacturer about

16 firearm reporting, does NSSF check the numbers or

17 information that it receives from the manufacturer?

18 A. We'll provide just a general logic

19 check. If they provide a number that doesn't make

20 sense, then we'll go through the steps to verify.

21 But, largely, our members in our industry provide a

22 very thorough, comprehensive data that we've never

23 really had to question.

24 Q. Beyond that logic check, is there any

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1 other validation that NSSF does?

2 A. No, simply for the fact that our members

3 want truthful, accurate data; and that if they are

4 not providing that, they are not getting a quality

5 report at the end of the day. So we believe our

6 numbers to be accurate in the reporting of any

7 information that we're asking them about.

8 Q. I'm going to direct your attention to

9 the last page of this report, so Deposition

10 Exhibit 6. It's the "Firearm Production in the

11 United States" Bates-labeled NSSF 000052. Do you

12 see underneath "Sources" where it says "Total

13 Production"?

14 A. Do you want me to read that portion?

15 Q. No. I'll direct you further here. So

16 in that box to the right of "Total Production," it

17 says "Detail data source: The 2021 Annual Firearms

18 Manufacturing and Export Report (AFMER). This

19 annual report is prepared by the office of Firearms

20 and Explosive Services Division (FESD), Bureau of

21 Alcohol, Tobacco, Firearms and Explosives (ATF),

22 Washington, DC." And then it has in parentheses,

23 it says "(historical analysis conducted by NSSF)."

24 Do you see that?

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1 A. Yes.

2 Q. What does "historical analysis conducted

3 by NSSF" mean?

4 A. So as manufacturers report their

5 manufacturing, they might have an amendment to that

6 number. And so what they do is they say, hey, here

7 is our reporting. We submitted it. And then they

8 might do their own self-audit. It's like, oh, we

9 actually have an amendment. They'll submit that

10 amendment, ATF publishes that.

11 But once ATF gets the number and they

12 publish the AFMER report for that year, they are

13 not going to go back to that original post and

14 update the link. So then if we're seeing those

15 updates happen, we have to then go back and make

16 those corrections.

17 Additionally, we might have a

18 manufacturer that has three locations. So then in

19 the processing of the AFMER, we need to combine

20 those three manufacturers together so you get a

21 true balance of what that brand of manufacturer is

22 making.

23 Q. So you sometimes have to take the ATF

24 AFMER data and combine or sort or conduct further

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1 analysis of it; is that fair to say?

2 A. It's not really an analysis. We're more

3 so just adding one and two together to make sure

4 the sums for each brand are accurate.

5 Q. So ATF AFMER data, you agree, goes back

6 to what year?

7 A. 1990.

8 Q. How does NSSF validate data that's

9 reported in AFMER -- well, let me withdraw that.

10 Does the historical analysis that

11 NSSF conducts involve making those types of

12 modifications to ATF AFMER data from the 1990s?

13 A. It's only as the information is

14 presented. So if ATF posts a correction for the

15 latest year and we see that, then we'll make that

16 correction. They're usually small in number. It's

17 a few thousand here or there, compared to the

18 millions that are in the full production for the

19 year. So it's small adjustments, but it's

20 adjustments that we make. In my time at NSSF, I've

21 never seen an adjustment go back multiple years.

22 Q. All right. I'm going to direct your

23 attention to the last sentence in this "Total

24 Production" section where it says "The AFMER 2021

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1 as reported through January 20th, 2023 -
 2 reviewed/adjusted by NSSF."
 3 Do you see that?
 4 A. I'm sorry. I don't. Okay. So the
 5 manufacturing trends and the box next to it?
 6 Q. No, total production.
 7 A. Oh, I'm sorry.
 8 Q. The next -- the last sentence in total
 9 production.
 10 A. Oh, sorry.
 11 Q. So I'm going to ask you about that last
 12 sentence again that says --
 13 A. Yeah, sure.
 14 Q. -- "The AFMER 2021 as reported through
 15 January 2023 - reviewed/adjusted by NSSF."
 16 What does "reviewed/adjusted by NSSF"
 17 mean?
 18 A. It's what I was talking to you earlier
 19 there. We might have a brand that has multiple
 20 locations, and so we'll go through the AFMER and
 21 combine the production in those multiple locations
 22 so that each brand has a total figure next to it.
 23 We're not going to make the -- we're not going to
 24 make the report and have, say, for example, one

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1 manufacturer in position 3 of their totals and then
 2 they're repeated again in position 8. We're
 3 getting rid of that duplication so that we have one
 4 final figure.
 5 Q. Are there any other adjustments that
 6 NSSF makes to ATF AFMER data?
 7 A. Not that I'm aware of. We just combine
 8 the like brands under one umbrella so that we can
 9 get a true total.
 10 Q. Does NSSF draw data from multiple AFMER
 11 categories in calculating its modern sporting rifle
 12 table?
 13 A. We don't primarily use the AFMER to --
 14 let me back up here. While the AFMER tells us
 15 production, we have to go to the manufacturers
 16 sometimes to figure out what proportion of their
 17 manufacturing is. For some brands, we do use the
 18 AFMER directly because we can go through their
 19 offerings of products on their website and see
 20 every single product falls under, for instance, an
 21 MSR platform; it's AR, AK, variant thereof.
 22 Q. When you say you go through a
 23 manufacturer's website and look at their offerings,
 24 what does that review entail?

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1 A. So that is going to -- say we designate
 2 this person, this entity, company, makes MSRs.
 3 Okay? Let's go to their website. Do they make
 4 anything other than MSRs? And we go through their
 5 catalog, we search them on the website for what
 6 they have to offer from the retailer, just as a
 7 double-check. And as long as nothing falls under
 8 anything that's outside of MSR, then we don't have
 9 to do the additional investigation of proportions
 10 of production.
 11 Q. How are you determining that what you
 12 review on those websites are modern sporting
 13 rifles?
 14 A. By using the understanding that it
 15 usually falls in the category of AR, AK, variants
 16 thereof.
 17 Q. Is it fair to say you're looking at
 18 visual images of the firearms to assess whether or
 19 not they're modern sporting rifles?
 20 A. Yes.
 21 Q. You don't perform physical inspections
 22 of the models from a particular manufacturer when
 23 you're trying to determine whether it's a modern
 24 sporting rifle?

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1 A. I've never, in my time, had to do that
 2 just because I have familiarity with a lot of
 3 products. And there's also the added benefit of
 4 YouTube, for example, of, hey, how is this going to
 5 work. And go on YouTube and there's somebody
 6 usually has a review and they shoot it and all that
 7 stuff so you can kind of see how it operates.
 8 Q. All right. I'd like to turn back to the
 9 first page of Deposition Exhibit 6. That's NSSF
 10 000035. I'm going to direct your attention to the
 11 second sentence in the first paragraph where it
 12 says "Every effort has been made to provide
 13 accurate and updated information so the reader may
 14 keep this edition as a reliable resource for trend
 15 information."
 16 Do you see that?
 17 A. Vaguely. Yes, I see it.
 18 Q. Do you agree with that?
 19 A. Yes.
 20 Q. Can you describe for me what those
 21 efforts are.
 22 A. So we collect -- for everything that is
 23 in this report, we collect the latest updated
 24 information available to us in this snapshot in

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1 time to give accurate, objectionable data in
2 reporting on this topic.
3 Q. All right. I'm going to direct your
4 attention to the third paragraph on this page, the
5 one that starts with the word "Information." And
6 directing your attention to the second sentence
7 that reads "Other factors outside of the
8 manufacturing sector, such as the retail sector,
9 the economy and frequently the political climate,
10 must all be taken into consideration."
11 Why must the political climate be
12 taken into consideration?
13 A. I'm not sure if you are familiar with
14 the sales trends of firearms. But, largely,
15 when -- anytime that there is a shift in political
16 appetite to, say, ban things, further regulate,
17 there is usually a drive by consumers to go and
18 purchase those things that would be banned under
19 that possible legislation.
20 Or even -- not even if there's a
21 legislation provided. If someone gets in office
22 that makes their campaign to ban firearms, that
23 largely, just by observing trends, that will
24 motivate consumers to then go and buy those things

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1 because they largely want them. And they may not
2 have planned to buy it then, but if it's going to
3 be gone, they want to get their hands on it.
4 Q. So is it fair to say that the firearms
5 industry is impacted by things like whether it's an
6 election year or not?
7 A. It certainly can be. If you look at the
8 FBI NICS data that tracks background checks, I've
9 seen the 25-year chart that they've been in
10 operation. There is always a spike. Every time
11 it's an election year, no matter who was leading,
12 there's always a spike.
13 Q. What about the year after an election
14 year? And when I'm referring to an election, I'm
15 referring to a presidential election. So if
16 there's a change in presidential administration,
17 the year that a new president is inaugurated, does
18 that impact the firearms industry?
19 A. It certainly can. I know that there is
20 an impact after a spike. Every time that there is
21 a spike, just by flow of the data, there is going
22 to be augmentation there because you just had one
23 previously. And as far as I know, it exists. The
24 extent and direction, I can't speak to today. But

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1 I can investigate that later -- or investigate that
2 at a later time and get back to you if you have a
3 particular thing I have to investigate.
4 Q. Does the political climate ever benefit
5 the firearm industry?
6 A. I think I can only give my opinion here
7 and that it's possible.
8 Q. So you testified earlier that sometimes
9 if someone is running for office and they are
10 advocating for a ban on certain types of weapons,
11 that may actually increase the sales of those types
12 of weapons; is that fair to say?
13 A. Yeah. It's a term called "panic
14 buying."
15 Q. What does panic buying mean?
16 A. There's a rush of retail activity to go
17 and legally purchase firearms that they possibly
18 could not get -- that they, as consumers, could
19 possibly not get at a later date.
20 Q. And is panic buying a regularly
21 understood and used term in the firearms industry?
22 A. I would say yes.
23 Q. All right. I'm going to direct your
24 attention to the next page, NSSF 36. All right.

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1 At a high level, what is the chart on NSSF 36
2 showing?
3 A. This is firearm production broken down
4 by type from 1991 to 2021.
5 Q. And the types are pistols, revolvers,
6 rifles, and shotguns; is that fair to say?
7 A. That's correct.
8 Q. And those categories were taken from ATF
9 AFMER; is that fair to say?
10 A. That's correct.
11 Q. And modern sporting rifle is not a
12 category on this chart, correct?
13 A. That's correct.
14 Q. And you see "Total Handguns" as a
15 category?
16 A. I do.
17 Q. What's in that category?
18 A. So that would be pistols and revolvers.
19 Q. Does that include AR pistols?
20 A. It certainly can. And largely because
21 of that, the historic recording of these charts
22 didn't include, say, an AR pistol and an AK pistol
23 back in, say, '91 -- or not '91 -- but in the early
24 2000s when this was started. And this is simply a

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1 continuation of reporting pistols and revolvers and
2 a summation of the total handguns.
3 Q. So for all the AR pistols that you're
4 aware of that are out on the market, where will
5 they be captured in the columns in this chart?
6 A. So they may be captured in -- I'm sorry.
7 Can you say the question again.
8 MR. WELLS: Can you read it back, please.
9 (Record read as requested.)
10 THE WITNESS: They would be captured in the
11 pistols for production.
12 BY MR. WELLS:
13 Q. What about AK pistols? Where would they
14 be captured?
15 A. In the same category, as long as they
16 were made as a pistol as defined by ATF.
17 Q. Can you look at the far right-hand
18 column of the chart on NSSF 36 and tell me what's
19 in this column?
20 A. That is a percent change in total
21 production year over year.
22 Q. And how is that calculated?
23 A. You take the new minus old divided by
24 old.

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1 Q. And when you say the new minus old
2 divided by old, so just looking at 2021, for
3 instance, so is it fair to say you're going to take
4 the total in the "Production Total" column in the
5 bottom right corner, the 12,521,614?
6 A. Yes. We would take that as the new
7 number, subtract the old number, divided by the old
8 number. And that's just a simple percentage-change
9 formula.
10 Q. And the old number you're referring to
11 is 9,740,240 from 2020; is that right?
12 A. That's correct.
13 Q. So you subtract the 12.5 -- you take
14 12.5 million from 2021, and you subtract the
15 9.7 million from 2020; is that fair to say? That's
16 the first step?
17 A. Yes, that's the first step.
18 Q. And then the second step is to divide
19 the result of that subtraction by what number?
20 A. By the old number. That's a simple
21 percent-change formula.
22 Q. Right. The old number being the
23 9,740,000?
24 A. Yes.

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1 Q. And that gives you a percentage that is
2 shown in the right-hand column; is that right?
3 A. Yes. Percent change in total production
4 year over year.
5 Q. And how does NSSF do that calculation?
6 Is it through an Excel spreadsheet?
7 A. I can't recall, as I sit here today, if
8 it was a formula that's in one of our many Excel
9 spreadsheets, because we have a lot of them --
10 you've seen them -- or if it was done by hand. I
11 can look into that and see if we do have that.
12 Q. I'm asking at a general level if it's
13 like --
14 A. I honestly can't recall if we have the
15 formula and we just update the new numbers or if we
16 do it by hand.
17 Q. But using Excel formulas is something
18 that NSSF does to prepare the tables and charts in
19 this report; is that fair to say?
20 A. We can use it for percent change, but
21 largely, a lot of this preparation is just
22 transferring the data from AFMER and plugging it
23 in. That's about the extent of the arithmetic
24 that's involved.

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1 Q. And the right-hand column has black
2 numbers and red numbers. What's the difference
3 between them?
4 A. Positive and negative. Black is
5 positive, red is negative. Percent change.
6 Q. So let's look at 2008. Do you see there
7 was an 8.5 percent change in total production year
8 over year?
9 A. Yes.
10 Q. And 2008 was an election year, right,
11 presidential election?
12 A. I believe it was.
13 Q. And then do you see in the next year, so
14 2009, there's a 29.2 percent increase. Do you see
15 that?
16 A. Yes.
17 Q. And in 2009 there was a new president
18 inaugurated, right?
19 A. I believe so.
20 Q. And the new president, did that impact
21 gun sales in the year of 2009?
22 A. I didn't really track the data back in
23 2009, so I don't know. But just looking at this,
24 that impacted production.

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1 Q. Okay.

2 A. Could have impacted production. This is

3 simply a production of year over year. I think it

4 would take an expert to analyze if that particular

5 consequence of steps resulted in one or the other.

6 Q. Okay. Let's look at 2016. 2016 was

7 also a presidential election year, correct?

8 A. That's correct.

9 Q. And that -- in that year there was a

10 19 percent increase, as reflected in the right-hand

11 column; is that correct? In firearm production?

12 A. Over 2015, yes.

13 Q. In 2017 there was a 25.5 percent

14 decrease. Do you see that?

15 A. I do.

16 Q. And there was a new president

17 inaugurated in 2017, correct?

18 A. That's true.

19 Q. Do you see any connection between the

20 new president's inauguration and that negative

21 25.5 percent figure?

22 MR. LOTHSON: I'll object just to the extent

23 it's beyond the extent of the notice.

24 THE WITNESS: I think you may be able to draw

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1 some correlation, but I don't think you can draw

2 causation.

3 BY MR. WELLS:

4 Q. Okay. 2020, also an election --

5 presidential election year; is that right?

6 A. That's correct.

7 Q. 57.9 percent increase over 2019; is that

8 right?

9 A. Yes.

10 Q. Is that an instance of the type of panic

11 buying that you were talking about before?

12 A. This does not include sales. This is

13 production.

14 Q. Manufacturers are producing in

15 anticipation of selling those firearms, right?

16 A. You can infer that from the data, that

17 they were creating more firearms because of the

18 perceived demand.

19 Q. Perceived demand based on 2020 being an

20 election year; is that right?

21 A. I don't know if I could -- I'm not an

22 expert in that subject matter, so I don't know if I

23 can provide my opinion.

24 Q. And in 2021 there was an increase of

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1 28.6 percent firearm production over 2020; is that

2 right?

3 A. That's correct.

4 Q. And 2021 was a record year for the

5 firearms industry, right?

6 A. Both 2020 and 2021.

7 Q. So two record consecutive years?

8 A. Yes.

9 Q. And 2020 was a presidential election

10 year, and 2021 was a change in presidential

11 administration; is that right?

12 A. I believe so.

13 Q. I'm just directing your attention to the

14 bottom of the chart here where it says "From 2011

15 to 2018, several adjustments were made to the data

16 in the chart due to omissions in the ATF AFMER

17 report (i.e., figures for long guns manufactured by

18 Savage Arms were omitted from the 2017 AFMER),

19 duplication of production due to parts manufactured

20 by machine shops (i.e., parts reported by machine

21 shop in addition to being reported by the firearm

22 manufacturer resulting in double-counting) and

23 adjustments to the miscellaneous category (i.e.,

24 [REDACTED]).

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1 What does all that refer to?

2 A. So that refers to an instance where

3 there was a error in the ATF AFMER, and then it was

4 subsequently caught and, I believe, corrected based

5 on what's provided here.

6 In preparation for this, I did speak

7 to Dianne Vrablic about the various reports and

8 this history of it, and she does remember at one

9 point there was an error found, and it was called

10 out. And then subsequently there were steps taken

11 to correct that with ATF.

12 Q. Who found the error?

13 A. I'm not sure if it was designated to her

14 or if she found it.

15 Q. It was an error by NSSF?

16 A. No. We don't create errors -- we don't

17 create any of the numbers in the ATF AFMER. That's

18 strictly the manufacturer reporting to ATF.

19 Q. So who made the error and who called it

20 out?

21 A. I'm not sure who made the error. I just

22 know that there was an error, and we called that

23 out in the report.

24 Q. And the 2011 to 2018, the adjustments,

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1 who made those adjustments?
 2 A. Those were the previous adjustments that
 3 we discussed where there was an amendment made and
 4 those amendments were then updated in our figures
 5 based off of what ATF made public.
 6 (NSSF Deposition Exhibit 7 was
 7 marked for identification.)
 8 BY MR. WELLS:
 9 Q. All right. I've handed you what's been
 10 marked as Deposition Exhibit No. 7, which covers
 11 Bates range NSSF 002324 through 35. Have you seen
 12 this document before?
 13 A. Yes.
 14 Q. What is it?
 15 A. So these are -- this is a tracking
 16 document that we use to track the adjustments that
 17 were made to the -- made public by ATF and made for
 18 the AFMER regarding the AFMER production.
 19 Q. And the sentence that we were just
 20 looking at in the "Firearm Production in the
 21 United States" report where it referred to
 22 adjustments, are those adjustments reflected in
 23 this document, Deposition Exhibit 7?
 24 A. Yeah, this is a tracking document that

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1 documents what those changes were.
 2 Q. Does this document, Deposition
 3 Exhibit 7, contain all of the adjustments that NSSF
 4 made that are referenced in the firearm production
 5 report in the page --
 6 A. To the best of my knowledge, this is
 7 where we track the changes.
 8 Q. Who created this document in the first
 9 instance?
 10 A. I'm not sure, to be honest. I can go
 11 back and investigate that. I'm not sure if this
 12 was something that Dianne Vrablic inherited or if
 13 she created it.
 14 Q. So is it fair to say that this document
 15 existed before you joined NSSF?
 16 A. Yes. Likely much before I joined
 17 because I see these go back to early 20-teens.
 18 Q. Is it fair to say that this document,
 19 Deposition Exhibit 7, is a document that is changed
 20 annually?
 21 A. As long as there are corrections made
 22 public by ATF, then we'll track that here to keep a
 23 record of it.
 24 Q. And this document is maintained by NSSF

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1 as a part of its regularly conducted activity?
 2 A. Yes, just to try to have as accurate a
 3 record as possible.
 4 Q. And it's a regular practice of NSSF to
 5 create this type of document?
 6 A. As long as there are corrections
 7 provided by ATF, then we will track that so that we
 8 don't have to rely on it being hosted on our the
 9 website.
 10 Q. And you make those corrections pretty
 11 close in time to when you review the ATF AFMER
 12 data; is that fair to say?
 13 A. It all depends on when the adjustments
 14 are made public.
 15 Q. But as soon as the adjustments are made,
 16 NSSF tries to make them promptly; is that fair to
 17 say?
 18 A. That's correct.
 19 Q. Just directing your attention to the top
 20 where it says "AFMER 2021 corrections/adjustments,"
 21 do you see that?
 22 A. I'm sorry. Could you point me to it?
 23 This one? Yep.
 24 Q. It says "Analysis of the 2021 AFMER

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1 production (report data as of January 2023) has
 2 resulted in the following corrections, adjustments,
 3 and notations and related to the following" -- "and
 4 notations related to the following license holders,
 5 which have either confirmed, or we have conferred
 6 or surmised, to be component parts suppliers to
 7 major manufacturers who are also reporting the same
 8 quantities as complete firearms."
 9 Who wrote that?
 10 A. I'm not sure. I'm not sure if this was
 11 inherited before myself or Dianne or if this was
 12 something that somebody else wrote that's currently
 13 being deployed.
 14 Q. And at a high level, what is this
 15 sentence saying?
 16 A. It's just saying that -- let me read it
 17 one more time, please.
 18 So what I believe the sentence to be
 19 is to make sure that there's an effort of not to
 20 double-count firearms; to be as conservative as
 21 possible and accurate.
 22 Q. So is it fair to say that NSSF, as
 23 reflected in this document, is taking ATF AFMER
 24 data and subtracting some from its calculations if

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1 there's double-counting?
 2 A. If there is any sort of double-counting
 3 that we are aware of, then we will make those
 4 adjustments to make sure that we're not.
 5 Q. Are there other types of adjustments
 6 that are being made?
 7 A. Only if there are corrections. And then
 8 also what I explained before where a manufacturer
 9 may have multiple locations, and we don't want to
 10 report multiple locations for one manufacturer. We
 11 want one grand-total sum.
 12 Q. Okay. I'm going to direct your
 13 attention to underneath where it says "Rifles."
 14 And it says "Update [REDACTED] date." Do you
 15 see that?
 16 A. Yes.
 17 Q. And [REDACTED] is then in a bullet
 18 that's highlighted in green. Do you see that?
 19 A. Yes.
 20 Q. And it then says "509 rifles & 176,485
 21 misc," m-i-s-c, "(less 1,318 exports) total 175,686
 22 to MSR."
 23 What does that mean?
 24 A. So that would be the count of the plus

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1 production minus export that we would count in the
 2 MSR for [REDACTED].
 3 Q. Where is the 509 rifles figure coming
 4 from?
 5 A. I believe that's coming from their
 6 production report in the AFMER.
 7 Q. "Their" being [REDACTED]?
 8 A. [REDACTED] production in the
 9 AFMER.
 10 Q. What is the 176,485 misc?
 11 A. Those are frames and receivers. So
 12 those are incomplete firearms. They're not
 13 operational. It's just a lower, for lack of better
 14 terms. But it is still classified by ATF as a
 15 firearm and regulated as such.
 16 Q. So "misc" refers to miscellaneous; is
 17 that right?
 18 A. Yes.
 19 Q. And miscellaneous refers to the ATF
 20 AFMER category "miscellaneous"?
 21 A. That's correct.
 22 Q. How does NSSF know that the 176,485 that
 23 [REDACTED] includes in the miscellaneous
 24 category are modern sporting rifles?

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1 A. By knowing their offerings in their
 2 products.
 3 Q. How does NSSF gain that knowledge?
 4 A. Through independent research and
 5 conversation with [REDACTED]. We see them at SHOT Show,
 6 we talk to them, we see their products. And up
 7 until very recently -- I want to say in the past
 8 year, which is not captured in this 2021 AFMER --
 9 they just came out with a bolt-action rifle. But
 10 that's not captured in this 2021 because it didn't
 11 come out to market until then, until recently.
 12 Q. Where it says "less 1,318 exports," what
 13 does that refer to?
 14 A. Those are exports that are recorded in
 15 the AFMER that we then have to subtract because
 16 it's not counted in the -- what's produced for the
 17 US.
 18 Q. And this last phrase, "total 175,686 to
 19 MSR," what does that mean?
 20 A. That would be the summation of those two
 21 figures minus the 1318 total count of MSRs.
 22 Q. So you would take 509 and add it to
 23 176,485?
 24 A. Mm-hmm.

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1 Q. And then you would subtract 1,318; is
 2 that right?
 3 A. Yep.
 4 Q. And that's how you get that total
 5 figure; is that right?
 6 A. That's correct.
 7 Q. And it says "to MSR." What does that
 8 mean?
 9 A. That would be counted in our MSR chart.
 10 Q. All 175,686?
 11 A. That's correct.
 12 Q. So I'm going to direct your attention to
 13 where it says "Note" underneath the [REDACTED]
 14 bullet point. It says "Note: Previously using an
 15 average [REDACTED] percent of total their production as
 16 supplied by [REDACTED] in previous years, we
 17 would report an estimated [REDACTED] rifles as MSR."
 18 What does that note mean?
 19 A. So that is the previous arithmetic that
 20 we would use with the proportion applied. Which,
 21 full transparency, this should have been redacted.
 22 Under our confidentiality agreement with our
 23 members, we should have redacted this before going
 24 to you. There should have been no names here.

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1 Q. So it refers to, you said, a previous
 2 arithmetic? What do you mean by previous
 3 arithmetic?
 4 A. Applying the proportion.
 5 Q. For the proportion being █ percent?
 6 A. Yes.
 7 Q. Who came up with the █ percent
 8 proportion?
 9 A. That likely would have been communicated
 10 from █ to us. We don't create the proportions.
 11 We get them directly from manufacturers. We can't
 12 assume how much or what the percentage may be.
 13 Q. When you say previous arithmetic, using
 14 the 35 percent proportion, are you referring to
 15 prior years?
 16 A. Prior years, yeah.
 17 Q. Prior years in which NSSF would have
 18 used that █ percent proportion in calculating how
 19 many █ MSRs to include in NSSF's MSR
 20 calculation?
 21 A. That's correct.
 22 Q. So there was a time period in which
 23 there was a █ percent proportion multiplied
 24 against some number from the AFMER data; is that

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1 right?
 2 A. That's correct.
 3 Q. And that █ percent came from █
 █?
 5 A. That's correct. Which, again, should
 6 have been confidential and redacted before the
 7 production.
 8 Q. Is there any court order requiring that
 9 to be maintained, confidentiality?
 10 MR. LOTHSON: He doesn't have to answer that.
 11 MR. WELLS: Okay. Withdrawn.
 12 BY MR. WELLS:
 13 Q. But -- so it's █ percent times some
 14 number that generated the entry into NSSF's
 15 calculation --
 16 A. That's correct.
 17 Q. -- of MSRs for █
 18 A. That's correct. It's a conservative
 19 estimate of how many would fall under that
 20 category.
 21 Q. Okay. You said it was a previous
 22 arithmetic. So did the arithmetic change for the
 23 2021 AFMER data?
 24 A. Well, I'm led to believe that it was the

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1 previous version because it says "previously using
 2 average █ percent." This looks like a direct
 3 reporting. That's why I said that.
 4 Q. And that approach of taking a percentage
 5 from the manufacturer and applying it to their
 6 AFMER data, multiplying it times their AFMER data,
 7 is that a methodology that NSSF regularly uses in
 8 calculating the modern sporting rifles from that
 9 particular manufacturer?
 10 A. It's for all manufacturers that we
 11 believe make MSRs. We will approach them and ask
 12 them if there is any ambiguity about how many of
 13 their -- what proportion of their offerings would
 14 not fall under it. Then we would get that from
 15 them.
 16 Q. When you say when there's an ambiguity,
 17 how might an ambiguity arise?
 18 A. So say there's a major firearm
 19 manufacturer and they make bolt-actions, lever
 20 guns. They make MSRs. They make everything under
 21 the sun. We can't go to their rifle production and
 22 report in the AFMER and say all of those are MSRs.
 23 So then we have to go and ask for clarification:
 24 Hey, all of your rifles or of your firearms that

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1 you made, how many fall under the MSR category?
 2 And we have to rely on them to tell us that.
 3 Sometimes they do, sometimes they don't. And when
 4 they don't, even if it's a major manufacturer, it's
 5 a big number, we have to remove -- we can't add
 6 that to a count. So, ultimately, it's a
 7 conservative estimate.
 8 Q. And if they're major manufacturers, do
 9 you repeatedly follow up with them to try to get
 10 that information?
 11 A. We do everything other than showing up.
 12 If they don't want to tell us, they don't want to
 13 tell us.
 14 Q. What if there are small manufacturers
 15 who don't provide you that information? Do you
 16 follow up with them?
 17 A. There's always follow-up there. But if
 18 they don't want to give it to us -- we've either
 19 e-mailed or called and they just don't want to
 20 answer -- then they don't want to answer.
 21 Q. And do you prioritize the large
 22 manufacturers?
 23 A. No. Anybody that just there's a
 24 question mark on -- with portion or anything that

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1 we might need clarification on, we go to everybody.
 2 Q. What does NSSF do to validate the
 3 percentage estimate that you get from the
 4 manufacturers?
 5 A. So we rely on our manufacturers to be
 6 truthful with us, and they have a vested interest
 7 in us being as accurate as possible in our
 8 reporting. So we trust their numbers to be
 9 accurate, representative of what we're asking. And
 10 that goes for, largely, all of our investigative,
 11 you know, conversations with them.
 12 It behooves them to be accurate
 13 because then it is truthful to fact. And anytime
 14 that something doesn't pass the logic check, we
 15 might need to follow up with them to say, hey, is
 16 this a typo? Can you just confirm.
 17 Q. So if a manufacturer, let's say, reports
 18 a million rifles in ATF AFMER and NSSF is trying to
 19 determine what percentage are modern sporting
 20 rifles, NSSF will call the manufacturer, and the
 21 manufacturer will say 60 percent are modern
 22 sporting rifles --
 23 A. They may give -- I'm sorry.
 24 Q. Go ahead.

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1 A. They may give a raw number. They may
 2 give a percentage.
 3 Q. And NSSF trusts the manufacturer's
 4 percentage or numbers that it receives; is that
 5 right?
 6 A. Absolutely. We know that our members
 7 want objective data and that they are incentivized
 8 to be truthful with us.
 9 Q. And the validation of those reported
 10 figures from industry members consists of a logic
 11 check; is that right?
 12 A. That's correct.
 13 Q. Anything beyond a logic check that NSSF
 14 does to validate those reported percentages from
 15 manufacturers that are used in the modern sporting
 16 rifle report?
 17 A. Largely, outside the logic check, it's
 18 not needed because our members want objective data,
 19 and they want truthful reports.
 20 Q. So is that a "no"?
 21 A. That would be a "no."
 22 Q. All right. Directing your attention to
 23 the Deposition Exhibit 7 again, the part that's --
 24 do you see the highlighted section -- the yellow

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1 highlighted section in the middle that says "Keep
 2 in AFMER and include with MSR production history"?
 3 A. Yes.
 4 Q. What -- underneath this where it says
 5 "Steyr Arms" --
 6 I'm mispronouncing that. How do you
 7 pronounce it?
 8 A. It's Steyr.
 9 Q. "Steyr Arms, BCI Defense, IWI US, Noreen
 10 Firearms, Tactical Solutions Inc.," what is being
 11 described in this section of the document?
 12 A. This is a designation of whether or not
 13 we are counting something in the MSR report, to
 14 my -- from looking at this. I know I've looked at
 15 a lot of data. I believe that this is what this
 16 is.
 17 Q. So this is NSSF deciding whether to
 18 include or exclude data from specific companies in
 19 its MSR calculation?
 20 A. That's correct. And the note says, that
 21 is down at the bottom, this one particular
 22 manufacturer, "Unable to determine the split
 23 count." Even though it's small, it's been omitted
 24 from the MSR production report, which then, again,

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1 lies in the conservative estimate that we're making
 2 in our production.
 3 Q. So you mentioned the note at the bottom.
 4 And the note says "Note: Tactical Solutions Inc.
 5 makes both MSR and traditional rifles. Unable to
 6 determine split in total count. Since it's a
 7 relative small quantity, the number has been
 8 omitted from the MSR production report."
 9 Did I read that correctly?
 10 A. Yes.
 11 Q. Why does the size of the quantity
 12 matter?
 13 A. It doesn't. That is largely just a note
 14 for -- from someone that is not writing this for
 15 legal review. They are just writing it for the
 16 facts, and they are including the facts in there.
 17 Q. What does "traditional rifle" mean here?
 18 A. Traditional rifle, say, like a
 19 bolt-action rifle, non-MSR.
 20 Q. Would that bolt-action AR-type rifle
 21 that we described earlier at the beginning of the
 22 deposition be a traditional rifle?
 23 A. Again, that's a gray area where I don't
 24 even know how many of those exist.

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1 Q. So even in distinguishing between
 2 traditional rifles and modern sporting rifles,
 3 there's going to be gray areas, right?
 4 A. In those very small areas, if it's
 5 non-MSR, it's usually pretty easy to distinguish.
 6 Previously we were highlighting a very small
 7 segment of all firearms to where I have to go do
 8 individual research to go seek out if those were
 9 even made, more than a concept that was possibly,
 10 like, introduced at SHOT Show.
 11 Q. It says "Unable to determine split in
 12 total count." What does that mean?
 13 A. So that was what I was alluding to
 14 earlier that I covered. If the total production is
 15 X, but we don't know how many of those fall under
 16 MSR, then we omit the number, regardless of size.
 17 Because we can't for-sure determine if it falls
 18 under the MSR category.
 19 Q. And how -- how does this concept of
 20 split, how does NSSF determine the split between
 21 modern sporting rifles and traditional rifles for a
 22 particular manufacturer?
 23 A. What do you mean?
 24 Q. So what do you do to assess, one,

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1 whether a split exists, and two, what the breakdown
 2 of that split is?
 3 A. Yeah. So we will go -- like I said
 4 before, we'll go to their website, we'll check out
 5 what they manufacture, what they offer for sale.
 6 And if there is a difference of they make two
 7 different things -- they don't just make MSRs --
 8 then we have to go to them and ask them what the
 9 split is. If we're not able to determine, then we
 10 can't count it because we're not going to assume or
 11 assign a percentage of that proportion in there.
 12 Q. All right. I'm going to direct your
 13 attention to Bates page 38 in Deposition Exhibit 6.
 14 So that's page 4 of the internal pagination,
 15 NSSF 000038.
 16 At a high level, what's shown here?
 17 A. This is US firearm production from '95
 18 to 2021 showing handguns, long guns, and total
 19 production.
 20 Q. Directing your attention to the pistol
 21 chart, pie chart, on the upper right-hand side of
 22 the page. Do you see that?
 23 A. Do you mean the "by caliber" or the pie
 24 chart? I'm sorry.

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1 Q. Let's look at the caliber breakout.
 2 A. Okay.
 3 Q. Do you agree that, at least based on
 4 2021, the market, in terms of manufacturing for
 5 9-millimeter pistols, are the most popular pistols?
 6 A. That is the largest category reported in
 7 2021 for pistols.
 8 Q. And the "to 9-millimeter" pistols
 9 category made up 63 percent of pistols manufactured
 10 in the US in 2021, according to AFMER data; is that
 11 right?
 12 A. That's correct.
 13 Q. All right. In this chart of pistols by
 14 caliber, which category could cover AR pistols
 15 chambered in .223 Remington?
 16 A. I'm not positive at this time if it
 17 would fall under the "to .22 or the "to .25." I'd
 18 have to go back and clarify with ATF. But I can do
 19 that and get back with you if you'd like me to.
 20 Q. Okay. So it's either .22 or .25
 21 category; is that right?
 22 A. Yeah. I can't say for certain right now
 23 what it would fall under.
 24 Q. And the "to .22" category is at

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1 10.9 percent of pistols manufactured in 2021; is
 2 that right?
 3 A. That's correct.
 4 Q. And the "to .25" is at 2.7 percent for
 5 pistols manufactured in 2021; is that right?
 6 A. That's correct.
 7 Q. Where would AK pistols chambered in
 8 7.62-caliber be captured in this chart? By "762,"
 9 I mean 7.62 by 39 millimeters.
 10 A. Yeah. It's 3.10 diameter. Educated
 11 guess -- I can't say for certain -- but I'd have to
 12 guess it would be in the "to .380" that is
 13 represented in the 11.7 percent of pistol
 14 production for 2021. I believe that's where it
 15 would go. Wait, no. I'm sorry. .310, that's
 16 either going to fall under the "to .32" or "to
 17 .380." I'm not sure which one it would be.
 18 Q. So as you sit here today, you can't be
 19 certain where an AR pistol chambered in 5.56
 20 NATO/.223 Remington would fall in this chart; is
 21 that fair to say?
 22 A. I've reviewed a lot of data. That was
 23 one thing that I didn't investigate in preparation
 24 for this. It would either fall under that .22 or

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1 .25 for .223-caliber firearms.
2 Q. So that's a "no"?
3 A. I'm sorry?
4 Q. That's a "no" to my question?
5 MR. LOTHSON: No, he answered it.
6 BY MR. WELLS:
7 Q. As you sit here today, for the AK
8 pistols chambered in 7.62 by 39-millimeter caliber,
9 you can't definitively say which category they
10 would fall into in this chart that we're looking
11 at?
12 A. That's correct. I would have to go back
13 and just confirm with ATF so I didn't guess.
14 Q. Let's go to the middle chart here, the
15 one that's "Total Production" with the gray
16 shadowing in the back. Do you see that?
17 A. Yes.
18 Q. At a high level, what is this chart
19 showing?
20 A. That is total production of handguns and
21 long guns for combined categories.
22 Q. And what is the gray line that's going
23 up and down in the background?
24 A. That's everything. Everything, as in

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1 all categories of pistols, revolvers, long guns --
2 being rifles and shotguns -- all combined together.
3 Q. And you can see in that chart that there
4 are various peaks; is that right?
5 A. Yes.
6 Q. And just looking at it, are you able to
7 tell that peaks tend to occur around election
8 years; is that right?
9 A. Some do, but some don't. Like, for
10 example, 2013 there's a big peak there. But
11 there's also another sizable peak in 2009. But
12 there's also one in 2002. It ebbs and flows.
13 Q. So 2009 was a year after an election
14 year; is that right?
15 A. Yes.
16 Q. And 2013 was a year after a presidential
17 election year?
18 A. Yes.
19 Q. And in both of those years there was a
20 Democratic president?
21 A. I believe so.
22 Q. All right. So just looking now at this
23 chart in terms of the bars, now. So looking away
24 from the gray section. Do you agree that handguns

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1 are now more prevalent -- are being produced
2 more -- manufactured more in the United States than
3 long guns; is that right?
4 A. That's factual. Handguns are being
5 produced at a higher rate than rifles in the
6 categories of combined pistols and revolvers
7 compared to combined rifles and shotguns.
8 Q. And just looking at the bottom chart, do
9 you agree that the percentage of long guns made up
10 by rifles has, generally speaking, increased
11 substantially from 1995 to 2021?
12 A. Rifles does show an increase, but it's
13 always generally been higher than shotguns since
14 like 2000.
15 Q. All right. Let's look just briefly
16 at --
17 MR. LOTHSON: When do you want to be at a
18 stopping point?
19 MR. WELLS: How long have we been going for?
20 THE COURT REPORTER: It's been another hour
21 25.
22 MR. WELLS: We can stop now.
23 (Lunch recess taken from
24 12:08 p.m. to 1:04 p.m.)

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1 A F T E R N O O N S E S S I O N
2 E X A M I N A T I O N (resumed)
3 BY MR. WELLS:
4 Q. All right. So it is 1:04 p.m.
5 Did you have a nice lunch?
6 A. It was a nice lunch. How was yours?
7 Q. It was good.
8 A. Good.
9 Q. So I'd like to direct your attention
10 back to Deposition Exhibit 6, the "Firearm
11 Production in the United States," page 7, which is
12 NSSF 000041. Do you recognize this chart?
13 A. Yes.
14 Q. What is it?
15 A. It is our MSR production chart from 1990
16 to 2021.
17 Q. And could you read to me the title of
18 the chart.
19 A. "Modern Sporting Rifle Production in the
20 United States, 1990 to 2021."
21 Q. And "modern sporting rifle," as used
22 here, does that have the same meaning as your
23 interrogatory response No. 12 that we looked at
24 earlier?

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1 A. As an MSR? Yes.

2 Q. And in terms of what's included in this

3 chart, these are production figures, not ownership

4 figures; is that fair to say?

5 A. That's correct.

6 Q. Are there any shotguns included in this

7 chart?

8 A. To the best of my knowledge, no,

9 shotguns are not included.

10 Q. Are there any pistols included in this

11 chart?

12 A. Yes, there are.

13 Q. Where would the pistols be captured in

14 this chart?

15 A. Within the production tab.

16 Q. So is that the blue column?

17 A. Yes.

18 Q. Where -- are there particular years

19 where there are pistols that are included?

20 A. I don't know off the top of my head all

21 of the years where pistols would be included, but

22 generally speaking, manufacturers have been

23 making -- legally making, per ATF's regulations, an

24 AR/AK/MSR-type pistol for a number of years. I

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1 just don't know how far back that scales.

2 Q. Other than those pistols that you just

3 described -- AR-type, AK-type -- are there any

4 other types of pistols covered by this -- the data

5 in this chart?

6 A. There are variants thereof, yes.

7 Q. When you say "variants," what do you

8 mean?

9 A. So it's by the type of platform that it

10 is. It's not an AR. It's not an AK. But it still

11 has all of the features of those individual -- or

12 those two types of firearms. But they're not,

13 technically speaking, AR or AK.

14 Q. Why not?

15 A. They're just not. So the operational

16 system is different. They might have split

17 receiver; they might not have a split receiver.

18 The actions are largely similar, but they're not

19 identical to AR/AK.

20 Q. Can you give me an example of what type

21 of firearm?

22 A. Yeah. So FN SCAR, for example. It's

23 not an AR, but it falls under the MSR category.

24 CZ Bren. HK MP5/SP5.

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1 Q. Any other examples that come to mind?

2 A. Those are the top three that are off the

3 top of my head right now.

4 Q. All right. Are there .50-caliber rifles

5 that are captured in this chart at NSSF 000041?

6 A. There certainly could be, just because

7 some manufacturers may create a .50 Beowulf, for

8 example, chambering in an AR platform. But as far

9 as .50-caliber, I think that's the extent just

10 because, as I covered earlier, a .50 BMG just

11 doesn't really fit inside a AR platform, typically.

12 Q. Are .50-caliber BMG-chambered firearms,

13 are they typically larger than modern sporting

14 rifles?

15 A. The frame has to be bigger to take that

16 large of a cartridge.

17 Q. And are -- so is that a "yes"?

18 A. I believe so, yes.

19 Q. Are .50-caliber rifles typically heavier

20 than modern sporting rifles?

21 A. Which .50-caliber rifles? Because there

22 are .50-caliber rifles that are MSRs chambered in

23 .50 Beowulf that are .50-caliber that are MSRs.

24 Q. So I'm exclusively referring to

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1 .50-BMG-caliber.

2 A. Okay. Can you -- sorry. Would you mind

3 rephrasing for me.

4 Q. Sure. So are there, generally speaking,

5 rifles that are chambered in .50-BMG-caliber, are

6 they typically heavier than modern sporting rifles?

7 A. Yes.

8 Q. By a lot?

9 A. I don't know what "a lot" is, generally

10 speaking. But they are heavier, simply because the

11 mass required to hold that cartridge and control

12 the combustion and all the other things that go

13 into that gun, you typically are going to have a

14 bigger, heavier, just by mass, rifle.

15 Q. And how would you describe the relative

16 proportionality of .50-BMG-caliber rifles compared

17 to modern sporting rifles? Which is more prevalent

18 in the consumer market?

19 A. In regards to what's more popular, as

20 in, like, what's -- there's more, generally, of

21 them?

22 Q. So which are -- in terms of production,

23 for instance. Like, which is a larger set of

24 production that's manufactured every year in the

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1 United States?
 2 A. I would say calibers smaller than .50
 3 would be more prevalent, knowing -- recognizing
 4 that there are some .50-caliber carveouts like
 5 .50 Beowulf that exhibit.
 6 Q. How does .50 Beowulf compare to .50 BMG
 7 in terms of caliber?
 8 A. It's the same caliber.
 9 Q. What's different about Beowulf compared
 10 to BMG?
 11 A. Completely different cartridge,
 12 different case, different amount of powder in it.
 13 Q. And does that result in different muzzle
 14 velocity and muzzle energy?
 15 A. All of those things combined, yes.
 16 Q. Just looking back at NSSF 000041, why
 17 are all the numbers in this modern sporting rifle
 18 production chart rounded to the nearest thousandth?
 19 A. This is an estimate, and it's the
 20 closest that we get. So just to make it a clean
 21 chart, we round to the closest thousandth.
 22 Q. So you agree that, other than the column
 23 that says "Year," all of the other figures that are
 24 included in this chart are estimates?

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1 A. Yes. We are very open that the MSR
 2 chart on page 7 is our best estimate.
 3 Q. Where does it say "estimate" on this
 4 page?
 5 A. It does not. But as we are discussing
 6 right now, I'm not trying to withhold any
 7 information that says we don't provide that.
 8 Q. But you agree that you can't find the
 9 word "estimate" on this page; is that right?
 10 A. That's correct. The word "estimate" is
 11 not on here.
 12 Q. Okay. So can you just walk me through
 13 what's in the different columns. So starting with
 14 the orange column is the year.
 15 A. Year.
 16 Q. What's in the blue column?
 17 A. That is US production, less exports of
 18 MSR platform.
 19 Q. And what's -- where is the data from
 20 this column coming from?
 21 A. That's coming from ATF AFMER and USITC,
 22 in combination with industry reporting. It's all
 23 those three put together, depending on the
 24 manufacturer.

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1 Q. And when you say in combination with
 2 industry reporting, what do you mean?
 3 A. So it's what we talked about earlier,
 4 that for some manufacturers we have to go to them
 5 and ask for that proportion of their manufacturing
 6 of this particular year, for this particular
 7 platform, how many -- or for these particular
 8 firearms that you made, how many are MSR. And then
 9 from there we can find out -- we can put in the
 10 column of production minus -- plus imports, minus
 11 exports.
 12 Q. About how many manufacturers' production
 13 figures are incorporated in the blue column?
 14 A. I know that it's dozens, but I don't
 15 know a specific number.
 16 Q. Is it less than a hundred?
 17 A. I'd have to go back and look at the
 18 chart. I've reviewed a lot of information in
 19 preparation for this, and I am familiar with the
 20 master document that we have. But at this time I
 21 can't recall exactly how many we have on there.
 22 Q. Is it less than 500?
 23 A. I would say yes, it's less than 500.
 24 Q. And in terms of this industry reporting,

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1 how many -- to produce this chart, how many
 2 different industry members or how many different --
 3 when I say industry members, I mean, like, one
 4 company. How many are you talking to in a given
 5 year to get the information you need to create this
 6 chart?
 7 A. It depends on the year. So sometimes we
 8 can talk to a member, and they say flat-out this is
 9 what we're using, and this is on track for, you
 10 know, this period. This is what we're using.
 11 Other times we have to -- when there's ambiguity,
 12 we've got to go back and get more answers.
 13 Q. Do you ever ask for records from the
 14 industry member to inform the blue column?
 15 A. We do not ask for numbers. We
 16 specifically ask for their MSR production, which,
 17 in itself, is a type of record. But we don't ask
 18 for a document to be produced.
 19 Q. So the manufacturers don't actually give
 20 you a specific number of number of MSRs
 21 manufactured?
 22 A. No. As I said earlier, sometimes their
 23 answers may be a specific number, or it may be a
 24 proportion that we apply to their production.

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1 Q. So in preparing the blue column, when
2 you're relying on industry reporting, you are
3 having communications with industry members, and
4 they're either providing you a number of modern
5 sporting rifles or a percentage of their production
6 of rifles that you're then applying to the AFMER
7 number; is that right?
8 A. They would tell us how many of their
9 firearms they produced were MSRs, whether it's a
10 number or a proportion.
11 Q. And just to be clear, the figure or
12 the -- so looking at 2021, for instance, in the
13 blue column it says 3,178,000. That figure
14 encompasses data from multiple industry members; is
15 that right?
16 A. Yes.
17 Q. Do -- and I think you testified earlier
18 it's probably dozens of industry members; is that
19 right?
20 A. Yes.
21 Q. And that information all gets aggregated
22 to generate this one number?
23 A. That's correct.
24 Q. Let's see. What is the green column?

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1 A. That is the import -- that is a US
2 import, less exports, of MSR platforms.
3 Q. Where is that -- what are the data
4 sources for the information in the green column?
5 A. USITC. It's a snapshot in time, data
6 pull that we performed, in order to gather
7 information using codes that encompass MSR
8 platforms.
9 Q. When you say "data pull," what do you
10 mean?
11 A. So we utilize the USITC website to do a
12 report pull, and then that report then talks about
13 different ECCNs and HTS codes that we then utilize
14 to make an -- utilize in our estimation for the
15 imports, less exports.
16 Q. Do you retain that data pull report at
17 NSSF?
18 A. I know that we have them. I don't know
19 if we have all of them or how many we might have.
20 But we definitely download it, and we keep a copy.
21 I believe we've produced that in the production.
22 MR. WELLS: Obviously, if we haven't gotten
23 that, I think we would like that. I think I've
24 seen something like that. We'll follow up. I just

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1 want to note it for the record.
2 BY MR. WELLS:
3 Q. Okay. And returning to NSSF 00041, the
4 right-hand column, it says "Annual Total" in black.
5 Is it fair to say that that is the sum of the blue
6 column and the green column?
7 A. That's correct.
8 Q. For each year, right?
9 A. Yes.
10 Q. So for 2021, the blue column says
11 3,178,000; the green column says 520,000; the black
12 column entry for 2021 is 3,698,000. That's the sum
13 of the blue figure and the green figure in 2021?
14 A. That's the sum of production, plus
15 imports, minus exports.
16 Q. Okay. How long has a version of this
17 chart -- not the 2023 version, necessarily -- but
18 any modern sporting rifle production chart existed
19 at NSSF?
20 A. I don't know how long it's existed.
21 I've, you know, talked to NSSF staff that have been
22 around, and I couldn't get a hard date of when this
23 was originally produced and who produced it. But I
24 know that our team in research has the files to

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1 update it and that we do so every year as a course
2 of normal business.
3 Q. There was, at some point in time,
4 though, an original modern sporting rifle
5 production chart; you just don't know who created
6 the first one?
7 A. That's correct.
8 Q. Do you know approximately when the first
9 modern sporting rifle production chart was created?
10 A. As I sit here today -- I know I've
11 looked at a lot of records that we have -- I don't
12 recall the specific date. If you'd like me to go
13 back and investigate, I certainly can.
14 Q. What's the earliest version of this
15 chart that you've seen?
16 A. I want to say the 2018 version back in
17 our 2020 IIR.
18 Q. When you, at NSSF, are preparing an
19 updated version of this modern sporting rifle
20 production chart, for data that's, you know, from
21 2000 and before, do you go back and validate it
22 each year, or do you rely on the calculations from
23 prior years that have already been done?
24 A. We typically don't touch the stuff

<p style="text-align: right;">Page 158</p> <p>1 before, unless ATF gives us a reason to go back 2 because they published an amendment that a 3 manufacturer has disclosed. 4 Q. So is it fair to say, then, for the 2023 5 version of the report, the only row that you're 6 touching is the 2021 row, unless there's some ATF 7 clarification; is that fair to say? 8 A. That's correct. 9 Q. And is that consistent with prior 10 versions of the report that you've been involved 11 with; you only go back if there's an ATF-generated 12 reason to go back? 13 A. Yes. Unless ATF tells us that their 14 record has been changed, we don't have any reason 15 to go back because, largely, ATF provides and 16 produces the backbone of a lot of our reports. 17 Q. Does NSSF have a chart showing 18 production of other subcategories of rifles? 19 A. I don't believe so. 20 Q. Why not? 21 A. It's never been asked by our members, so 22 we don't have one. 23 Q. Was a request from members the reason 24 that the modern sporting rifle production chart --</p>	<p style="text-align: right;">Page 160</p> <p>1 your attention to the screen up here. 2 A. Sure. 3 Q. Are you familiar with this document? 4 A. Yes. 5 Q. What is it? 6 A. This is a portion of our master document 7 that we update every year with new data from the 8 AFMER, USITC, and industry reporting on how many 9 MSRs have been produced. 10 Q. And, in particular, we're looking at the 11 tab that says "Master_Est MSR Production." Do you 12 see that? 13 A. Yes. 14 Q. And this is a spreadsheet/workbook that 15 has multiple tabs; is that right? 16 A. Yes. 17 Q. And what specifically is captured in the 18 first tab here? 19 A. The first tab is a collection from 1990 20 to 2021 of our MSR production estimates. 21 Q. When was this spreadsheet first created? 22 A. I don't know. Likely, it was the same 23 time that the table/chart was created on page 7. 24 But, again, I wasn't around. I did do some</p>
<p style="text-align: right;">Page 159</p> <p>1 was that the reason it was created, request from 2 members? 3 A. I don't know. 4 Q. All right. Let's pull up a spreadsheet. 5 So I'm going to go ahead and show you what has been 6 previously marked as Deposition Exhibit 8. 7 A. This is all mine? 8 Q. Yep. So there's two physical documents 9 that I've handed you. One is No. 8 and one is 10 No. 9. And I can represent to you that these are 11 both printouts of "NSSF 002351 Redacted." 12 A. Yep. 13 MR. LOTHSON: Do you have a copy of 9, by 14 chance? 15 MR. WELLS: Oh, yeah, I do. Sorry. I've got 16 them over here. 17 MR. LOTHSON: That's fine. Thank you. 18 (NSSF Deposition Exhibits 8 19 and 9 were marked for 20 identification.) 21 BY MR. WELLS: 22 Q. And I've asked my colleague, Mike 23 Tresnowski, to pull up on the screen "NSSF 002351 24 Redacted" in native form. So if I could direct</p>	<p style="text-align: right;">Page 161</p> <p>1 investigation to see if I could find it. Did not 2 have a certain answer from anybody on staff. 3 Q. And does this Master_Est MSR Production 4 tab, is this a document that is modified over time? 5 A. Yes. It gets re-updated every year. As 6 we get new ATF AFMERs, we then update the next 7 year. So this upcoming year, as the ATF AFMER for 8 2022 just got posted, we'll have the 2022 tab 9 created. 10 Q. Did this document exist when you joined 11 NSSF? 12 A. Yes. 13 Q. Who was the owner, so to speak, of this 14 document when you joined in NSSF? 15 A. It was largely research owned it. 16 Q. And who would that have been at that 17 time? 18 A. That would be Jim Curcuruto, Dianne 19 Vrablic. I believe, through talking through 20 Dianne, Jim organized and updated this and then 21 handed it off to her as he left. 22 Q. And I've handed you what's been 23 previously marked as Deposition Exhibit 8. Do you 24 recognize the information in this exhibit?</p>

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1 A. I recognize the exhibit.
 2 Q. What is it?
 3 A. This is what we're looking at on there.
 4 Q. Correct.
 5 A. Yeah.
 6 Q. So it is a printout to make it --
 7 A. Yeah.
 8 Q. -- more manageable. I just want to make
 9 sure that it looks right to you.
 10 A. Yes.
 11 Q. I can represent to you that it is a
 12 printout of what you see on the screen. But, more
 13 specifically, it's a printout of columns A through
 14 AI of "NSSF 002351 Redacted." Is that consistent
 15 with what you're seeing in Deposition Exhibit 8?
 16 A. That's correct.
 17 Q. Okay. I'm now going to ask you to turn
 18 to Deposition Exhibit No. 9. So do you recognize
 19 this document?
 20 A. This is a continuation of the analysis
 21 that we've been doing for the MSR chart. This is
 22 just a different portion of that document.
 23 Q. And do you see at the top here where it
 24 has column numbers?

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1 A. Yes.
 2 Q. And what's that first column number on
 3 the upper left?
 4 A. AI.
 5 Q. And what's the last column number on the
 6 top right -- far top right of the document?
 7 A. AV.
 8 Q. So I can -- do you -- look up on the
 9 screen right now. Do you see "NSSF 002351
 10 Redacted," do you see columns AI through AV?
 11 A. Yes.
 12 Q. And do you agree that what you're seeing
 13 on the screen in "NSSF 002351 Redacted" is the same
 14 as this printout that's now Exhibit 9?
 15 A. Yeah. We can only see a portion at a
 16 time there, but I can see the full thing here.
 17 Q. So just for your own kind of navigation
 18 here, the first document is the first chunk of
 19 columns in this Master_Est MSR production tab. The
 20 second printout is the second chunk of columns,
 21 right? Because it's a huge document, right?
 22 A. Yes.
 23 Q. All right. So let's go back to No. 8.
 24 A. Okay.

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1 Q. And just looking at the title of the
 2 tab, "Master_Est MSR Production," what does the
 3 "Est" mean?
 4 A. Estimate.
 5 Q. And why is the word "estimate" included?
 6 A. Because we are trying to get as close to
 7 reality as possible, but we know, through having to
 8 omit certain manufacturers, as we discussed before
 9 earlier today, sometimes we have to omit
 10 manufacturers, and sometimes they don't provide
 11 clarity.
 12 Q. And just to be clear, this spreadsheet
 13 that we're looking at, how is the calculations --
 14 how are the calculations that are reflected in this
 15 spreadsheet used in the rifle production -- or the
 16 firearm production report that we were previously
 17 looking at?
 18 A. Certainly. In its unredacted format,
 19 we've got the manufacturers, and each manufacturer
 20 corresponds to a certain number of production.
 21 Those are tabulated and simply added together to
 22 get a sum number.
 23 Q. And you mentioned redactions. What has
 24 been redacted here?

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1 A. Company names.
 2 Q. And would those appear in column A?
 3 A. Those would have, yeah.
 4 Q. And does column AI also appear to have
 5 redactions?
 6 A. Yes.
 7 Q. What's been redacted from that column?
 8 A. Contact information.
 9 Q. Contact information for whom?
 10 A. Manufacturers.
 11 Q. So is it fair to say that the rows in
 12 this column, each row -- or the rows in this
 13 spreadsheet, Deposition Exhibit 8, roughly
 14 correspond to one manufacturer of firearms; is that
 15 right?
 16 A. Yes.
 17 Q. All right. So flipping to the third
 18 sheet here in this very large exhibit, directing
 19 your attention to row 112. Do you see where it
 20 says "US Annual Total"?
 21 A. Yes.
 22 Q. And what's in this row?
 23 A. Those are the totals of all of the years
 24 from 1990 to 2021.

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1 Q. And in front of you you've got
2 Deposition Exhibit 8 turned to page 3 and
3 Deposition Exhibit 6 turned to page -- internal
4 page 7. So that's NSSF 41. Is it fair to say
5 that, looking at Exhibit 8, the totals from row 12
6 feed into the blue column in NSSF 41?
7 A. The rows from 112.
8 Q. Or the numbers from 112, row 112, in
9 Deposition Exhibit 8 feed into NSSF 41, the chart,
10 and the blue column, specifically?
11 A. Yes.
12 Q. And the only difference is that the
13 numbers from row 112 have been rounded before being
14 included in NSSF 41?
15 A. That's correct.
16 Q. So what we're looking at in Deposition
17 Exhibit 8 is essentially the backup data for making
18 the calculations in the blue column of NSSF 41; is
19 that fair to say?
20 A. Yeah. This is a portion of what goes
21 into this.
22 Q. Okay. So directing your attention back
23 to Exhibit 8, bottom left corner, do you see
24 there's -- next to row 114, it says "this color

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1 represents confidential data estimates"?
2 A. Yes.
3 Q. What does that mean?
4 A. It's what we talked about previously,
5 where we would have to reach out to manufacturers
6 and get clarification on either the proportion or
7 the direct number of MSRs that they self-disclose
8 to us.
9 Q. If I'm trying to figure out which cells
10 correspond to numbers that are based on
11 confidential estimates, how do I determine that?
12 A. Well, there is color coding here, but
13 this is also just one portion of the larger
14 document.
15 Q. So in terms of numbers, if a number is
16 in a cell that's colored orange, does that mean
17 it's based on a confidential data estimate?
18 A. Yes. This is being called out for that.
19 But I can't, sitting here at this point in time,
20 say that any of the noncolored ones weren't
21 confidential.
22 Q. So there may be additional numbers that
23 are based on confidential data estimates beyond the
24 cells that are colored orange?

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1 A. That's correct. I can't say that, for
2 certain, every single one of them was accurately
3 color coded, largely because this is a very big
4 project. We do it every year. Sometimes we might
5 miss a formatting change.
6 Q. Do you see where it says "italic figures
7 are rough estimates"?
8 A. Yes.
9 Q. What does that mean?
10 A. If we are -- you know, if a
11 manufacturer, when we reach out to them, gives us a
12 "about" or any clarification of this number, then
13 that is documented in this.
14 Q. "Gives us an 'about'"? What does that
15 mean?
16 A. About number. So if we reach out to
17 them and they don't give us a hard-and-fast number
18 or proportion -- they say, "eh, it's about this" --
19 that is recorded here.
20 Q. Does that happen periodically;
21 manufacturers won't give you a hard-and-fast
22 number?
23 A. It does happen. I can't speak to the
24 entirety of the history of the MSR chart, how many

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1 times that's happened. But it does happen.
2 Q. Just flip back to the first page of
3 Deposition Exhibit 8, if you would. And just
4 looking at the top, row 3, where it lists years, do
5 you see that?
6 A. Yes.
7 Q. The years 1995 to 2004 are colored
8 orange in columns G through P. Do you see that?
9 A. Mm-hmm.
10 Q. Do you know why?
11 A. I don't know why. And I think they're
12 peach, not orange. I'm not positive what the peach
13 designates versus the orange.
14 Q. Do you know whether that might
15 correspond to the time period in which the Federal
16 Assault Weapons Ban was in effect?
17 A. I can't speak to it. I know that this
18 is what the data represents. Whether or not that's
19 what the color coding is for, it's not called out
20 in this document. So as it stands right now in
21 this point in time, I'd have to go back and confirm
22 if that's the case.
23 Q. Okay. I'm going to now direct your
24 attention to the later pages in this document. So

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1 moving past the portions that have the numbers
 2 associated with them.
 3 A. Go past all of them?
 4 MR. WELLS: So, actually, before we do that, I
 5 want you to take a look at the screen.
 6 And, Mike, could you go to, for
 7 instance, AA7 with the red. And can you hover over
 8 it. Yeah.
 9 BY MR. WELLS:
 10 Q. So do you see, looking at the screen in
 11 AA7, how there's a little red triangle in the
 12 corner of this cell?
 13 A. Yes.
 14 Q. Do you have an understanding of what
 15 that means?
 16 A. It looks like there's more data behind
 17 it.
 18 Q. Are you familiar with the comment
 19 function in Excel?
 20 A. Yes.
 21 Q. And does NSSF use comments -- the
 22 comment function in the Excel version of this
 23 document?
 24 A. I didn't know whether or not we have

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1 before. Clearly, there's something there. It
 2 wasn't top of mind when I was reviewing the data.
 3 Q. So you don't look at the comments that
 4 are included in the spreadsheet that we're looking
 5 at regularly?
 6 A. For the historic numbers that you're
 7 going back to all the way to 2015? That is not a
 8 normal course of business, to go back many years
 9 and see what comments were beforehand.
 10 Q. The numbers from 2015 and many years
 11 beforehand are included in the modern sporting
 12 rifle chart in the 2023 edition of --
 13 A. That's correct. It's a summation.
 14 Q. So whatever decisions were made for 2015
 15 that are reflected in these comments are just kind
 16 of baked into that number already; is that right?
 17 A. That's correct. Every year we do that
 18 year update, unless we have a reason to go back.
 19 Q. And the only reason that you identified
 20 to go back would be an ATF-generated change; is
 21 that right?
 22 A. That's correct.
 23 Q. So now flipping to the portions of
 24 Exhibit 8 that look like this. Let the record

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1 reflect I'm showing the witness a column that has
 2 text but not many numbers. Do you see that?
 3 A. Yes.
 4 Q. So I can represent to you that what this
 5 is is a printed-out version of the comments. Excel
 6 gives you an option to print out the comments at
 7 the conclusion. So these are the comments that are
 8 associated with the red triangles in this Excel
 9 spreadsheet, "NSSF 002351 Redacted," Master_Est MSR
 10 Production that's up on the screen.
 11 A. That's a mouthful.
 12 Q. So just looking at these, and directing
 13 your attention to where it says cell AA7, cell AD7,
 14 cell AE7, do you see those comments?
 15 A. I do.
 16 Q. And do you see any names you recognize
 17 there?
 18 A. Both Jim Curcuruto and Dianne Vrablic.
 19 Q. And looking at cell AA7, there's a note
 20 from Jim Curcuruto that says "51,500 misc." Do you
 21 have an understanding as to what that means?
 22 A. These are frames and receivers.
 23 Q. How do you know that?
 24 A. It's the miscellaneous category defined

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1 by ATF.
 2 Q. And what does that mean in terms of this
 3 chart? How is that 51,500 figure fed into this
 4 Excel spreadsheet?
 5 A. For the corresponding manufacturer, that
 6 51,500 number -- 51,500 number is a representation
 7 of MSR frames and receivers that were produced that
 8 year by that manufacturer.
 9 Q. So I'm looking at AA7 up on the screen,
 10 "NSSF 002351," the master MSR production tab, and
 11 the number is 50,000, which is different than
 12 51,500 misc. Do you have any idea why that might
 13 be?
 14 A. There might have been a need to be
 15 conservative with the number. I wasn't there and I
 16 wouldn't do it, but that's my only guesstimate, if
 17 you're asking my personal opinion.
 18 Q. When you say you weren't there and you
 19 wouldn't do it, why not?
 20 A. No, didn't do it.
 21 Q. Oh, didn't do it.
 22 A. Didn't do it.
 23 Q. Based on this note, does this indicate
 24 that there were at least 50,000-plus frames or

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1 receivers that were included in the calculation of
 2 modern sporting rifles for the year 2015 that
 3 NSSF --
 4 A. For that manufacturer, yes.
 5 Q. And that number would, again, be used
 6 from year to year in documents like the 2023
 7 firearm production report that we were previously
 8 looking at, Deposition Exhibit 6, correct?
 9 A. Yes. Any previous information typically
 10 is carried over into the next year.
 11 Q. All right. I'm directing your attention
 12 now to the cells further down -- or the comments
 13 further down the line that say cell AB19, cell
 14 AE19, cell AF19. You understand that when it says
 15 cell AF19, it means column AF, row 19?
 16 A. Yes.
 17 Q. And do you recognize names of people
 18 that are familiar to you?
 19 A. Yes.
 20 Q. Jim Curcuruto and Dianne Vrablic; is
 21 that right?
 22 A. Yes.
 23 Q. And it appears that they have included
 24 notes at some point in time reflecting decisions

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1 that are associated with these cells; is that
 2 right?
 3 A. That's correct.
 4 Q. And, for instance, in AB19, Jim
 5 Curcuruto included a note that said "combo rifles
 6 plus 13,800 misc"? Do you see that?
 7 A. I do.
 8 Q. What does that mean?
 9 A. That would be rifles plus miscellaneous;
 10 again, "miscellaneous" being frames and receivers.
 11 Q. And I believe you said earlier that an
 12 AR lower receiver could grow into an AR pistol or
 13 it could grow into an AR rifle; is that right?
 14 A. I said it could grow up to be one.
 15 Q. Grow up to be one.
 16 A. That's right. That's right.
 17 Q. So, like -- okay. So there may be some
 18 group of this 13,800 miscellaneous that grows up to
 19 be an AR rifle and another portion that grows up to
 20 be an AR pistol; is that right?
 21 A. That's correct. And they could also be
 22 short-barreled rifles, as well, if they are
 23 Formed 1 -- if they are Form 1'd. Or they could
 24 remain frames or receivers in someone's safe.

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1 Q. Or if they are illegally made into a
 2 short-barrel rifle, right?
 3 A. Certainly, there is a criminal aspect
 4 there if someone were to legally acquire a firearm
 5 and go through illegal procedures to create an SBR.
 6 Q. So "yes"?
 7 A. Someone could create a -- produce a
 8 criminal act and illegally make an SBR. That does
 9 happen. ATF is all over it as far as regulating
 10 that activity.
 11 Q. Okay. All right. Now I'm directing
 12 your attention to the bottom of this page where it
 13 says cell AB23. Do you see that?
 14 A. I do see that.
 15 Q. And that AB23, again, corresponds to
 16 cell AB23 and the big spreadsheet that we're
 17 looking up at on the screen?
 18 A. I don't see it on the screen. There we
 19 go. I see it.
 20 Q. And what figure, looking at the screen,
 21 do you see in cell AB23?
 22 A. I'm sorry. Do you want me to tell you
 23 the value that's in AB23?
 24 Q. Yes.

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1 A. That is 108,000.
 2 Q. Okay. Now, looking back at the note
 3 here for cell AB23, do you see it's Jim Curcuruto,
 4 and there's a comment "75 percent of total are,
 5 quote, NSR/AK made in US, but not sure if all are
 6 AK. Need to contact. 90,000 rifles plus 54,000
 7 misc equals 144,000. Going to use 90K to be safe,
 8 as no response from co."?
 9 What does that mean?
 10 A. Sounds like Jim had a figure of
 11 75 percent, tried to confirm it, didn't get
 12 follow-up.
 13 Q. Where would that 75 percent come from?
 14 A. I can't speak to that.
 15 Q. In your experience, is that type of
 16 percentage what you get from manufacturers when you
 17 have conversations with them about what their rough
 18 proportion of modern sporting rifles is?
 19 A. It certainly varies from manufacturer to
 20 manufacturer. But they are not made-up percentages
 21 that we assign. We only use percentages if we were
 22 provided them. And Jim, here -- I can only assume
 23 what he was trying to do, was update that figure.
 24 And if he didn't have an update, he used the

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1 previous proportion.
 2 Q. What does "AK" refer to in this comment?
 3 A. AK? I don't know what else to --
 4 Q. What do the letters AK stand for in this
 5 comment?
 6 A. I forgot the A in AK, but the K is
 7 Kalashnikov. It's AK-variant rifle.
 8 Q. Would it be Avtomat Kalashnikov?
 9 A. That would be it.
 10 Q. Just brushing up on my Russian.
 11 A. Oh, it's what I do on weekends.
 12 Q. It says "needs to contact" here. Do you
 13 have an understanding as to what that means?
 14 A. It sounds like he wanted to update the
 15 proportion, wanted to reach out to contact. But
 16 the data that's provided here does not confirm or
 17 deny whether he did or did not reach out to
 18 contact.
 19 Q. And, again, we see that this "54,000
 20 misc," that would be receivers, in your
 21 understanding?
 22 A. Yes. Frames and receivers.
 23 Q. And it says here "going to use 90K to be
 24 safe, as no response from company." What do you

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1 understand that to mean?
 2 A. He did not get a response when he
 3 reached out, and so he used the previous proportion
 4 that was provided from the company.
 5 Q. And just directing your attention back
 6 to AB23. As we discussed earlier, the actual
 7 figure in AB23 is 108,000. Do you see that?
 8 A. That's correct.
 9 Q. Why would it be different than the
 10 90,000 reflected in the comment?
 11 A. It could have been that -- and you're
 12 asking me to assume here because I wasn't there
 13 what I did it -- when this was done. But I have to
 14 assume that either there was a follow-up or some
 15 sort of information that validated Jim to, at the
 16 time, change that number to 108.
 17 Q. Do you have any documentation of how
 18 that decision was made?
 19 A. I do not.
 20 Q. Does NSSF have documentation of how that
 21 decision was made?
 22 A. I sincerely doubt it, but we can go back
 23 and look if you need us to. I don't think we have
 24 records that far back.

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1 Q. The 108,000 that we see in AB23, that
 2 figure is included in the sum totals that are
 3 reflected in NSSF 41 --
 4 A. Yes.
 5 Q. -- the firearm production -- or the
 6 modern sporting rifle production chart in NSSF 41;
 7 is that right?
 8 A. That's correct. Summation of all the
 9 figures combined.
 10 Q. All right. I'm going to direct your
 11 attention to -- if you flip a couple pages down to
 12 where you're looking for cell number 69. I'm
 13 sorry. AB69. Do you see that there's a comment
 14 there from Jim Curcuruto that says "13,340 but some
 15 bolt-action"?
 16 A. I do.
 17 Q. Do you have any understanding as to what
 18 that means?
 19 A. I do not. It may be that gray area that
 20 you were alluding to before. But that's only me
 21 speaking to what I know at this point in time.
 22 Q. Looking at the screen that has "NSSF
 23 002351 Redacted," Master_Est MSR Production,
 24 looking at cell AB69, what's the figure that's

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1 included there?
 2 A. 10,000.
 3 Q. And that 10,000 is different than 13,340
 4 reflected in the note; is that right?
 5 A. That's correct.
 6 Q. Do you know why that figure is
 7 different?
 8 A. Based off of how we update this chart,
 9 he likely removed the bolt-actions from that so he
 10 only captured MSRs in the count.
 11 Q. Did the company that corresponds to
 12 row 69 produce exactly 3340 bolt-action firearms in
 13 that year?
 14 A. They may have. I can go back and check
 15 to see. Which year is that? 2016?
 16 Q. 2016.
 17 A. It will take some digging, but I can
 18 certainly ask.
 19 Q. You don't know which company, just
 20 looking at this document, though, because the
 21 company names have been redacted; is that right?
 22 A. That's correct.
 23 Q. Let's look at number 79 -- or row 79,
 24 the comments corresponding to row 79. Do you see

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1 where it says cell AB79?
 2 A. Yes.
 3 Q. It's a note from Dianne Vrablic. It
 4 says "Rifles 20,792, but one traditional model.
 5 Est. 15,000 for rifle. Pistols 4,559."
 6 Do you have an understanding as to
 7 what that means?
 8 A. It sounds like they took all of the
 9 rifle production for that year, reduced to
 10 eliminate the traditional rifles, and then counted
 11 the pistols as MSRs.
 12 Q. Do you know how the quantity of the
 13 reduction would have been determined?
 14 A. Likely would have been from reaching out
 15 to the manufacturer directly.
 16 Q. Do you know if there are records of that
 17 correspondence?
 18 A. We -- based on what we've talked about
 19 before -- pretty sure I alluded to it -- there is a
 20 confidentiality agreement when we ask for this
 21 information. We include it in our e-mails. And
 22 anytime that those confidential figures or
 23 proportions are provided, we are done with the
 24 exercise, and we delete them. So the records

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1 are -- as far as e-mails for correspondence -- are
 2 expunged, per the confidentiality.
 3 Q. Do you have a copy of that agreement at
 4 NSSF?
 5 A. It's not a paper agreement, as far as I
 6 understand it. They are just the high points that
 7 we try to communicate to our members as a -- in the
 8 course of business.
 9 Q. Again, looking at the comment associated
 10 with cell AB79, what does "one traditional model"
 11 mean?
 12 A. That could be that all rifles are
 13 27,000 -- or I'm sorry -- 20,792, but one of those
 14 available rifles is not an MSR.
 15 Q. "Pistols 4,559." Does that refer to --
 16 what types of pistols?
 17 A. Likely MSR pistols.
 18 Q. And would those MSR pistols have been
 19 included in that company's total for the modern
 20 sporting rifle calculation for the year reflected
 21 in this?
 22 A. Yes.
 23 Q. Calculated in this chart?
 24 A. Yes.

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1 Q. At what point did NSSF begin including
 2 MSR -- I'm sorry -- AR pistols in its modern
 3 sporting rifle calculation?
 4 A. I'm not sure. I can certainly go back
 5 and investigate. But the prevalence of AR/AK
 6 MSR-platform pistols has been prevalent for over a
 7 decade. And that's strictly because ATF allows
 8 that manufacturer of that pistol in that platform,
 9 and it's something that our industry makes for our
 10 consumers.
 11 Q. Generally speaking, if there are
 12 comments that refer to pistols in this chart, does
 13 that suggest to you that there are pistols for that
 14 particular manufacturer that are being included in
 15 the modern sporting rifle calculation?
 16 A. Yes.
 17 Q. I'm going to direct your attention to
 18 AD92. AD92. So you've got to flip, I think, one
 19 more page. Towards the bottom there.
 20 MR. LOTHSON: What's this -- where are we at?
 21 MR. WELLS: Cell AD92.
 22 BY MR. WELLS:
 23 Q. And there's a series of cells that say
 24 AE92, AF92, AG92. Do you see those? And this

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1 is -- I'm looking at the comments.
 2 A. AE92, yeah. I just wanted to see it on
 3 there.
 4 MR. TRESNOWSKI: Yeah, it's hard to get the
 5 comment in.
 6 MR. LOTHSON: I'm sorry. I'm not -- I'm
 7 trying to locate this one.
 8 THE WITNESS: Alpha-Delta-92.
 9 MR. LOTHSON: Sorry. About how many pages in
 10 is it?
 11 MR. WELLS: It is three from the back.
 12 MR. LOTHSON: Oh. Got it.
 13 BY MR. WELLS:
 14 Q. So directing your attention to
 15 Deposition Exhibit 8, the comments at cell AD92,
 16 AE92, AF92, and AG92, those are all comments from
 17 Dianne Vrablic. Do you see that?
 18 A. Yes.
 19 Q. Do you see in the comment for AD92, it
 20 says "misc"? That refers to the ATF miscellaneous
 21 category?
 22 A. Yes.
 23 Q. And then it says "Rev in 2022 to include
 24 rifles and shotguns." Do you have an understanding

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1 as to what that means?
 2 A. Yes. More than likely, what happened
 3 there is that the manufacturer started producing
 4 either AR- or AK-style MSR-category shotguns. And
 5 so while they are reported as shotguns, they fall
 6 into the umbrella of MSR.
 7 Q. Would those types of shotguns be
 8 included in NSSF's calculation of modern sporting
 9 rifle production?
 10 A. I'm not positive. I don't know if this
 11 note here denotes that they were included when we
 12 sussed out the shotguns -- "sussed out" meaning
 13 remove the shotguns -- or we include them. I'd
 14 have to go back and determine whether or not they
 15 were included.
 16 Q. Is there a possibility, then, that the
 17 modern sporting rifle production chart at NSSF 41
 18 included shotguns?
 19 A. I can't speak to it right now. I'd have
 20 to go back and check. I can certainly follow up
 21 with you if you'd like me to.
 22 Q. You can't say one way or the other
 23 whether shotguns are included in NSSF 41, as you
 24 sit here today?

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1 A. That's correct. I need to go back and
 2 look.
 3 Q. Okay. So now I'm going to direct your
 4 attention to No. 9, Deposition Exhibit No. 9. And
 5 as we discussed previously, it's in the same
 6 massive spreadsheet that we're looking at up on the
 7 screen. It's just the other group of columns. Is
 8 that fair to say?
 9 A. Yes.
 10 Q. And for the record, we're looking at
 11 "NSSF 002351 Redacted." All right. Just looking
 12 at row 2 across the top of Deposition Exhibit 9, do
 13 you see where it says "This color highlighting
 14 labels the confidential estimates (calls)"?
 15 A. I see that.
 16 Q. What does this refer to?
 17 A. That would designate that we had reached
 18 out and gotten direct estimates from a
 19 manufacturer.
 20 Q. And it says "(calls)." What does that
 21 mean?
 22 A. That means picking up the phone and
 23 calling them.
 24 Q. Through the process that we've talked

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1 about a couple times over the course of this
 2 deposition; is that right?
 3 A. That's correct.
 4 Q. And in this column AI, the contents of
 5 the column have been redacted; is that right?
 6 A. That's right.
 7 Q. All right. Moving to AJ2, it says
 8 "10/9/2023 through 10/16/2023, notes for 2021
 9 recording." What does this mean?
 10 A. I don't recall this particular column.
 11 Yeah, I don't recall this particular column.
 12 Q. And this column is also redacted?
 13 A. Yes.
 14 Q. All right.
 15 A. Likely because it had contact
 16 information or confidential information that was
 17 provided to us. Otherwise, it wouldn't have been
 18 needed to redact.
 19 Q. Moving to AK column, not the firearm.
 20 A. Yes.
 21 Q. Column AK, row 2, it says "Potential
 22 problems are highlighted with this color (re 2019
 23 to 2021)." And the text is red and the cell is
 24 pink. Do you see that?

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1 A. Yes.
 2 Q. What does this mean?
 3 A. Those are typically totals or
 4 manufacturer activity that we need to get clarity
 5 on. And if we can't get clarity, those typically
 6 get labeled with this color coordination or color
 7 combination to designate that either we were or
 8 were not going to put them in. Likelihood is we
 9 identified the problem and were not going to put
 10 them in there.
 11 Q. So anywhere I see a pink-colored cell in
 12 this spreadsheet, it corresponds to this label
 13 here, "potential problems are highlighted"; is that
 14 fair to say?
 15 A. That is the designation of the color
 16 code.
 17 Q. Why were there -- why is the problem
 18 category specific to 2019 to 2021?
 19 A. I believe, if recollection serves me
 20 here, that we had a number of manufacturers that
 21 made, as I mentioned before, a wide swathe of
 22 products, and we needed to go back and get the
 23 proportion or number from them of MSRs that they
 24 produced. And this would highlight that we don't

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1 have clarity on these numbers and we need to go
 2 back and get more information.
 3 Q. All right. So directing your attention
 4 now to columns -- do you see the blue section where
 5 it says "MSR pistol estimates"?

6 A. Yes.

7 Q. And it says "MSR pistol estimates
 8 (subset of total MSRs)." What does that mean?

9 A. That we were trying to track MSR pistol
 10 production.

11 Q. Do you see there's a note there that
 12 says "Note: These pistol estimates," underline,
 13 "are included in the total MSR production
 14 estimates"?

15 A. Yes, I see that.

16 Q. And then it says "(under the green
 17 highlighted headings for MSRs)." So what does that
 18 mean?

19 A. That particular note, I'm not sure. I
 20 think what it likely is is a different column
 21 setting or column dataset in this master file.

22 Q. Does this indicate to you that MSR
 23 pistols are included in the modern sporting rifle
 24 calculation?

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1 A. I've been very transparent that pistols
 2 are included.

3 Q. So directing your attention to row 112
 4 at the bottom of this. So do you see the blue
 5 cells that include the figures 20,370; 54,010;
 6 63,221? Do you see that?

7 A. Yes.

8 Q. And do you see on the right it says "US
 9 annual total MSR pistols (included in total MSR)"?
 10 Do you see that?

11 A. Yes.

12 Q. And what are we being told in these
 13 cells? What's this information?

14 A. That this is our estimate for 2019,
 15 2020, and 2021, how many MSR pistols were produced.

16 Q. In 2019, NSSF's estimates of MSR pistols
 17 that were produced was 20,370?

18 A. That's what the label says.

19 Q. Is that accurate?

20 A. If it's in the chart and we have not
 21 changed it, then it's accurate.

22 Q. How about 54,010? Is that NSSF's
 23 estimate of MSR pistols for the year 2020?

24 A. Yes.

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1 Q. And the next column -- or I'm sorry --
 2 the next cell, 63,221. Is that NSSF's estimate for
 3 MSR pistols for 2021?

4 A. Yes.

5 Q. All right.

6 A. Can I get some more water?

7 MR. WELLS: Sure, sure. We'll go off the
 8 record for a second.

9 (Discussion had off the record.)
 10 (NSSF Deposition Exhibit 10 was
 11 marked for identification.)

12 MR. WELLS: All right. So it's 2:04.
 13 BY MR. WELLS:

14 Q. I'm directing your attention up to the
 15 screen where we've got "NSSF 002351 Redacted."
 16 I've now moved to another tab in this same
 17 spreadsheet. The tab is titled "2021 AFMER_2023
 18 MSR Call List." Do you see that?

19 A. I'm sorry. I was reading. Could you
 20 point it out? Yes. Yes, right there.

21 Q. Are you familiar with what's up on the
 22 screen right now?

23 A. Yes.

24 Q. What is this?

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1 A. So that is a record of clarification
 2 points that communicate between the research team
 3 on what we, you know, kind of should do as far as a
 4 call is concerned on including, excluding, do we
 5 need to follow up.

6 Q. Now directing your attention to what I
 7 have premarked as Deposition Exhibit 11, does this
 8 deposition -- I'm sorry. Deposition Exhibit 10.
 9 Does what you see in front of you in Deposition
 10 Exhibit 10 look like what we just saw up on the
 11 screen?

12 A. Yes.

13 Q. And so it's the same information?

14 A. Yes, just the full printout.

15 Q. I can represent to you that it's the
 16 same. I'm directing your attention to A7, cell A7.
 17 Do you see that?

18 A. Yes.

19 Q. It says "Salam." Is that you?

20 A. That's me. I'm sorry. A7?

21 Q. Did you write this? And, in particular,
 22 it's a comment that says "I'm not sure their rifles
 23 are MSRs (M14s). They don't 'look like' MSRs."
 24 A. Yes. If it has my name there and what I

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1 said -- I don't know what year I said that -- but I
 2 trust my team to make accurate records.
 3 Q. So did your team write this or did you
 4 write this?
 5 A. They likely are my words transcribed
 6 here for this record.
 7 Q. Who actually would have done the
 8 transcribing?
 9 A. It could have been myself. It could
 10 have been Dianne, someone on the research team.
 11 Q. When you said "they don't 'look like'
 12 MSR," what did you mean?
 13 A. So they're not -- for the M14s that were
 14 listed on the website, they didn't have all of the
 15 form, factor, and features that other MSRs do.
 16 Q. Form, factor, and features. What do you
 17 mean by "form"?
 18 A. So if a -- are you familiar with an M14?
 19 Q. Yes.
 20 A. So M14 can come in a adjustable stock.
 21 It can come in a fixed stock, traditional wood
 22 stock, with no, you know, external pistol grip,
 23 however it's designated. It can come with all of
 24 the features that an AR-15 or an AK come with, as

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1 far as furniture, but the furniture can also be
 2 traditional wood stock that looks like a, you know,
 3 old-school hunting rifle.
 4 Q. And an adjustable stock is a common
 5 feature on a modern sporting rifle?
 6 A. Yes.
 7 Q. A pistol grip is a common feature on a
 8 modern sporting rifle?
 9 A. That's correct.
 10 Q. You also mention -- I think you said
 11 "form, factor, and features." Did I hear that
 12 right?
 13 A. Yeah, speaking to the furniture of the
 14 firearm.
 15 Q. What does "factor" mean?
 16 A. Is it made out of aluminum. Is it made
 17 out of wood. What does it look like; a traditional
 18 old-school hunting rifle, or is it more modern,
 19 falling under, you know, the modern sporting rifle
 20 category of furniture.
 21 Q. What is furniture?
 22 A. Furniture is the stuff that goes on the
 23 gun. So, like, a stock would be furniture, a hand
 24 guard would be furniture.

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1 Q. All right. Directing your attention --
 2 and I'm sorry. What are features?
 3 A. Features, like does the -- is the stock
 4 fixed, is it telescoping, does it have M-LOK, does
 5 it KeyMod; is there a place and, you know, process
 6 of putting on, say, flashlights, grips, optics,
 7 anything like that.
 8 Q. All right. Directing your attention to
 9 Deposition Exhibit 10, cell A9, do you see where it
 10 says "Do not know what to count for the MSR
 11 estimate. Their website currently displays one
 12 rifle model and lever action. 12 rifle models
 13 appear to be MSR styles. 6 short-barrelled rifle
 14 models. 7 pistol models appear to be MSR styles.
 15 Parts include uppers, lowers, and other misc."?
 16 Who wrote that?
 17 A. I believe those are my findings.
 18 Q. What are you saying in this cell?
 19 A. So it's what I kind of alluded to
 20 previously where a manufacturer can make so many
 21 things that we need to ask clarification in order
 22 to count the numbers. Being a conservative count
 23 and this ambiguous, if we didn't get a call from --
 24 or a response from the manufacturer, then that

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1 would lead us to say, all right, for this
 2 manufacturer we can't include anything for this
 3 year. Regardless of the number, if we can't get
 4 confirmation of how many things from firearms fall
 5 into MSR, then we need to exclude it. That's
 6 typically the rhyme and reason that's applied.
 7 Q. Do you know how the comment in cell A9
 8 in Exhibit 10 was resolved?
 9 A. I don't recall.
 10 Q. And is it fair to say that the
 11 right-hand columns, columns B through G, are
 12 redacted?
 13 A. Yes.
 14 Q. If you didn't have the redactions, would
 15 you be able to potentially explain how this comment
 16 was resolved?
 17 A. Possibly. But I'd have to go and look
 18 on a case-by-case basis.
 19 MR. WELLS: Let's -- on the screen, Mike, if
 20 we can go to the next tab.
 21 BY MR. WELLS:
 22 Q. All right. I'm showing you on the
 23 screen "NSSF 002351 Redacted." It's under tab
 24 labeled "MSR Table_Ann Est_Final 7/6/22." And

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1 directing your attention up to the screen, what are
2 we looking at?
3 A. That is the MSR chart that is on page 7
4 of the IIR, Exhibit 6.
5 (NSSF Deposition Exhibit 11 was
6 marked for identification.)
7 BY MR. WELLS:
8 Q. Directing your attention to what's been
9 premarked as Deposition Exhibit 11, do you see
10 that?
11 A. For this document?
12 Q. Yes.
13 A. Yeah.
14 Q. And is the information that's appearing
15 in Deposition Exhibit 11 the same information that
16 you're seeing up on the screen here?
17 A. Yes.
18 Q. And describe for me what these numbers
19 are.
20 A. This is the same stuff that's on the MSR
21 chart that we published. This is just the working
22 document that we used to update. And then we will
23 take this, give it to creative services. They will
24 make it pretty and give us a page insert for the

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1 IIR.
2 Q. Directing your attention to the top
3 here, row 1, it says "NSSF MSR History, 1990 to
4 2020, Estimated US Firearm Production Minus Exports
5 Plus Imports of MSR/AR, AK Platform."
6 Do you see that?
7 A. Yes.
8 Q. "Semiautomatic rifles and lowers." Do
9 you see that?
10 A. Yes.
11 Q. You agree that these figures are all
12 estimated, right?
13 A. We've established that they're an
14 estimate.
15 Q. And it's important to note that these
16 figures are estimated?
17 A. It's the best estimate we could possibly
18 make. Because in order to create this estimate,
19 you need to have confidential data. And the only
20 way to get it is to partner with manufacturers,
21 which is what we do.
22 Q. You said best estimate you could
23 possibly make. Are there statistical methods that
24 you're using to make that conclusion?

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1 A. We are simply adding what we can compile
2 from the AFMER and proportions applied to
3 production.
4 Q. Are there --
5 A. So it's adding and subtracting because
6 we've got to export the -- we've got to minus the
7 exports.
8 Q. Are there principles of opinion survey
9 research or survey research that you're applying as
10 part of your methodology?
11 A. It's not necessary because this is a
12 very simple "one plus one minus one."
13 Q. So "no"?
14 A. No.
15 Q. Directing your attention to rows 36 and
16 39 at the bottom there, and you see it says
17 "Sources, ATF AFMER, USITC, industry estimates"; is
18 that right?
19 A. That's correct.
20 Q. Row 37, it says "10/1/2020 through
21 2018." What does that mean?
22 A. So the ATF AFMER -- I believe I've said
23 this before, but I'm happy to revisit. The ATF
24 AFMER is always two years behind. So right now

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1 it's 2024. We're getting the 2022 AFMER a month
2 ago.
3 Q. What does the next note mean, "7/5/2022
4 through 2020"?
5 A. That at July -- is it July? -- July 5th,
6 2022, the information included was through the 2020
7 data that we had.
8 Q. What about that last note, "12/12/23
9 through 2021"?
10 A. Same thing. It denotes when we were
11 finished compiling everything, and the data that we
12 used was through 2021.
13 MR. WELLS: Okay. You can put that one away.
14 Or keep it handy for a second. Let's just briefly
15 look up at the screen real quick.
16 Mike, go to the next tab.
17 BY MR. WELLS:
18 Q. "Top 10 in 2022, 2020 AFMER," that's the
19 tab we're looking at in spreadsheet "NSSF 002351
20 Redacted." What's in this tab?
21 A. So we tabulate how many MSRs are made
22 per manufacturer. And this is just a
23 for-internal-use top-ten list of MSRs -- MSR
24 manufacturers.

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1 MR. WELLS: Could you scroll down, Mike.
 2 BY MR. WELLS:
 3 Q. And looking at row 16, it says
 4 "Pending phone calls and responses 2023,
 5 10:18 a.m." What does that refer to?
 6 A. I don't know, to be honest. I know it's
 7 a note that we need to, you know, confirm pending
 8 calls and responses. This could be just a
 9 carryover of the other notes that we had from other
 10 exhibits in other portions of this same master
 11 document. But that "2023, 10:18 a.m.," I don't
 12 recall what that particular section means.
 13 Q. Does this tab appear to have been
 14 redacted?
 15 A. Yes.
 16 Q. What's been redacted?
 17 A. Contact information and manufacturer
 18 names.
 19 Q. Who did the redactions?
 20 A. I did.
 21 Q. So is there a version of this document
 22 that hasn't been produced that includes the
 23 information that has been redacted?
 24 A. We do have a version that is not

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1 redacted, correct.
 2 Q. So the version that you've produced in
 3 this litigation is one that you've specifically
 4 modified to redact; is that right?
 5 A. That's correct.
 6 Q. You personally?
 7 A. Yes.
 8 Q. Who directed you to make those
 9 redactions?
 10 A. Me.
 11 MR. LOTHSON: And I'll object to the extent
 12 there could be discussions with counsel involved in
 13 that.
 14 BY MR. WELLS:
 15 Q. Was there any other basis for making
 16 those redactions aside from the assurances that you
 17 provide to manufacturers about the confidential
 18 treatment of their data?
 19 A. It's strictly the confidential nature of
 20 the information that they provide.
 21 Q. Okay. Now, let's look back at NSSF 41
 22 in Deposition Exhibit 6, the "Modern Sporting Rifle
 23 Production in the United States, 1990 through
 24 2021." All of those spreadsheets that we just

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1 looked at, all of that feeds into the generation of
 2 this chart; is that fair to say?
 3 A. That's correct.
 4 Q. And the adjustments and estimates that
 5 are done to generate this chart are done by NSSF
 6 personnel; is that right?
 7 A. That's correct.
 8 Q. Those adjustments and estimates are done
 9 internal to NSSF; is that right?
 10 A. Yes.
 11 Q. Does NSSF publish its methodology for
 12 making the calculations in this chart?
 13 A. We provide the sources, and the
 14 methodology is largely just a summation. I'm not
 15 sure, sitting here today, if we note that anywhere;
 16 do or don't note that anywhere.
 17 Q. If I looked in this report, where would
 18 I find the methodology that you're employing?
 19 A. Specifically to the MSR chart?
 20 Q. Yes.
 21 A. I just want to make sure. We don't
 22 designate the methodology, largely because we are
 23 doing a conservative count of what we can prove.
 24 Q. When you say "conservative count," what

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1 do you mean?
 2 A. So we can't, right now, get every single
 3 accurate figure of MSRs. If we did, that would be
 4 great. But it's an estimate because we might
 5 have -- like I've alluded to before, there might be
 6 a manufacturer that just simply doesn't want to
 7 answer our phone call. There might also be a
 8 manufacturer that is a boutique small shop that
 9 doesn't jump out at us when we're reviewing the
 10 AFMER or doing open source investigation of MSR
 11 manufacturers, and then they're not counted.
 12 And, similarly, this is not counting
 13 MSRs that are produced at home from 80 percent
 14 lowers that are not captured in production of
 15 firearms.
 16 Q. But specifically the word
 17 "conservative," what are you trying to convey when
 18 you say it's conservative?
 19 A. When I say conservative, it is largely
 20 an understatement of what is likely the real
 21 number.
 22 Q. Okay. If you could take Exhibit 11 --
 23 A. Yes.
 24 Q. -- the bottom column there, and compare

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1 it to how the sources are described in NSSF 41. So
 2 do you see that in NSSF 41, the sources are
 3 described as ATF AFMER, USITC, industry reporting?
 4 Do you see that?
 5 A. Yes.
 6 Q. And looking at Exhibit 11, in row 36,
 7 the sources are described as ATF AFMER, USITC,
 8 industry estimates. Do you see that?
 9 A. Yes.
 10 Q. Do you know why the word "industry
 11 estimates" was changed to "industry reporting"?
 12 A. I changed it from "estimates" to
 13 "reporting" largely because I thought it was more
 14 reflective, and I didn't think at the time that I
 15 made that change that I would be giving deposition
 16 on it.
 17 Q. Did anyone instruct you to make that
 18 change?
 19 A. I don't think anyone did. I had brought
 20 it up in internal conversations with staff, and
 21 between myself and my leadership, just like, yeah,
 22 reporting is probably more accurate. Let's be more
 23 accurate in our reporting. Put that.
 24 Q. The result of that decision, though, is

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1 that nowhere on page NSSF 000041 is there the word
 2 "estimate"; is that right?
 3 A. That's correct.
 4 (NSSF Deposition Exhibit 12 was
 5 marked for identification.)
 6 BY MR. WELLS:
 7 Q. You've just been handed what's been
 8 marked as Deposition Exhibit 12, which is Bates
 9 range NSSF 000017 through 34.
 10 Do you recognize this document?
 11 A. I do. I'm just trying to find where we
 12 are publishing the year on here so I can get
 13 oriented. So this is the 2020 since this has 2018
 14 data in it.
 15 Q. What is this document?
 16 A. So this is a older version of Exhibit 6.
 17 Q. You said older version. So Deposition
 18 Exhibit 12, based on the copyright date, appears to
 19 be the 2020 version of the "Firearm Production in
 20 the United States" report; is that right?
 21 A. That's correct.
 22 Q. And previously in Deposition Exhibit 6,
 23 we looked at the 2023 edition of the "Firearm
 24 Production in the United States" report; is that

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1 correct?
 2 A. That's correct.
 3 Q. All right. So directing your attention
 4 to page 7, which corresponds to NSSF 000023, what
 5 do you see here?
 6 A. We see our MSR chart from 2018 -- from
 7 the 2018 AFMER -- and the -- and this is that
 8 magazine chart that was from 2018.
 9 Q. Is it fair to say that the modern
 10 sporting rifle data that's included in NSSF 000023
 11 covers the years 1990 to 2018, and the only
 12 difference compared to NSSF 41 in Deposition
 13 Exhibit 6 is that the 2023 version at NSSF 41
 14 includes the years 2019, 2020, and '21?
 15 A. That appears so. Just a difference of
 16 how many years are captured on each chart.
 17 Q. Earlier when you described the process
 18 of annually updating and adding based on new ATF
 19 AFMER data, so the difference between these two
 20 charts is that three years more of ATF AFMER data
 21 have come out --
 22 A. Yes.
 23 Q. -- and you've done the internal analysis
 24 to generate the 2023 edition; is that right?

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1 A. That's correct.
 2 Q. Are the sources for NSSF 23 the same as
 3 the sources for NSSF 41, with the exception that
 4 for 41 you had later AFMER data?
 5 A. That's correct. We did not change the
 6 methodology. We just used the updated content.
 7 Q. Directing your attention to the bottom
 8 of NSSF 23, do you see where it says "Source"?
 9 A. Yes.
 10 Q. And for source, it says "ATF AFMER,
 11 USITC industry estimates." Do you see that?
 12 A. Yes.
 13 Q. So in the 2020 version of the "Firearm
 14 Production in the United States" chart, NSSF
 15 described its sources as industry estimates; is
 16 that correct?
 17 A. That's correct.
 18 Q. But in the 2023 version of that same
 19 report, "Firearm Production in the United States,"
 20 for the modern sporting rifle production chart,
 21 NSSF describes its source as "industry reporting,"
 22 correct?
 23 A. That's correct.
 24 Q. And that was the word change that you

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1 were describing earlier, changing from "estimates"
 2 to "reporting"?

3 A. Yeah. I thought it was a more apt
 4 label, and wanting to be as accurate as possible,
 5 we -- I decided to propose changing the name -- or
 6 changing the label.

7 Q. Who did you propose it to?

8 A. Likely my boss, Larry Keane.

9 Q. So that's the general counsel?

10 A. Yes.

11 Q. And at the time you made that proposal,
 12 were you aware that this data from this chart was
 13 being used in litigation?

14 A. The principal purpose of these reports,
 15 from my viewpoint as director of research, is to
 16 produce accurate reporting for our members.

17 Q. At the time that you decided to make
 18 that word change, you were aware that this data was
 19 being used in litigation, correct?

20 MR. LOTHSON: Objection; form.

21 THE WITNESS: Still answer?

22 MR. WELLS: You can answer.

23 MR. LOTHSON: You can. Go ahead.

24 THE WITNESS: While I was aware that it could

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1 be, that that change was not because of litigation
 2 or anything else. It's strictly because I wanted
 3 to be as accurate as possible in the labeling.

4 BY MR. WELLS:

5 Q. I'm not asking about your intent. I'm
 6 just asking about your knowledge. You knew that
 7 this chart was being used in litigation at that
 8 point in time?

9 MR. LOTHSON: Objection; asked and answered.

10 BY MR. WELLS:

11 Q. You can answer.

12 A. I'm going to go back to my last answer.

13 Q. What was that?

14 A. Which was it was done largely because I
 15 was trying to be as accurate as possible.

16 Q. But in your head, you were aware that
 17 this was being used in litigation?

18 MR. LOTHSON: Objection. Same objection.

19 BY MR. WELLS:

20 Q. You can answer.

21 A. I'm going to point you back to my last
 22 answer.

23 Q. What was that?

24 A. Which was I wanted to be as accurate as

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1 possible in the labeling.

2 Q. Okay. So we talked about the MSR chart
 3 at the top half of the page. What's the chart on
 4 the bottom half of the page?

5 A. That is a old NSSF magazine chart from
 6 1990 to 2018.

7 Q. And, specifically, we're looking at NSSF
 8 000023, NSSF magazine chart. And it says
 9 "Estimated 304 million detachable pistol and rifle
 10 magazines in US consumer possession, 1990 to 2018."
 11 Did I read that correctly?

12 A. You did.

13 Q. It says "estimated" because this is an
 14 estimate, right?

15 A. That's correct.

16 Q. "Estimated 304 million detachable pistol
 17 and rifle magazines in US consumer possession, 1990
 18 to 2018." Is "in US consumer possession" accurate?

19 A. I don't know.

20 Q. Why don't you know?

21 A. Largely because I did not work on the
 22 analysis for this chart. I was -- I inherited this
 23 as I took over the research department, and
 24 researching it, I couldn't find enough data to

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1 answer that portion of the question.

2 Q. You looked for data to understand how
 3 this chart was generated, and you couldn't find it?

4 A. That's correct. I couldn't find enough
 5 to find -- enough to be satisfactory.

6 Q. Did you find any data?

7 A. I could find the chart.

8 Q. The chart by itself?

9 A. Yeah. I could find the chart, but I
 10 can't recall if I found anything of worthwhile
 11 methodology.

12 Q. When you say "worthwhile methodology,"
 13 what do you mean?

14 A. The nuts-and-bolts actual summation of
 15 what is being compiled to create these numbers.

16 Q. When you say "worthwhile methodology,"
 17 is there a standard for methodology that you're
 18 looking to?

19 A. Yeah. Typically you want to have
 20 objective data that you can add up to create the
 21 sum that you are going to represent in your chart.

22 Q. Is that standard from any type of
 23 professional organization for statisticians?

24 A. I'm not aware if it is, but it doesn't

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1 really have to be for this exercise. What it needs
2 to be is objective and true, and that's what we try
3 to put out.
4 Q. If I wanted to know whether it's
5 objective and true, how would I validate that?
6 A. Then you'd probably have to go look at
7 some of the metadata or ask for how it was compiled
8 by the person who compiled it.
9 Q. And that's who?
10 A. That would be Jim Curcuruto.
11 Q. If I wanted to replicate the
12 calculations reflected in this chart, how would I
13 do that?
14 A. So I would not try to replicate this. I
15 would start from the ground up and create a new
16 analysis, which is what I did.
17 Q. Why would you not try to replicate this?
18 A. Because, unlike the MSR chart or the
19 IIR, in total, where there is a trackable, provable
20 track record of what has happened for those many
21 years to add everything up, I didn't find that
22 here. And in putting together the new magazine
23 report that I created, I just started from the
24 ground up and created a new analysis.

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1 Q. So you agree that, in terms of
2 methodology, it's really important to be trackable?
3 A. I think it's really important to use
4 objective data.
5 Q. You agree that it's important to be
6 trackable when you're talking about methodology?
7 MR. LOTHSON: Objection; asked and answered.
8 BY MR. WELLS:
9 Q. You can answer.
10 A. I wouldn't agree with you there because
11 some of the information that we utilize in, say,
12 the magazine report that we produced here, we have
13 to operate under the confidentiality of our
14 members, them producing some of the information
15 that was used in the analysis. So trackability is
16 not the principal. It's objective data.
17 Q. You used the word "trackable" earlier,
18 correct?
19 A. Yes.
20 Q. That was your word?
21 A. Yes.
22 Q. So in terms of what's trackable here,
23 because the data has been destroyed, it's not
24 trackable for purposes in this litigation, correct?

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1 A. It's largely because I didn't create
2 this magazine chart. And so trying to recreate it
3 with an old file, updating with new data, wasn't
4 able to do that. So I started over completely.
5 Q. Do you have a belief, as you sit here
6 today, whether or not this chart accurately
7 reflects US consumer possession of magazines?
8 A. I would say that it's an estimate. I
9 can't speak to the accuracy because I didn't do it,
10 and I didn't know any of the work that went into
11 compiling it.
12 Q. Do you agree that ATF AFMER data does
13 not include data on magazines?
14 A. It has some information that you can
15 extrapolate to get magazine production.
16 Q. What do you mean by that?
17 A. So you can look at how many pistols were
18 made, for example; and you can see, based on that
19 manufacturer, how many magazines and what capacity
20 do they provide in the box.
21 Q. All of that is an extrapolation, though,
22 right?
23 A. I would not say it's extrapolation, only
24 because it's objective data that you're able to

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1 easily find and verify, and it's not creating data
2 based off of a known point and carrying it out. It
3 is simply collecting information that's publicly
4 available.
5 Q. "Extrapolation" was your word, correct?
6 A. I don't recall. It's been a long day.
7 Q. ATF AFMER data does not include specific
8 totals of magazine production, correct?
9 A. That's correct.
10 Q. ATF data -- ATF AFMER data does not
11 include specific totals of magazine possession,
12 correct?
13 A. That's correct.
14 Q. AFT AFMER data does not include data on
15 magazine capacity, right?
16 A. That's correct.
17 Q. ATF AFMER data does not reflect data on
18 magazines sold with firearms, right?
19 A. That's correct.
20 Q. ATF AFMER data does not include data on
21 magazines sold separately from firearms, correct?
22 A. That is correct.
23 Q. ATF AFMER data does not include data on
24 magazines manufactured for the US market, correct?

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1 A. It doesn't. But at the same time, it
 2 shows the amount of firearms that were made for the
 3 US market. And through a little bit of work, you
 4 can find out how many magazines and what capacity
 5 were made for those, if you want to assign a value,
 6 which is what I did.
 7 Q. And that would be a process of
 8 extrapolation; is that fair to say?
 9 A. No. That would be objective data
 10 gathering.
 11 Q. What's the methodology for that
 12 objective data gathering?
 13 A. Can you go to a specific example or
 14 point me in the report where you want me to answer?
 15 Q. We'll get back to it.
 16 A. Okay.
 17 MR. LOTHSON: Let's take a break here for a
 18 second. I need to hit the head.
 19 MR. WELLS: Okay.
 20 (Short recess.)
 21 MR. WELLS: It's 2:46 p.m.
 22 BY MR. WELLS:
 23 Q. All right. Directing your attention
 24 back to NSSF 23, bottom of the page of the NSSF

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1 magazine chart, you agree that this chart shows
 2 different categories of magazines; is that right?
 3 A. Different categories and capacities.
 4 Q. How are the categories for capacity
 5 determined?
 6 A. If you read the chart, it says "pistol
 7 magazines 10 rounds and less, pistol magazines
 8 11-plus, rifle magazines 10 rounds and less, rifle
 9 magazines 11 to 29 rounds, rifle magazines
 10 30-plus."
 11 Q. Why is 10 rounds used as a threshold to
 12 differentiate between the categories?
 13 A. Having not created this chart, I'd have
 14 to think that, largely, it's because of regulations
 15 that surround magazines or legislation that comes
 16 down for magazines specifically calls out the
 17 10-and-below, and the 11-plus is segmented from
 18 that.
 19 Q. What types of regulations are you
 20 referring to?
 21 A. So if it's a state regulation that
 22 controls what people can own.
 23 Q. Are you aware of any federal regulation
 24 that's ever existed that's similar to that?

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1 MR. LOTHSON: I'll object; beyond the scope of
 2 the deposition.
 3 But if he has personal knowledge on
 4 that, he can answer.
 5 THE WITNESS: I don't know of a federal one.
 6 BY MR. WELLS:
 7 Q. Are you aware that the Federal Assault
 8 Weapons Ban that was in place from 1994 to 2004
 9 included a 10-round capacity limitation on
 10 magazines?
 11 A. It sounds familiar, and that does sound
 12 right. It just didn't come to mind when you asked.
 13 Q. And, again, to be clear, at NSSF 000023,
 14 there's two pistol magazine categories; is that
 15 right?
 16 A. That's correct.
 17 Q. One category is pistol magazines of 10
 18 rounds or less; is that correct?
 19 A. That's correct.
 20 Q. The other category is pistol magazines
 21 of 11-plus rounds; is that right?
 22 A. That's correct.
 23 Q. And for the rifle magazines, there's
 24 fully three categories; is that right?

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1 A. Yes, there are.
 2 Q. There are rifle magazines at 10 rounds
 3 or less; is that correct?
 4 A. Yes.
 5 Q. Rifle magazines at 11 to 29 rounds?
 6 A. That's correct.
 7 Q. And rifle magazines of 30-plus rounds;
 8 is that right?
 9 A. That's correct.
 10 Q. 30-plus rounds, and based on your
 11 knowledge of the industry, how high does that
 12 amount go? Like, what's the largest magazine
 13 capacity that you're aware of?
 14 A. I believe there are both -- there's
 15 40-round capacity traditional stick magazines. And
 16 then there are, I think, 50 and a hundred or some
 17 variation in between of other drum magazines.
 18 Q. Are those legal in states other than
 19 Illinois?
 20 A. Where they're not prohibited.
 21 Q. The NSSF magazine chart in NSSF 000023,
 22 when was this chart published?
 23 A. It was published with the 2020 IIR,
 24 whenever that was published by the NSSF in 2020.

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1 Q. Were you employed by NSSF at that time?
 2 A. I was.
 3 Q. Did you have any involvement in the
 4 production of that industry intelligence report
 5 from 2020?
 6 A. I believe at that time, if I did work on
 7 it, it was largely to do that staff review portion:
 8 Hey, look through this, try to catch typos.
 9 Q. Who was involved in the generation of
 10 that report?
 11 A. The research department at the time.
 12 Q. Which would have been who?
 13 A. That would have been Elizabeth McGuigan,
 14 Jim Curcuruto, and Dianne Vrablic.
 15 Q. Elizabeth -- can you say her last name
 16 again.
 17 A. McGuigan.
 18 Q. Do you know how to spell that?
 19 A. M-c-G-u-i-g-a-n.
 20 Q. Does Ms. McGuigan still work at NSSF?
 21 A. No.
 22 Q. When did she leave?
 23 A. 2021.
 24 Q. What were the circumstances of her

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1 departure?
 2 A. I believe she found employment
 3 elsewhere.
 4 Q. You mentioned earlier that Jim Curcuruto
 5 no longer works at NSSF and departed in 2021. What
 6 were the circumstances of his departure?
 7 A. I knew that he was let go from NSSF. I
 8 don't have any real details on that. And, mind
 9 you, he was let go and a bunch of other folks were
 10 let go at the same time.
 11 Q. Why?
 12 A. We didn't have our SHOT Show that year,
 13 and so because of COVID restrictions, we didn't
 14 have SHOT Show. SHOT Show is our trade show that,
 15 as I've said before, largely brings in a lot of
 16 revenue. And so I believe it was strictly
 17 financial decision.
 18 Q. NSSF was not able to have the SHOT Show
 19 in 2020 and the loss --
 20 A. 2021.
 21 Q. 2021. And the loss of revenue was
 22 significant enough it resulted in layoffs; is that
 23 right?
 24 A. That's my understanding.

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1 Q. You mentioned at the beginning of the
 2 deposition that you testified in an Oregon trial;
 3 is that correct?
 4 A. That's correct.
 5 Q. And, specifically, do you recall that
 6 you testified in June of 2023?
 7 A. That sounds right.
 8 Q. And that trial, what was it about?
 9 A. There's Measure 114.
 10 Q. Which did what?
 11 A. It was -- best of my knowledge right
 12 now, put extra regulations to ban certain types of
 13 firearms and magazines.
 14 Q. What types of magazines?
 15 A. Using their nomenclature, so-called
 16 high-capacity magazines greater than 10 rounds, I
 17 believe.
 18 Q. What did you testify about at that
 19 trial?
 20 A. Largely the content of the industry
 21 intelligence report.
 22 Q. And, specifically, the NSSF magazine
 23 chart at NSSF 000023; is that right?
 24 A. That's correct. That was one of the

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1 things that I testified to.
 2 (NSSF Deposition Exhibit 13 was
 3 marked for identification.)
 4 BY MR. WELLS:
 5 Q. So I'm showing you what's been marked as
 6 Deposition Exhibit No. 13, which is -- I can
 7 represent to you is a transcript from federal court
 8 case in the United States District Court for the
 9 district of Oregon, Oregon Firearms Federation v.
 10 Kotek. First case number is 22-cv-1815-IM, and
 11 there's several other consolidated cases associated
 12 with it.
 13 Does this sound like the case that
 14 you testified in --
 15 A. Yes.
 16 Q. -- in Oregon? Is that a "yes"?
 17 A. Yes.
 18 Q. Directing your attention to page -- so I
 19 can represent to you that this is an excerpt. So
 20 it's the first couple pages showing the case
 21 caption, followed by pages later on that say your
 22 name at the top. So if you could flip to the pages
 23 that say your name at the top.
 24 A. Can you tell me where that page is.

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1 Q. 356 is the first one.
 2 A. Okay.
 3 Q. So I can represent to you that this is a
 4 transcript from the trial in Oregon that you
 5 testified at. And your name is written at the top
 6 because it corresponds to the transcript for when
 7 you were testifying.
 8 A. Gotcha.
 9 Q. I'm going to direct your attention to
 10 366. So flip a few more pages.
 11 A. 366?
 12 Q. 366, line 3 to 11. Actually, lines 1
 13 to 11. So if you could read that, please.
 14 A. You want me to read starting --
 15 Q. No, just read it to yourself. You don't
 16 need --
 17 A. Oh.
 18 Q. Tell me when you're done, please.
 19 A. Was it just the first paragraph?
 20 Q. Yeah, through line 11.
 21 A. Okay.
 22 Q. So in this passage that I just directed
 23 your attention to, do you see that you were asked a
 24 question by the Court, "How can you attest to where

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1 the data comes from?"
 2 Do you see that?
 3 A. Sorry. Line 1?
 4 Q. Yeah.
 5 A. Yes.
 6 Q. And in response to that, you went on to
 7 say, "So we are currently updating this chart into
 8 our 2022 -- 2020 or 2022 numbers using the 2020 ATF
 9 AFMER data and also industry insights. So I'm
 10 currently updating the methodology on that and
 11 going through and compiling all of the
 12 information."
 13 What were you describing here?
 14 A. That would be the work that I was
 15 already doing updating the -- our NSSF's magazine
 16 chart, or magazine study.
 17 Q. And you use -- what data sources were
 18 you using?
 19 A. ATF AFMER and industry insights.
 20 Q. What are industry insights?
 21 A. That is going to the manufacturers and
 22 surveying them, in part, to find information that I
 23 can apply to AFMER, and also their manufacturing
 24 data for magazines.

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1 Q. Is that what was previously referred to
 2 in the documents we looked at as "industry
 3 estimates"?
 4 A. It's part of. That's not directly
 5 because we were talking about the MSR chart. It's
 6 a type of similar reporting, but it's not directly
 7 related to the MSR.
 8 Q. Right. But as -- we also looked at the
 9 NSSF magazine chart where it cited as sources
 10 industry estimates. Do you recall that?
 11 A. Oh, yeah, in the last exhibit?
 12 Q. Yes.
 13 A. Yeah.
 14 Q. And in the trial testimony, you were
 15 using the phrase "industry insights," correct?
 16 A. Yes.
 17 Q. Why were you using the phrase "industry
 18 insights"?
 19 A. Just the word that I chose that day.
 20 Q. What was that choice based on?
 21 A. Stress, probably.
 22 Q. All right. In this section of
 23 testimony, you said, "So I'm currently updating the
 24 methodology."

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1 And what are you referring to there?
 2 A. So I was not left with much to work with
 3 as far as notes, unlike the MSR chart, for example,
 4 that we went through in great detail. There was a
 5 record and a document that we can use to put in the
 6 next year's data with some logic that we can apply
 7 there. Whereas I was kind of starting anew with
 8 the new exercise that I had for the next magazine
 9 estimate.
 10 Q. So your testimony today is that you
 11 weren't left with much in terms of documents and
 12 notes and records to rely on from your predecessor?
 13 A. In regards to the 2018 magazine estimate
 14 that is on the 2020 IIR, I was not left with a ton
 15 of information that I could use to update the next
 16 iteration.
 17 Q. Okay. So directing your attention back
 18 to Deposition Exhibit 13, lines 366, 8 through --
 19 page 366, lines 8 through 11. You testified in
 20 June 2023 in the Oregon trial, "In order to do
 21 that, I had to research based off of my
 22 predecessor's notes and records of how they started
 23 or they compiled this information. So then I used
 24 that as my foundation to then create this next

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1 version of the analysis."
 2 Do you see that?
 3 A. Yeah.
 4 Q. So you used your predecessor's notes and
 5 records as the foundation to create the next
 6 version of the magazine chart analysis; is that
 7 right?
 8 A. Yeah. I have largely followed the same
 9 format that is displayed here using the established
 10 pistol magazines 10 or less, pistol magazines
 11 11-plus, and then similarly for rifle magazines.
 12 Q. And that format was the product of
 13 regulations that affect magazine capacity; is that
 14 right?
 15 MR. LOTHSON: Objection; I think that
 16 misstates his prior testimony.
 17 BY MR. WELLS:
 18 Q. You can answer, if you understand.
 19 A. It's all right. You can go on.
 20 Q. Do you understand the question?
 21 A. I don't understand the question.
 22 MR. WELLS: Okay. Can you read it back.
 23 (Record read as requested.)
 24 THE WITNESS: You're talking about this chart?

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1 BY MR. WELLS:
 2 Q. Yes. Those categories were determined
 3 based on regulations regulating magazine capacity
 4 at a 10-round threshold, correct?
 5 A. I believe so. To the best of my
 6 knowledge as I sit here today, that seems to be the
 7 split of why they have different categories of
 8 magazine here.
 9 Q. Do you know what the result of the
 10 Oregon trial that you testified at was?
 11 A. I don't recall.
 12 Q. Are you aware that the judge in that
 13 trial, in her written opinion discussing the NSSF
 14 magazine chart that we were looking at in
 15 Exhibit 12 at NSSF 000023 that you testified about,
 16 the Judge said that that chart was entitled to
 17 "little weight"? Are you aware of that?
 18 MR. LOTHSON: Objection; form, argumentative,
 19 beyond the scope.
 20 THE WITNESS: I should answer?
 21 BY MR. WELLS:
 22 Q. You can answer.
 23 A. Okay. It was made pretty clear that the
 24 judge was not favorable to the magazine chart while

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1 I was testifying there.
 2 Q. Made pretty clear by whom?
 3 A. The judge's body language and verbiage.
 4 Q. Based on that experience, did you change
 5 anything about how you were approaching the
 6 analysis that you were conducting at that time to
 7 generate a new version of the magazine chart?
 8 A. Largely, no. I had already been working
 9 on the methodology prior to testifying. And it was
 10 just a continuation of trying to optimize what I
 11 had started from the ground up.
 12 Q. You said "largely, no." Did it have any
 13 impact on how you approached the analysis that you
 14 were conducting?
 15 A. If anything, it motivated me to be very
 16 careful and try to get as much of that objective
 17 data as possible that I could prove in there.
 18 Q. What were you trying to prove?
 19 A. An accurate representation, an accurate
 20 estimate, of how many magazines are available.
 21 Q. Why were you trying to prove that?
 22 A. To provide a service for our members to
 23 get industry reporting -- accurate industry
 24 reporting for our numbers.

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1 Q. Did it have anything to do with the
 2 success of NSSF in litigation that it's brought
 3 challenging these regulation?
 4 A. I'm sure it was a motivator on some
 5 level to make sure that there was accurate
 6 reporting on a critical aspect of our industry.
 7 Q. And remind me of your title again.
 8 A. Director of research.
 9 Q. And as director of research for NSSF, if
 10 your research is being used in litigation brought
 11 by NSSF, it's important for you to ensure that NSSF
 12 is successful, correct, in that litigation?
 13 A. No.
 14 MR. LOTHSON: Objection; form.
 15 THE WITNESS: No. It's important for me to be
 16 accurate in my reporting.
 17 MR. WELLS: What was the -- strike that.
 18 (NSSF Deposition Exhibit 14 was
 19 marked for identification.)
 20 BY MR. WELLS:
 21 Q. I'm handing you what's been marked as
 22 Deposition Exhibit 14, which is Bates NSSF 001994
 23 through NSSF 001997. Have you seen this document
 24 before?

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1 A. Yes.
 2 Q. What is it?
 3 A. That is the -- "NSSF's detachable
 4 magazine report, 1990 to 2021."
 5 Q. Did you have a role in creating this
 6 document?
 7 A. Yes, I did.
 8 Q. What was your role?
 9 A. To create the document.
 10 Q. Was anyone else involved in creating
 11 this document?
 12 A. Only in the aspect of double-checking
 13 for spelling errors and producing the creative
 14 services portion of putting in images and colors,
 15 what was there, and generally just doing a logic
 16 check of this is my approach, am I missing
 17 anything.
 18 Q. Why was this report created?
 19 A. Because there was a gap in our
 20 knowledge, and I wanted to fill it.
 21 Q. When you say gap in your knowledge, what
 22 do you mean?
 23 A. So, as you pointed out in my testimony
 24 in Oregon, the judge was not favorable to, you

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1 know, the magazine chart previous, and clearly
 2 there was a gap in knowledge that I wanted to fill.
 3 So as the director of research, I was already
 4 working on this before I gave the testimony, and so
 5 that just kind of confirmed people want to know
 6 about this. We need to get accurate reporting on
 7 our industry.
 8 Q. And you say "gap in our knowledge."
 9 Whose knowledge?
 10 A. Industry's knowledge.
 11 Q. So is NSSF a part of the firearms
 12 industry?
 13 A. NSSF is the trade association of the
 14 firearms industry.
 15 Q. When did you start working on the
 16 analysis that resulted in this detachable magazine
 17 report that's Exhibit 14?
 18 A. It was sometime in 2022.
 19 Q. When in 2022?
 20 A. I can't recall. I think it was in
 21 either late Q1 or early Q2 of '22.
 22 Q. Did the Oregon litigation exist at that
 23 point?
 24 A. I don't know.

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1 Q. All right. I'm directing your attention
 2 to the first page with text on it. Is that right?
 3 "NSSF 1995." Do you see that?
 4 A. Yep.
 5 Q. Who wrote the text on this page?
 6 A. I did.
 7 Q. All of it?
 8 A. Yes, other than where I was quoting
 9 reports.
 10 Q. Directing your attention to the top of
 11 the page where it says "Purpose," underneath
 12 "Purpose," it says "Estimate the number of
 13 detachable firearm magazines, segmented by
 14 capacity, that have been sold and made available
 15 using the latest information (2023 initial study)."
 16 Did I read that correctly?
 17 A. Yes.
 18 Q. So you agree that what's reflected here
 19 is an estimate?
 20 A. Yes. It's the first word in "Purpose."
 21 Q. And when you say "segmented by capacity"
 22 here, what does that mean?
 23 A. So instead of just doing a large
 24 collection of here's all the magazines that we

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1 think are out there, we segment them by capacity.
 2 Q. What segmentation did you use?
 3 A. If you look on the next page, you can
 4 see that it was broken down pistol 10 below, pistol
 5 11-plus, rifle 10 below, rifle 11 to 29, and rifle
 6 30-plus.
 7 Q. You would agree with me that that's the
 8 same set of segments that was used in the NSSF
 9 magazine report that you testified about in the
 10 Oregon trial?
 11 A. They are the same.
 12 Q. Directing your attention back to the
 13 1995 Bates page, what does "2023 initial study
 14 period" mean?
 15 A. That's when we started -- "we," as in
 16 me -- started actually collecting the data that's
 17 used in the report.
 18 Q. How did you collect the data that's used
 19 in this report?
 20 A. Using ATF AFMER and then industry data
 21 through survey and direct contact of manufacturers.
 22 Q. When you say "ATF AFMER," how are you
 23 using the ATF AFMER data in the preparation of this
 24 report?

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1 A. So if we can figure out how many pistols
 2 were made, for example -- pistols and rifles count
 3 here. If we can figure out how many pistols were
 4 made and we can identify, on average, how many
 5 magazines come in each box and what their
 6 capacities are, by doing some independent research
 7 and asking the manufacturers directly, then we can
 8 apply that value to the production number.
 9 Q. Is that all?
 10 A. That was all.
 11 Q. You described the approach for pistols.
 12 What was the approach for rifles?
 13 A. It was similar. I was just using
 14 pistols. But the same exercise was applied to
 15 rifles.
 16 Q. And, again, similar to the MSR chart,
 17 you're relying on communications with manufacturers
 18 as the basis for the data that's included in this
 19 report; is that right?
 20 A. In part.
 21 Q. Do you have the records or the
 22 communications that you had with manufacturers that
 23 informed the generation of the report in Deposition
 24 Exhibit 14?

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1 A. I'm sorry. Could you say that again.
 2 MR. WELLS: Can you read it back, please.
 3 (Record read as requested.)
 4 THE WITNESS: I don't recall, as I sit here
 5 today, if we had those e-mails that went back and
 6 forth letting people know that we were working on
 7 it. But we certainly introduced the topic to them
 8 to give them a heads-up. We provided the survey
 9 questions ahead of time to make sure that they had
 10 time to review and collect that information,
 11 because we were asking for a considerable bit of
 12 data. And then the aggregated data was retained
 13 from the survey responses.
 14 BY MR. WELLS:
 15 Q. All right. So directing your attention
 16 back to the "Purpose" section, do you see it says
 17 "Estimate the number of magazines provided 'in the
 18 box,' with firearms made available to consumers
 19 along with secondary market/direct consumer
 20 purchase of firearm magazines"?
 21 Did I read that correctly?
 22 A. Yeah.
 23 Q. What does that mean?
 24 A. So I just want to make sure I read it

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1 again. So this encapsulates the two segments of
 2 the count. There is a manufacturer side, and then
 3 there's the secondary market side, also the
 4 consumer side. When someone legally purchases a
 5 firearm at a retailer and it's a brand-new gun in a
 6 brand-new box, say it's a pistol, they're going to
 7 get, usually, about two magazines. And then
 8 depending on the model, the capacity on that
 9 changes.
 10 They can also go and buy additional
 11 magazines for that model firearm. And so there's
 12 two segments of the study: The ones that came in
 13 the box and the ones that were made available as
 14 secondary markets so that the consumers -- are made
 15 available to consumers.
 16 Q. So in this sentence when you say "in the
 17 box," that's the category of magazines that are
 18 sold with the firearm by the manufacturer; is that
 19 right?
 20 A. That's correct.
 21 Q. And the second category is secondary
 22 market/direct consumer purchase. That is magazines
 23 that a consumer purchases either from the
 24 manufacturer of a particular firearm, but not with

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1 that firearm; or from a manufacturer that just
 2 produces magazines, not necessarily a firearm --
 3 that same firearm for that magazine; is that right?
 4 A. Correct. Compatible magazine for that
 5 firearm.
 6 Q. All right. Last sentence. "This is
 7 done as part of NSSF's ongoing industry research to
 8 provide insights into the firearm and ammunition
 9 industry."
 10 Did I read that correctly?
 11 A. Yes.
 12 Q. Did the preparation of this report have
 13 anything to do with ongoing litigation in which
 14 NSSF was involved?
 15 A. It may have. I know that it came up in
 16 the previous case that I was testifying in. But
 17 the primary purpose is the one as stated on this
 18 study, which is to provide insights.
 19 Q. Is there any reference to ongoing NSSF
 20 litigation in the "Purpose" section here?
 21 A. In this right here? No.
 22 Q. But you agree that that was at least a
 23 factor in the creation of this report?
 24 MR. LOTHSON: Objection; asked and answered.

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1 THE WITNESS: It could have been a factor.
 2 BY MR. WELLS:
 3 Q. So that's passive voice, "it could have
 4 been." Was it a factor for NSSF?
 5 MR. LOTHSON: Objection; it's asked and he's
 6 answered the question.
 7 MR. WELLS: Can you read it back.
 8 (Record read as requested.)
 9 THE WITNESS: I don't recall my exact words,
 10 as I'm getting a little tired here, but I'm going
 11 to go back to whatever I said before.
 12 BY MR. WELLS:
 13 Q. I'm going to interpret what you said
 14 before as a "yes"; is that fair?
 15 MR. LOTHSON: Objection; argumentative.
 16 MR. WELLS: I'll withdraw it.
 17 BY MR. WELLS:
 18 Q. All right. I'm directing you now to the
 19 box that says "Methodology." Do you see that?
 20 A. I certainly do.
 21 Q. What are you generally describing in the
 22 methodology box here?
 23 A. This is how I went about figuring out
 24 how I was going to create my totals for the chart

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1 that's on the next page.
 2 Q. Okay. So would you agree with me that,
 3 as described here, the first step in that
 4 methodology was to utilize ATF AFMER data to
 5 "Identify firearm manufacturers and corresponding
 6 firearm manufacturing activity of pistols and
 7 rifles"?
 8 A. Yes.
 9 Q. So step one is you look at ATF AFMER
 10 data to start gathering information about how many
 11 pistols and how many rifles are being manufactured;
 12 is that right?
 13 A. Yes.
 14 Q. So what did that process look like?
 15 A. Going through the latest version, the
 16 latest data that was available, which at the time I
 17 believe was the 2020 AFMER; tallying up who were
 18 the most prominent players in manufacturing pistols
 19 and rifles.
 20 Q. And just looking at how the methodology
 21 is described here, after you've gone through that
 22 process, the second step was to "Identify and
 23 remove firearm manufacturers that do not produce
 24 pistols and rifles that accept detachable

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1 magazines."
 2 Is that a fair statement about the
 3 second step of your methodology?
 4 A. Yes.
 5 Q. So tell me what that means exactly.
 6 A. What do you mean?
 7 Q. So tell me in your own words what that
 8 sentence means.
 9 A. So you want to capture -- you want to
 10 use the segmentation of, you know, pistols and
 11 rifles, but you don't want to include pistols and
 12 rifles that don't take detachable magazines
 13 because, if you do that, then you're inflating the
 14 count, and that's inappropriate.
 15 Q. All right. Again, based on how the
 16 methodology is described here, I believe, your
 17 third step is as follows: One -- I'm sorry --
 18 "Three, master totaled were created for the top 15
 19 pistol manufacturers, about 80 percent of pistols;
 20 and top 15 rifle manufacturers, about 60 percent of
 21 rifles produced in the 2021 AFMER."
 22 A. That's correct.
 23 Q. So, essentially, you looked at the top
 24 15 pistol manufacturers to get a sense of what

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1 types of firearms they were producing; is that
 2 right?
 3 A. Pistol and rifle, yes, to identify the
 4 manufacturers.
 5 Q. And "those top 15 pistol manufacturers
 6 make up about 80 percent of pistols," what's that
 7 estimate based on?
 8 A. That is simply tallying up all of the
 9 pistols that were made in 2021 for that particular
 10 AFMER and figuring out, okay, the top 15, just
 11 trying to get a workable population sample of how
 12 much of their production is the entirety for that
 13 year.
 14 Q. And then you did the same thing by
 15 looking at the top 15 rifle manufacturers, but
 16 those top 15 only comprise about 60 percent of
 17 manufactured rifles, based on AFMER; is that right?
 18 A. Correct.
 19 Q. How did you pick 15?
 20 A. I was trying -- I was trying to get just
 21 a good population sample. If you drop it down
 22 to 10, then you're limiting your population sample.
 23 And so just knowing that our industry is very
 24 closeted when it comes to reporting, so if I needed

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1 to go to them to try to get survey responses, we
 2 may have a tough time. Wanted to increase the
 3 population sample and also get as representative as
 4 possible, adding, say, 5 and going to 15 rather
 5 than 10, just kind of creates more to work with
 6 there.
 7 Q. Who decided on this methodology?
 8 A. I did.
 9 Q. Was anyone else involved in the
 10 development of the methodology?
 11 A. Yeah. I utilized resources that are
 12 available to me and experts in the field in order
 13 to make sure that what I was doing was going to be
 14 representative.
 15 Q. Who were -- what resources did you rely
 16 on?
 17 A. So I not only talked to our primary
 18 economists just as double-check on what I was
 19 doing, but also Southwick and Associates, who does
 20 a lot of our survey and statistical work for us --
 21 or sorry -- research work for us.
 22 Q. Who are the names of the people that you
 23 consulted?
 24 A. Rob Southwick at Southwick and

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1 Associates and then Linda -- I believe her name is
 2 Lamont -- at Gorilla.
 3 Q. Say that again.
 4 A. Linda Lamont at Gorilla Economics.
 5 Q. At Grilla?
 6 A. Gorilla.
 7 Q. Gorilla.
 8 A. Gorilla.
 9 Q. And what's NSSF's relationship with
 10 Gorilla Economics?
 11 A. They're our economists that we have on
 12 retainer.
 13 Q. And what is Southwick Associates?
 14 A. They're a research partner that we
 15 utilize.
 16 Q. So both of these entities are paid money
 17 by NSSF?
 18 A. Yes.
 19 Q. Do you know what types of statistical
 20 sampling techniques were used in this methodology?
 21 A. It was a simple count.
 22 Q. All right.
 23 A. It sounds basic, but it's the easiest
 24 one to work with and the easiest one to utilize.

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1 Q. Okay. So based on the way the
 2 methodology is described in NSSF 1995, I think your
 3 fourth step is "Independent research and direct
 4 survey of firearm and magazine manufacturers
 5 yielded information on how many magazines, and
 6 their capacity, were provided with each firearm and
 7 made available to the consumer market from 1990 to
 8 2021 through wholesalers, retailers, and sold
 9 directly to consumers."
 10 Did I read that correctly?
 11 A. I believe you did.
 12 Q. Describe the surveys that were
 13 conducted.
 14 A. There was a survey conducted of the top
 15 manufacturers that are identified here, and top
 16 manufacturers of rifles, pistols, and magazines for
 17 secondary market, to get information on how many
 18 magazines they produced and the capacities.
 19 Q. You said top manufacturers. So how many
 20 manufacturers were surveyed?
 21 A. I believe the population sample was
 22 somewhere around 40.
 23 Q. How many responded?
 24 A. I think, in total, we had 13. And what

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1 came from that was realizing that we didn't
 2 primarily need to utilize the sample data for the
 3 manufacturers. We could confirm a lot of their
 4 information through independent research.
 5 But what was really critical was the
 6 participation of OEM and magazine manufacturers
 7 that were primarily selling -- either providing the
 8 magazines to the manufacturers or selling them
 9 directly to consumers.
 10 Q. How did you determine whether the 13
 11 responses you got out of the 40 were sufficient to
 12 draw conclusions?
 13 A. It's not that we're drawing conclusions.
 14 We're providing what we can count. And so if we
 15 had more participants, that 963 million number
 16 would have been higher.
 17 Q. How?
 18 A. So if you get more people to
 19 participate, especially secondary market magazine
 20 producers, then we're able to add them to that
 21 secondary market count, which is a large portion of
 22 the magazines that are available. More people
 23 participating, more magazines can count, simple
 24 addition, they go up.

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1 Q. How was data from the earlier part of
2 the study period collected; so from like from 1990
3 to 1999?
4 A. We collected data from -- in 10-year
5 increments, I believe, from 1990, 2000, 2010, and
6 2020 and 2021. Being able to get those data
7 points, we interpolated between a number of points
8 to fill in the middle as much as possible.
9 Sometimes the information that we
10 received gave more than what we asked for, and we
11 were able to get more data insights that what was
12 laid out in the survey. But, largely, we got those
13 major chunks of periods of time and then were able
14 to interpolate between those points and not
15 extrapolate information that we didn't know.
16 Q. So in certain instances you got more
17 information that you actually asked about from a
18 particular manufacturer; is that right?
19 A. Yeah. So if they had the information
20 available. One, in particular, provided more data
21 points than those individual sites. I know at
22 least one did of that 1990, 2000, 2010, until 2021.
23 Q. How did you assess whether that one
24 manufacturer was representative of other

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1 manufacturers who didn't provide such additional
2 information?
3 A. It's not that I had to make sure that
4 they were representative, it's that I put it into
5 the dataset and simply just interpolated between,
6 and then the in-between numbers were used as a
7 logic check.
8 Q. What does "interpolated" mean?
9 A. If you have two known points, you can
10 fill in the middle with the numbers that would
11 logically fall in between there. If you have a
12 known point and no end point, you're extrapolating
13 data. So we did no extrapolation. We simply
14 interpolated between known points.
15 Q. Where did you learn that technique?
16 A. Through my education from my undergrad,
17 and also I believe it was included in some of the
18 statistical education I took through LinkedIn
19 Learning.
20 Q. What specific part of your undergraduate
21 education that informed how you did that
22 methodology?
23 A. Well, I took statistics classes. And
24 also I wanted to add that I've taken survey

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1 methodology courses. And so having that exposure
2 to how other folks have filled in gaps with known
3 points, I applied the same methodology.
4 Q. So, again, back to the methodology
5 section of NSSF 1995. There's a sentence in here,
6 which I interpret as your step five that reads --
7 or at least a comment -- "If historical information
8 was not available, a value of one magazine per
9 pistol and rifle was used for the list of top
10 manufacturers."
11 What does that mean?
12 A. So there's two sides to this. There's
13 the consumer side, which is a direct count; and
14 then there's the manufacturer side. If going
15 through the manufacturer's production data,
16 available information, we know that from AFMER from
17 1990 to 2021 how many pistols and rifles they made
18 for manufacturers that we studied. Of those
19 manufacturers that we studied, going and doing
20 independent research to figure out, okay, what
21 comes in the box.
22 If we can't get a firm answer -- and
23 it's almost always two, it's three, it's one -- if
24 we can't find that number out and the manufacturer

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1 won't tell us, we put in a conservative estimate of
2 one because, with semiautomatic pistols and rifles,
3 you always get one in the box. Not semiautomatic.
4 I'm sorry. That's a correction. Just pistols and
5 rifles, you always get one in the box.
6 Q. All right. Again, looking at the
7 methodology section, it says "Organizing the data
8 collected from top pistol and rifle manufacturers,
9 industry averages of magazines was used for the
10 list of top manufacturers."
11 What does that mean?
12 A. So you've got the top 15, right? That
13 was, for example, the 80 percent of 2021, top
14 manufacturers for pistols.
15 Q. Mm-hmm.
16 A. You've still got 20 percent. So then
17 you take the numbers that you accumulated for the
18 top 80 percent, and then you do an average factor
19 applied to the rest of the 20 to then add to your
20 first set of data. So then you have a total of the
21 pistol representation.
22 Q. How was the average generated?
23 A. How was the average generated?
24 Q. Mm-hmm.

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1 A. Averaging the confirmed for top
2 manufacturers, taking the top manufacturers'
3 magazines that they provide in the box, averaging
4 them all out, and then getting that number, which I
5 believe is 2 for pistols or 2.1 or 1.7 -- 9.
6 Q. What was your data source for
7 determining what the manufacturers included in the
8 box?
9 A. So that was survey data and also
10 independent research. Going to a gun store, asking
11 to see what's in the box. Also doing web research
12 of some websites, depending on the retailer, will
13 tell you this is the gun, this is how many
14 magazines come with, this is the capacity. There
15 is that transparency on some websites.
16 Q. When you say survey data, you're
17 referring to the survey of 40 manufacturers that
18 resulted in 13 responses?
19 A. That's correct.
20 Q. What type of independent research was
21 done?
22 A. Just what I said before. Going to
23 firearm retailers, something that I typically do --
24 no surprise there -- and asking, say, hey, looking

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1 into these. Can you please pull them out. Let me
2 see what's back there and in the box. Along with
3 going online and seeing, okay, for this
4 manufacturer, these are all the pistols that I can
5 see that are available on this retailer. And this
6 retailer tells me via online store, this is the
7 pistol, these are the magazines that come with it,
8 and this is how many there are.
9 Q. I think you said earlier that an average
10 factor was applied to the rest of the 20. Walk me
11 through exactly what's happening in terms of the
12 multiplication.
13 A. Sure. So if you've got the 80 percent,
14 right? The average, how many magazines come with
15 the 80. Now you have your factor. And I think for
16 pistols it was one point -- I think it was 1.79.
17 Or I'm sorry. It's right here. 2.1. 2.1
18 magazines, on average, with every pistol.
19 So then you can apply that, based off
20 of the representation of the majority of pistols
21 made, apply that to the rest of them to get a
22 representative estimate.
23 Q. And just let the record reflect that the
24 witness pointed at the results section of NSSF

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1 001995; is that right?
2 A. Yes. I needed to recall what the
3 average was.
4 Q. Based on the way the methodology is
5 described here, there's another sentence that says
6 "Consumer market totals were taken directly from
7 participating magazine manufacturers with no
8 adjustment.
9 What does that means?
10 A. Can you show where that says it.
11 Q. I think it's towards the bottom here.
12 It's one of the last sentences.
13 A. Oh, this is not for the production side.
14 This is for the consumer side, taking that -- those
15 numbers and creating the consumer side of the
16 analysis.
17 Q. Okay. So explain to me what that
18 process was.
19 A. Sorry. Just tired. Need to collect
20 myself for a second.
21 So with the production side, we're
22 taking the numbers of pistols and rifles that were
23 produced and multiplying by a factor. With the
24 consumer side, it's strictly a count of what was

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1 reported for those years that we collected and then
2 interpolating between the known points.
3 Q. And who is doing the reporting in that
4 part of the analysis?
5 A. Who is doing the reporting?
6 Q. Yes.
7 A. Magazine manufacturers.
8 Q. And when you say magazine manufacturers,
9 are you using that to describe a different group of
10 manufacturers than firearms manufacturers?
11 A. Sometimes. There are manufacturers of
12 magazines that do not produce firearms.
13 Q. What would be examples in that category?
14 A. Say, Mec-Gar, for one. Mec-Gar is an
15 OEM supplier to a number of firearm manufacturers.
16 But, to my knowledge, they do not produce firearms.
17 They only produce magazines.
18 Q. All right. And the last sentence here,
19 it says "Totals of each segment were rounded to the
20 closest thousandth."
21 Do you see that?
22 A. Yes, closest thousandth.
23 Q. Why did you round?
24 A. It's something that we do in other

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1 reports, just like the MSR chart. We just try to
2 have a clean table. And at the end of the day, it
3 is an estimate. So it's not pertinent to have an
4 exact per-decimal figure.
5 Q. Other than what we've just walked
6 through here in the methodology section, were there
7 any other steps in the methodology used to generate
8 this report?
9 A. I believe that's it.
10 Q. So now directing your attention to the
11 results section, you write here that "Pistol
12 magazines had an industry average of 2.1 magazines
13 per firearm from the manufacturer, with 44 percent
14 being 10-and-below capacity."
15 Do you see that?
16 A. Yes.
17 Q. How is 2.1 magazines per firearm
18 calculated?
19 A. Oh, that was the factor that we either
20 got from the manufacturer or confirmed through
21 independent research.
22 Q. And where does this 44 percent being
23 10-and-below capacity come from?
24 A. That is simply taking the proportions of

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1 what was the final results and seeing what was the
2 percentage.
3 Q. And that is not based on data from the
4 entire firearms industry, correct?
5 A. Correct. If anything -- and I will
6 openly say this -- it's a very conservative
7 estimate. Because if I could possibly get more
8 people to participate in this, then I can have a
9 more representative number and, using methodology,
10 that number would go up because it's largely a
11 count.
12 Q. Based on this analysis, do you know what
13 percentage of pistol magazines were 15 rounds or
14 less?
15 A. I'm sorry. How many pistol magazines
16 were 15 rounds or less?
17 Q. What percentage of pistol magazines were
18 15 rounds or less?
19 A. No, because we don't collect that
20 information.
21 Q. Why not?
22 A. That wasn't a segmentation of our
23 category that we collected.
24 Q. Do you agree that there are at least

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1 some pistol magazines that are in the
2 11-to-15-round capacity range?
3 A. I'm sorry?
4 MR. WELLS: Could we read it back, please.
5 THE WITNESS: It sounded like an incomplete
6 thought.
7 (Record read as requested.)
8 THE WITNESS: 11-to-15-round capacity? Yeah,
9 there are certainly some that are going to be in
10 that range of 11 to 15, represented by the numbers
11 that are in the chart on 1996.
12 BY MR. WELLS:
13 Q. So based on the data that you collected,
14 the percentage of magazines at 15 rounds or less
15 will be higher than 44 percent, correct?
16 A. I didn't break out pistol magazines
17 15 rounds or less. So I'd have trouble figuring
18 that out because it was not a dataset that we
19 collected.
20 Q. Okay. So you agree that, based on your
21 study, 44 percent of magazines were -- of pistol
22 magazines were 10 rounds or less, correct?
23 A. That's exactly what we say here.
24 44 percent of 10-and-below capacity magazines for

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1 pistols.
2 Q. And then you just agreed with me when I
3 asked you whether or not there were at least some
4 magazines in the 11 -- pistol magazines in the
5 11-to-15-round capacity category, correct?
6 A. There are some.
7 Q. So it's 44 percent plus some, right?
8 A. Keep going.
9 Q. Do you understand the question?
10 A. I don't.
11 Q. Okay. So because you didn't -- okay.
12 You didn't look at the 15-round-and-under threshold
13 specifically, right?
14 A. No, we did not.
15 Q. Okay. But you agree, based on your
16 knowledge of the firearms industry, that there is a
17 group of magazines out there for pistols in the
18 11-to-15-round category?
19 A. I know that there are 15, and I know
20 there are some like 13- or 14-round magazines. But
21 how many there are, I can't speak to, because we
22 did not seek out that information in the study.
23 Q. But the addition of that quantum, which
24 you don't know, to the quantum that's 44 percent at

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1 10-rounds-and-below would make the number go higher
 2 than 44 percent, correct? The percentage go higher
 3 than 44 percent?
 4 A. It may. I'd really have to look at it.
 5 And I apologize. You're asking me when I'm kind of
 6 tired right now, so numbers are tough.
 7 Q. I'm just trying to establish that the
 8 baseline is 44 percent for 15 rounds, and it's
 9 probably higher, right? Because there are at least
 10 some magazines out there that are 11 to 15 rounds,
 11 and that would push the number above the 44 percent
 12 that you calculated for the 10-round threshold.
 13 A. In a more simplistic view, I would agree
 14 that there are pistol magazines 15-and-below
 15 capacity. It would be hard to segment out the 11
 16 to 15 without independently looking at it.
 17 Q. All right. And in the results section
 18 here, you also note that "Rifle magazines had an
 19 industry average of 1.8 magazines per firearm from
 20 the manufacturer, with half being 10-and-below
 21 capacity, 20 percent being 11-to-29-round capacity,
 22 and 30 percent being 30-plus-round capacity."
 23 Did I read that correctly?
 24 A. That's correct.

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1 Q. So how is that 1.8 magazines per firearm
 2 calculated?
 3 A. That was the same methodology for the
 4 pistols. Independent research and confirming or
 5 asking the manufacturer.
 6 Q. Is it fair to say that half of all
 7 "in-the-box" rifle magazines in the study were 10
 8 rounds or less?
 9 A. Yes.
 10 Q. All right. Just directing your
 11 attention to the second paragraph here in the
 12 results section. Do you see that it says that
 13 29 percent of magazines that were "estimated in the
 14 study originate from detachable magazines provided,
 15 quote, in the box with each newly manufactured
 16 firearm"?
 17 Do you see that?
 18 A. I see that.
 19 Q. So before you described two categories:
 20 In-the-box and secondary market. Do you recall
 21 that?
 22 A. Yes.
 23 Q. So what you're describing here is that
 24 29 percent of the magazines that you calculated

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1 through this study were in the in-the-box category;
 2 is that fair to say?
 3 A. Provided from the manufacturer, yes.
 4 Q. And the remaining 71 percent are in the
 5 secondary market category; is that right?
 6 A. That's correct.
 7 Q. So that would be magazines from one of
 8 two sources: Either the firearm manufacturer who
 9 is selling the magazine by itself, not packaged
 10 together with a firearm, or from a magazine
 11 manufacturer that's only selling the magazine,
 12 correct?
 13 A. That's correct.
 14 MR. LOTHSON: Are you at a good stopping
 15 point?
 16 MR. WELLS: Sure, yeah.
 17 MR. LOTHSON: Let's take a quick break.
 18 (Short recess.)
 19 MR. WELLS: Going back on the record. It's
 20 3:47.
 21 BY MR. WELLS:
 22 Q. You're still under oath. I should have
 23 reminded you before.
 24 Before when we were looking at

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1 Deposition Exhibit 14, the detachable magazine
 2 report, we were talking about secondary market
 3 magazines. Do you recall that?
 4 A. Yes.
 5 Q. And you would agree with me that
 6 firearms that accept detachable magazines can
 7 accept magazines with different capacities, right?
 8 A. Typically. I mean, you can have a
 9 minimum with, largely, the maximum is, like, how
 10 big can it be made while still functioning.
 11 Q. And the firearm that can accept a
 12 detachable magazine can accept a magazine that has
 13 a larger or smaller capacity than the original
 14 magazine included in the box by the manufacturer of
 15 the firearm?
 16 A. Within reason.
 17 Q. So, yes, but within reason?
 18 A. Yes, but within reason. There are
 19 limitations.
 20 Q. What kinds of limitations?
 21 A. So mag well, for example, on an AR, in
 22 order to get a flush-fit magazine, you're typically
 23 going to have, like, a five-rounder to go in there
 24 and still be able to grab it and pull it out.

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1 Q. When you say flush-fit, what do you
 2 mean?
 3 A. There's not much of the magazine
 4 extruding from the mag well other than, like, what
 5 very little is there to pull it out.
 6 Q. So you need at least some part of the
 7 magazine sticking out beneath the bottom of the mag
 8 well to be able to pull out the magazine; is that
 9 right?
 10 A. Typically.
 11 Q. Are you familiar with what are called
 12 sometimes compliant magazines?
 13 A. Does that mean compliant to a state
 14 regulation that would then limit it?
 15 Q. Yes.
 16 A. Yes. I just want to be specific.
 17 Q. So, for instance, in a state like
 18 California where the magazine capacity limit is
 19 10 rounds, manufacturers will sell
 20 California-compliant magazines that are 10 rounds
 21 or less?
 22 A. That's correct.
 23 Q. A pistol that can accept a detachable
 24 magazine can generally accept a magazine that has a

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1 capacity of 15 rounds or fewer, even if the
 2 in-the-box magazine for that firearm has a greater
 3 capacity than 15 rounds, correct?
 4 A. It largely depends. You can't apply
 5 that across the board.
 6 Q. All right. A rifle that can accept a
 7 detachable magazine can generally accept a magazine
 8 that has a capacity of 10 rounds or fewer, even if
 9 the in-the-box magazine for that firearm has a
 10 capacity greater than 10 rounds, correct?
 11 A. Again, with limitations. If you need to
 12 put in a block to be compliant or you have to be
 13 proprietary magazine, those would fit.
 14 Q. All right. I'm going to direct your
 15 attention back to NSSF 1996. So this is the second
 16 page of Deposition Exhibit -- I'm sorry -- the
 17 third page of Deposition Exhibit 14, the detachable
 18 magazine report.
 19 A. I'm sorry. You said 1996?
 20 Q. Yep.
 21 A. All right.
 22 Q. So directing your attention to the top
 23 of the page there, do you see it says "Of the
 24 estimated 963 million magazines, approximately

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1 74 percent, or 717 million, magazines have a
 2 capacity of 11-plus rounds"?
 3 Did I read that correctly?
 4 A. You did.
 5 Q. So one of the outcomes of this study
 6 that you performed was a final number for estimated
 7 magazines, and that final number was 963 million;
 8 is that right?
 9 A. For this study period, yes.
 10 Q. For the study period, meaning...
 11 A. 1990 to 2021. And, again, this is a
 12 conservative estimate. If I had more participation
 13 by more magazine manufacturers, then we could have,
 14 you know, upped the number and made it more true to
 15 reality. But we can't make up numbers and, you
 16 know, insert a name for a manufacturer. We have to
 17 have them report it.
 18 Q. Are there magazines that were
 19 manufactured in the 1990s that no longer exist?
 20 A. That's actually called out in the
 21 limitations. We don't account for breakage, and
 22 that's certainly a limitation of it. What's also a
 23 limitation is not counting any magazines prior to
 24 1990, which, again, reinforces the conservative

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1 nature of this.
 2 We talked about, earlier this
 3 morning -- I can't believe it's already been
 4 morning -- past morning -- AR-15s and AKs were, you
 5 know, largely MSRs, started back in the '50s/'60s.
 6 Magazines for them have not changed a lot. And
 7 there's no way to really confirm, because there's
 8 no reliable data, how many of those from '50s/'60s
 9 to 1989 are still around.
 10 Q. Why did you just refer to AR magazines
 11 in particular?
 12 A. Just because we were talking about MSRs
 13 before AR/AK and variants thereof.
 14 Q. Would you also acknowledge that the
 15 963 million figure that you calculated here, some
 16 portion of that total figure of the magazines have
 17 been lost, correct?
 18 A. That is called out in the limitations,
 19 breakage or any other way to deduct them.
 20 Q. Would you also agree that, out of the
 21 963 million estimated magazine figure, some
 22 percentage of those are illegally owned in the
 23 United States?
 24 A. You're asking me to pontificate on it,

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1 and I'm not sure that I'm the person to do that
 2 because I'm not an expert.
 3 Q. I'm not asking you to pontificate. I'm
 4 really just asking, you're aware that some people
 5 possess magazines illegally, perhaps if they're a
 6 felon?
 7 A. That certainly can be true. For this
 8 instance, I really don't know how it really would
 9 relate.
 10 Q. And it wasn't part of your analysis to
 11 calculate how many of the 963 million magazines
 12 were unlawfully owned in the United States?
 13 A. Last I checked, criminals don't really
 14 report that.
 15 Q. So it wasn't part of your analysis?
 16 A. That's correct.
 17 Q. Was it part of your analysis to
 18 calculate what proportion of the 963 million
 19 magazines that you estimated have been diverted to
 20 other countries?
 21 A. By "diverted," you mean criminally
 22 diverted?
 23 Q. No. It can be criminally diverted or
 24 just otherwise no longer in the United States.

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1 A. No. I don't believe we accounted for
 2 that. That's a great point to put in for my next
 3 limitation update. Thank you.
 4 Q. All right. You write here that "The
 5 percentage of detachable magazines at 11-plus
 6 capacity is about 55 percent of total pistol
 7 magazines."
 8 Did I read that correctly?
 9 A. Yes.
 10 Q. You don't know what percentage of that
 11 15 -- 55 percent of total pistol magazines is
 12 magazines in the 11-to-15-round category, do you?
 13 A. We did not study that.
 14 Q. So you don't know?
 15 A. That's outside the scope.
 16 Q. So you don't know?
 17 A. That's correct. I did not study that in
 18 this report, so therefore, I don't know.
 19 Q. Okay. And in the last sentence here,
 20 "The consumer market totals of rifle magazines show
 21 30-plus-capacity magazines, over 413 million, are
 22 over 30 times the amount available than
 23 10-and-below-capacity rifle magazines, about
 24 13 million."

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1 Do you see that?
 2 A. Yes.
 3 Q. And so in that sentence, you're
 4 comparing the secondary market figures exclusively,
 5 correct?
 6 A. That's correct. Consumer market totals.
 7 Q. That observation does not apply to the
 8 in-the-box magazines?
 9 A. No. That's strictly the consumer market
 10 totals.
 11 Q. All right.
 12 A. If I had a calculator, I can get you the
 13 manufacturer portion.
 14 Q. I'm showing you the calculator. I'm not
 15 going to make you do it.
 16 A. Okay. If you'd like me to do it, I'm
 17 happy to do it.
 18 Q. All right. So I want you to first tell
 19 me, these rows, these blue rows that are in the
 20 middle here in this chart that says "Firearm
 21 Magazine Estimate 1990 to 2021," describe generally
 22 what's in this chart.
 23 A. So this is a breakdown of segments of
 24 magazines, whether they are from the manufacturer

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1 or secondary market; and then a total sum,
 2 segmented again, further, by pistol 10-below,
 3 pistol 11-plus, rifle 10-below, rifle 11-to-29,
 4 rifle 30-plus. With a grand total at the bottom.
 5 Q. And, again, those categories are the
 6 same as the NSSF magazine chart you testified about
 7 in the Oregon trial?
 8 A. Yes, they are.
 9 Q. Do you see where it says "Grand total
 10 963,772,000"?
 11 A. That's correct. I see that.
 12 Q. What is that number?
 13 A. That is the total of all magazines in
 14 the bottom row of manufacturer and consumer totals
 15 for all capacities added up.
 16 Q. So that's all the magazines that you --
 17 that's the sum total estimate of all the magazines
 18 that you were able to capture in this study; is
 19 that fair to say?
 20 A. That's correct.
 21 Q. Across all the different categories?
 22 A. That's correct. Again, being a
 23 conservative estimate, because if I would have had
 24 more participation, I could have had a more

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1 representative answer. But I can't make them
2 participate.
3 Q. And out of that 963.8 million total,
4 448.4 million are rifle magazines of 30-plus; that
5 was the result you got?
6 A. Yes.
7 Q. All right. I want you to leave this
8 exhibit right here Deposition Exhibit 14, and I
9 want you to pull out the 2020 industry "Firearm
10 Production in the United States" report. So
11 Deposition Exhibit 12.
12 A. Number 12.
13 Q. I want you to turn to page 7 of that
14 report, NSSF 000023. You've got them side by side?
15 A. Yes, sir.
16 Q. So just comparing category to category
17 here, in the report that you generated with the
18 methodology that we discussed earlier, you reached
19 a result, a grand total of 963,772,000. In the
20 report conducted by your predecessor, Jim
21 Curcuruto, the conclusion for that same category of
22 total magazines was 304.3 million; is that correct?
23 A. That's correct. I'm sorry. Did you say
24 304 or 403?

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1 Q. 304, the number reflected on the page.
2 304,300,000.
3 A. Yes.
4 Q. So just doing kind of rough subtraction,
5 you ended up with a total magazine figure that was
6 660 million magazines higher than the Curcuruto
7 analysis?
8 A. That's correct.
9 Q. And the time period for your study was
10 1990 to 2021; is that right?
11 A. That's correct.
12 Q. And the time period for the Curcuruto
13 study was 1990 to 2018; is that correct?
14 A. That's correct.
15 Q. So you were looking at data from only
16 three additional years: 2019, 2020, and 2021; is
17 that correct?
18 A. Not necessarily. I looked at different
19 segments in the market and three additional years.
20 So we're looking at this at first glance, and, you
21 know, with, unfortunately, a limited amount of, you
22 know, records left over. I think that Jim counted
23 the consumer market -- or I'm sorry -- the
24 manufacturer market in his initial analysis, where

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1 I, through independent study and just knowing the
2 market, I decided to count both the manufacturer
3 totals and the consumer market totals, where I
4 believe he might have only counted one segment of
5 the market -- what comes with the guns -- where I
6 went and did what comes in the box and the
7 additional stuff. And that was largely a benefit
8 to -- not a benefit. That was largely in thanks to
9 the magazine manufacturers that did participate.
10 Q. So was his analysis wrong?
11 A. I don't know if it was wrong just
12 because I literally don't have enough to really
13 analyze it. But I know that, having seen what he
14 did, I built off of it. And I believe I have one
15 of, if not the most thorough analysis of magazines
16 in circulation. The only way to really improve it
17 that I know of is to get more magazine
18 manufacturers to participate, which then would
19 increase that number, making this a conservative
20 estimate.
21 Q. And just comparing the rifle magazines
22 of 30-plus rounds, you found -- or you estimated
23 448,369,000, and the Curcuruto analysis resulted in
24 79,200,000. So you had over 350 million more?

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1 A. Again, counting two sides of the market.
2 I think he counted one, where I counted both.
3 Q. Okay. And just looking at the NSSF 1996
4 chart -- or let me ask you this. Did you compare
5 your results to the Curcuruto results?
6 A. I did when I was done, just out of
7 curiosity. Didn't change anything. It didn't
8 impact the results whatsoever. Just out of
9 curiosity, what's the totals. All right. They are
10 what they are.
11 Q. Was that part of your logic check?
12 A. No. That was strictly out of curiosity.
13 My methodology was sound, and I didn't have to go
14 in -- I did not and would not go back and adjust
15 things just because the proportions were off from
16 what Curcuruto did.
17 Q. Were you surprised that you got a figure
18 that was 600 million higher than Curcuruto?
19 A. No. And, if anything, I still think my
20 963 million is a -- "drastic" is probably a strong
21 word, but definitely an understatement to some
22 degree, knowing that we had manufacturers that
23 would not participate so that we couldn't capture
24 more detachable magazines that are were made

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1 available to the market, and not counting anything
2 that's left over from pre-1990.
3 Q. And you're confident in your
4 methodology?
5 A. Yes.
6 Q. And I think you said it was the best
7 estimate that anybody has done of magazines; is
8 that right?
9 A. It's the best one that I know of.
10 MR. WELLS: All right. Could you pull up
11 NSSF 2323, Mike.
12 BY MR. WELLS:
13 Q. So I'm showing you on the screen what
14 was produced as NSSF 002323. Do you recognize this
15 document?
16 A. Yes, I do.
17 Q. What is it?
18 A. That is the working document that I used
19 to track the magazines included in the report.
20 Q. Which report?
21 A. The detachable magazine report, 1990 to
22 2021.
23 Q. So is it fair to say that this
24 NSSF 002323 is the backup documentation for the

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1 calculations and the charts that we just looked at
2 in the detachable magazine report that you
3 prepared?
4 A. That's correct.
5 Q. And that was Deposition Exhibit 14?
6 A. That's correct.
7 Q. And this is a spreadsheet that has
8 multiple tabs; you would agree?
9 A. Yes.
10 Q. And the first tab is labeled "Master."
11 Do you see that?
12 A. Yes.
13 Q. What's in the Master tab?
14 A. Can we click into it, please?
15 Q. Sure.
16 A. So this is the top 15 manufacturers,
17 rifle and pistol, and the start date of when those
18 organizations started. So, for instance, like,
19 SCCY, if they started in 2023, they're not going to
20 have AFMER data for 1995, for example, because they
21 didn't start then.
22 Q. Okay. And then after that tab, we see
23 several tabs that have what look like years?
24 A. Yep.

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1 MR. WELLS: So, Mike, if you would just go to
2 1990.
3 BY MR. WELLS:
4 Q. What's in the 1990 tab?
5 A. 1990 AFMER for these manufacturers. If
6 a number was reported, it is recorded here.
7 Q. And are there any redactions in this?
8 A. No. So the blanks here are largely
9 because it wasn't in the AFMER, and so it wasn't
10 available.
11 Q. So this particular spreadsheet has not
12 been redacted; is that fair to say?
13 A. That's correct.
14 Q. And as you just said, the absence of
15 numbers associated with a particular firearms
16 manufacturer just reflect the fact that there was
17 no AFMER data for that manufacturer for that
18 category for that year?
19 A. That's correct.
20 MR. WELLS: All right. So, Mike, if you would
21 scroll through the other -- or just go to the
22 last -- next to last tab.
23 BY MR. WELLS:
24 Q. Do you recognize -- what's this tab

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1 called?
2 A. "Totals."
3 Q. And what is reflected in the Totals tab
4 of NSSF 002323?
5 A. The top 15 manufacturers, the amount of
6 pistols and rifles for each manufacturer that they
7 made, and the application of the magazine factor,
8 the one -- the magazines that came in the box,
9 applied to the production numbers that are in the
10 sum.
11 (NSSF Deposition Exhibit 15 was
12 marked for identification.)
13 BY MR. WELLS:
14 Q. I'm handing you what's been marked as
15 Deposition Exhibit 15. Do you recognize the
16 information shown here?
17 A. Yes.
18 Q. What is it?
19 A. This is what we were just looking at.
20 It's the document that I used to organize and
21 compile the data.
22 Q. So what we're looking at in Deposition
23 Exhibit 15 is the Totals tab of NSSF 002323; is
24 that fair to say?

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1 A. Yes.
 2 Q. And I can represent to you that this is
 3 a screenshot of this particular sheet. You're
 4 familiar with Excel, correct?
 5 A. Yes.
 6 Q. So directing your attention to the upper
 7 left-hand corner of Deposition Exhibit 15, do you
 8 see where it says C3?
 9 A. Yes.
 10 Q. Do you have an understanding as to what
 11 that means?
 12 A. Is that column C, row 3?
 13 Q. Right. So C3 corresponds to the
 14 information that's in column C, row 3?
 15 A. Yes.
 16 Q. And are you familiar with the formula
 17 section of Excel where you can enter formulas to --
 18 A. Yes.
 19 Q. You can enter formulas to apply to data
 20 in the spreadsheet?
 21 A. I am aware that you can use formulas in
 22 Excel, yes.
 23 Q. And looking at C3 here, you agree that
 24 in the formula section it says "=B3*2"? Do you see

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1 that?
 2 A. Yes.
 3 Q. And that asterisk or star refers to
 4 multiplying in Excel, correct?
 5 A. That's correct.
 6 Q. So what's in cell C3 is equal to what's
 7 in cell B3 times two, correct?
 8 A. That's correct.
 9 Q. So now looking at cell B3, what number
 10 do you see there?
 11 A. That is the total sum of AFMER-reported
 12 pistol production for Smith & Wesson.
 13 Q. And you would agree that the number in
 14 cell B3 is 14,744,566; is that correct?
 15 A. Yes.
 16 Q. And now looking at cell 3, you would
 17 agree that the number there is 29,489,132?
 18 A. Yes.
 19 Q. So is it fair to say that column C is
 20 just column B multiplied by two?
 21 A. It depends. So that 2 that's
 22 represented there is the factor of magazines that
 23 come in a box. So for every manufacturer that's
 24 here, we would take the pistol total, multiply it

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1 by the amount of magazines in the box, and then
 2 resulting in the totals in C.
 3 Q. So -- all right. Now looking at cell C5
 4 on the screen, NSSF 002323, row 6 for Glock in the
 5 formula section, it says "=B6*3." Do you see that?
 6 A. Yep.
 7 Q. What does that mean?
 8 A. That means that Glock pistols, on
 9 average, come with three magazines in a box.
 10 Q. What's that average based on?
 11 A. That is based off of Glock reporting and
 12 also independent research; going to stores and
 13 figuring it out. And also independent research
 14 online, searching Glock products and seeing how
 15 many magazines come with each one.
 16 Q. Glock reporting to whom?
 17 A. To me through the survey.
 18 Q. Did you document what Glock reported?
 19 A. I did in this report in aggregate, and
 20 then as we talked about before, the individual
 21 response was expunged based on the confidentiality
 22 agreement that we had.
 23 Q. What time period did you use to
 24 calculate the three average here?

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1 A. What do you mean?
 2 Q. So do you know that Glock always,
 3 between 1990 and 2021, included three magazines
 4 with its pistols in the box?
 5 A. That is what they designated in the
 6 survey based off of the questions that we asked.
 7 Q. But the survey did not survey what
 8 Glock's practices were for each year between 1990
 9 to 2021, correct?
 10 A. It did survey a bunch of the periods
 11 that we studied. I don't remember exactly what it
 12 was. But --
 13 Q. Did it survey every year?
 14 A. It surveyed the -- in 1990, 2000, 2010,
 15 2020, 2021.
 16 Q. And that was -- so it surveyed only
 17 1990, correct, not 1990 to 1999?
 18 A. No. It surveyed those blocks of 10-year
 19 increments to try to reduce the burden on our
 20 manufacturers as an effort to get them to actually
 21 respond.
 22 Q. So I'm genuinely confused. When a
 23 manufacturer entered the figure for 1990, did they
 24 then enter another figure for 1991 and another

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1 figure for 1992?

2 A. If they had one. So, for instance, if a

3 manufacturer wasn't in business, they just

4 disregarded that portion, didn't answer it. And

5 then for the portions that they did have data and

6 figures, then they would report in the appropriate

7 section.

8 Q. And then you just took an average of

9 that, and that average was three, and that's how

10 you determined the factor to multiply in --

11 A. Correct. And if you go online right

12 now, you go on your phone, you look up Glock or a

13 particular retailer's website, you're going to see

14 that they come with three magazines.

15 Q. All right. I've now had the screen show

16 the tab labeled "Working Sheet" in NSSF 002323.

17 Does this look familiar?

18 A. Yes.

19 Q. What is it?

20 A. This is where I took the production

21 portion and put it in the master -- sorry -- the

22 master chart, the total chart, that is reflected on

23 1996.

24

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1 (NSSF Deposition Exhibit 16 was

2 marked for identification.)

3 BY MR. WELLS:

4 Q. I've just handed you what's been marked

5 as Deposition Exhibit 16. Do you recognize the

6 information in Deposition Exhibit 16?

7 A. Yes.

8 Q. What is it?

9 A. That is the consumer market table that

10 we previously discussed, along with the

11 manufacturing totals and the manufacturing and

12 consumer market totals. We are missing some of the

13 top, the top 35 rows, of this worksheet on this

14 printout.

15 Q. So just looking up at the screen in

16 NSSF 0023, before we were looking at the top half

17 of NSSF 002323. So rows 1 through 37 or so?

18 A. Yep.

19 Q. And is it fair to say that in Deposition

20 Exhibit 16 we're now looking at rows 36 and

21 subsequent?

22 A. Yeah, to 79.

23 Q. Yeah, to 79.

24 A. Yeah.

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1 Q. And to be fair, here, goes -- there's

2 some additional rows below 79, correct?

3 A. That's correct.

4 Q. All right. So in looking at Deposition

5 Exhibit 16, which is rows 36 through 79, looking at

6 cell K -- do you see where it says "Grand Total" on

7 the bottom right there?

8 A. Yes.

9 Q. And that number is 963,774,383?

10 A. Yes.

11 Q. What is that figure?

12 A. That is the total of manufacturer and

13 consumer market totals for all segments and

14 magazines in one lump sum, that is also reflected

15 in the magazine report.

16 Q. So you see that in Deposition Exhibit 16

17 the total is 963,774,383. Do you see that?

18 A. Yes.

19 Q. And looking at Deposition Exhibit 14,

20 the grand total is 963,772,000. Do you see that?

21 A. Oh, I do see that.

22 Q. So those numbers are different, right?

23 A. Yeah. I had a typo on the thousand in

24 the grand total. It should have been rounded down

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1 to 963,774,000. But clearly I messed something up

2 and had -- actually, no. No, I'm sorry. I didn't

3 mess anything up. That is the grand total when you

4 have all the digits not rounded. Once you round

5 the digits, in order to not get the random, "hey,

6 your numbers are wrong when you add them up on your

7 chart," those e-mails coming in, I added up the

8 rounded-up numbers, and that resulted in the

9 963,772,000.

10 Q. So how does 963,774,383 round to

11 963,772,000?

12 A. If you scroll down on that working

13 sheet, that is the rounding to the nearest

14 thousand.

15 Q. Well, looking at the thousandths digit

16 in Deposition Exhibit 16, it's 4.

17 A. Yes.

18 Q. And in 1996 it's a 2.

19 A. Yes. And I'll go over it again just to

20 make sure we're on the same page here. The

21 unrounded numbers in the totals, if you add them

22 all up, that's that 4. But if you -- once you

23 round it to logically follow the totals, rounding

24 up and down to the nearest thousand, you get to the

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1 772.
2 Q. When does the rounding happen?
3 A. Once I have the final total in that
4 table right there. So you can see the totals that
5 I had, and then I just round to the nearest
6 thousand below.
7 Q. Category -- so you did the rounding at
8 the category level before you did the grand total;
9 is that what I'm hearing?
10 A. Yeah. So once this portion -- sorry --
11 stand up or no?
12 Q. Sure. Go ahead.
13 A. Once this is done, the computation here
14 is complete. Now I need to make something that's
15 going to go on a report. And so because we
16 typically round to the nearest thousand just as
17 normal course of business, if you add up these
18 numbers and then plug in a number that's off by
19 2,000, it's going to get questioned.
20 Q. I see. All right. So you just got -- I
21 see. So you did the rounding at a different part
22 of the chart, basically?
23 A. It's here.
24 Q. Yeah, yeah. I see. I see. I

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1 actually --
2 A. So it's -- yeah. This is just here
3 rounded, and then all I did was put in the totals
4 there.
5 Q. Got it. Okay.
6 A. Because, undoubtedly, if you put
7 something out that does not jive when you add
8 everything up -- kind of like when you do a survey
9 and you don't -- doesn't -- net survey, or any sort
10 of, you know, report that's supposed to total up to
11 100, and the percentages don't total up to 100, you
12 will always get someone that finds that. Oh,
13 you're going to get e-mails about it forever.
14 Q. Yeah, that 1 percent?
15 A. Yeah.
16 Q. Right. Okay. So looking at Deposition
17 Exhibit 16 at the top, do you see on the upper left
18 hand it says J42?
19 A. Yes.
20 Q. And that corresponds to the information
21 in cell J42; is that right?
22 A. Yes.
23 Q. And just looking at the formula section
24 here at the top, that figure in the screenshot here

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1 says 172,000 -- let me say that again. I'm just
2 going to read the figures to you. Okay?
3 A. That's fine.
4 Q. 1727272.72727273. Why are there eight
5 decimal places in that figure?
6 A. It's just a function of Excel. When you
7 have two known points and you're interpolating
8 between those two points and you have it do that
9 function and it fills in for that period between
10 known points, it's just a function of Excel, and I
11 never edited it.
12 Q. What are the two known points that
13 you're referring to here?
14 A. The data collected in 1990 and the data
15 collected in 2000.
16 Q. Okay. So if we scroll up to cell J41 --
17 I'm directing your attention to the screen at
18 NSSF 002323 -- you're taking that 1.3 million
19 figure in the 30-plus rifle column as your baseline
20 for 1990; is that right?
21 A. Yes. That is all the magazine
22 manufacturers that did participate in the survey
23 added up.
24 Q. And then now going to cell J51 for 2000,

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1 you've got a figure of 5 million. Do you see that?
2 A. Yes.
3 Q. And those are the two points that you're
4 interpolating between, right?
5 A. That's correct.
6 Q. And as we see in the formula function up
7 there in J51 on NSSF 2323 on the screen, there's no
8 formula being applied to generate that 5 million
9 figure in cell J51?
10 A. That's correct. That is one of the
11 years that we collected from magazine
12 manufacturers.
13 Q. But as I go through cells J42 through
14 49, would you agree with me that all of the figures
15 in the 30-plus rifle category in this Excel
16 spreadsheet have multiple decimal places after
17 them, correct?
18 A. Between -- from 1991 and 1999.
19 Q. And that's because of this interpolation
20 that you did?
21 A. Interpolation between known points, yes.
22 Q. And how did you generate the 1.3 million
23 figure as a known point?
24 A. Surveying magazine manufacturers.

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1 Magazine and firearm manufacturers.
 2 Q. So -- and what did you do with that
 3 data? Did you add it together, or did you --
 4 A. Yeah. It's added together here. And
 5 then the -- like I said before, the individual
 6 responses, based on our confidentiality agreement
 7 of getting the data, I deleted the individual
 8 response once it's aggregated and counted here.
 9 Q. So basically, is the increment each year
 10 from 1.3 million to 5 million the same?
 11 A. What do you mean?
 12 Q. The increment of increase. So --
 13 A. Yes. So if you have the two known
 14 points and you interpolate between, it is a even
 15 segmentation between those two points to fill in
 16 the middle.
 17 Q. And this period includes the time period
 18 of 1994 to 2000?
 19 A. That's correct.
 20 Q. And then beyond that, the next
 21 interpolation would have been between 2000 and
 22 2010; is that fair to say?
 23 A. 2000 and 2010, yes.
 24 Q. So similar approach, you take the

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1 5 million for 2000, and then according to cell J61
 2 for 2010, you're at 23 million; is that right?
 3 A. That's correct.
 4 Q. And that's based on manufacturer survey
 5 information?
 6 A. Yes.
 7 Q. All right. And in between for 2001 and
 8 2002 and 2003 and 2004 and 2005 and 2006 and 2007,
 9 2008, and 2009, the information is having a factor
 10 multiplication factor applied to it; is that right?
 11 A. It's just an interpolation between known
 12 points, taking the 2000 number to 2010 number and
 13 evenly segmenting it up so that you can get up to
 14 the two known plots.
 15 Q. And that's why there's eight decimal
 16 places in each of the cells?
 17 A. That's correct.
 18 Q. Did you do a logic check on this
 19 methodology?
 20 A. Yes.
 21 Q. Do you agree with me that the 30-plus
 22 rifle category in column J in NSSF 002323, "Working
 23 Sheet" tab, is the largest category every year from
 24 1990 to 2021?

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1 A. Yes. If you add up the three bottom
 2 totals, it is the largest.
 3 Q. And it's --
 4 A. Or not three. Four. Four bottom
 5 totals.
 6 Q. But not just the total. For each year,
 7 the 30-plus rifle category is the largest for every
 8 year, right?
 9 A. That's typically how you become the
 10 largest.
 11 Q. But every year, 1990 to 2021; is that
 12 right? Just looking at column J and comparing it
 13 to columns I, H, G, and F.
 14 A. Yeah.
 15 Q. Do you recall earlier that -- so -- and
 16 just to kind of, for instance, like, let's take
 17 1995. So 1995, column J, the 30-plus rifle
 18 category, you see a 3,181,818?
 19 A. Yes.
 20 Q. And --
 21 A. That is our estimate for that year based
 22 off of the known data that we do have.
 23 Q. Okay. And so that's the 30-plus rifle
 24 category. Working backwards to column I, the rifle

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1 11-to-29 category, you've got 127,273. Do you see
 2 that?
 3 A. Yes.
 4 Q. So the rifle 30-plus category is bigger
 5 than the rifle 11-to-29 category?
 6 A. Yes. And having industry knowledge of
 7 what folks use and prefer, it's a much more common
 8 magazine.
 9 Q. Right. And in column H, rifle 10 below
 10 for 1995, the figure is 38,636; is that right?
 11 A. That's correct.
 12 Q. And the figure for column G, which
 13 corresponds to pistol 11-plus, is 283,836?
 14 A. That's correct.
 15 Q. And the figure for column F for the
 16 pistol 10-below category for 1995 is 214,412; is
 17 that right?
 18 A. That's correct.
 19 Q. So the 30-plus rifle category for 1995,
 20 according to this analysis for 1995, was over
 21 3 million; is that right?
 22 A. That's correct.
 23 Q. And none of the other categories that
 24 you looked at even got over 300,000; is that right?

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1 A. That's correct. And this is, again,
 2 using the magazine -- and this is using the
 3 manufacturer-supplied data to try to create an
 4 historic record to the best our ability to create a
 5 representative estimate.
 6 Q. And that trend continues in 1995,
 7 correct, according to this data? The 30-plus rifle
 8 category is much larger than any of the others.
 9 A. That's correct.
 10 Q. And it continues in 1996; is that right?
 11 A. It continues for most of the -- most, if
 12 not all, of the analysis.
 13 Q. And we discussed earlier that, between
 14 1994 and 2004, federal law prohibited magazines
 15 over 10 rounds, correct?
 16 A. That's correct.
 17 Q. So is it strange to you that for the
 18 years 1994 to 2004, when 30-plus rifle magazines
 19 were illegal, they continued to be under this
 20 analysis, by far, the largest magazine category
 21 that were being produced, according to this
 22 estimate?
 23 A. I wouldn't say it's strange, based off
 24 the reporting that, in 2000, the summation of

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1 30-plus rifle magazines, as reported by
 2 manufacturers, was 5 million. If they are truthful
 3 in their reporting, they give that to me, I trust
 4 their information because they have a vested
 5 interest in being open and honest with us. I have
 6 to use that number.
 7 Q. So it's not surprising to you that,
 8 according to this analysis, while 30-plus rifle
 9 magazines were illegal under federal law during the
 10 Federal Assault Weapons Ban from 1994 to 2004, that
 11 according to this analysis, 30-plus rifle magazines
 12 continued to be, by far, the most popular category
 13 of rifle -- or category of magazine?
 14 A. I can only report what is estimated --
 15 or I can only report what is provided to us in this
 16 estimate and through the survey data. That's it.
 17 Q. And did you do anything to check the
 18 manufacturer's information that they were providing
 19 to you?
 20 A. In regards to...
 21 Q. In regards to interpolating the two --
 22 the figures that you're using to interpolate. Once
 23 you saw this figure where you see massive numbers
 24 of 30-plus rifle magazines in a time period when

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1 federal law prohibited those kinds of magazines,
 2 did that give you any pause?
 3 A. No. Because, again, our manufacturers
 4 have a vested interest in giving us accurate
 5 reporting, based on their records. That's what
 6 they produced, and that's the number I have to use.
 7 Q. Okay. Let's go back to Deposition
 8 Exhibit 14.
 9 A. So is it the magazine report?
 10 Q. Oh, yeah. And before we move on, let me
 11 just ask one question about the year 2000. So in
 12 the year 2000, you're not interpolating, right?
 13 You're actually -- you have information from
 14 magazine manufacturers that you're actually using
 15 to come up with some type of figure; is that right?
 16 A. That's right. That was one of the
 17 segment -- one of the periods that we called out in
 18 the survey to collect information on.
 19 Q. And magazine manufacturers were
 20 representing to you, in the aggregate, that in the
 21 year 2000 they produced 5 million magazines that
 22 were illegal under federal law?
 23 A. I just take the number that was reported
 24 to me, but I can't speak to representation of

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1 what -- that would be legal or illegal.
 2 Q. Do you know whether those manufacturers
 3 were including in that 5 million figure magazines
 4 that were manufactured for the military?
 5 A. We specifically called out for the US
 6 consumer market in the survey.
 7 Q. Okay. Do you know whether manufacturers
 8 actually excluded magazines that were manufactured
 9 for the military?
 10 A. Only that we asked them to answer within
 11 the parameters of the survey.
 12 Q. Do you know whether the information
 13 provided from magazine manufacturers excludes
 14 magazines that were provided to law enforcement?
 15 A. We requested that those be excluded in
 16 the survey.
 17 Q. Do you know whether that request was
 18 complied with?
 19 A. Only that we trust our members to give
 20 us accurate information.
 21 Q. Okay. Let's go back now, really, to
 22 Deposition Exhibit 14.
 23 A. The magazine report?
 24 Q. The magazine report. All right. So I'm

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1 going to direct your attention to the limitation
 2 section. And we talked about some of these
 3 earlier, so I'll run through this quickly.
 4 You agree that one of the limitations
 5 of your study is that not all segments of
 6 detachable magazines could be counted due to lack
 7 of public information or availability of records;
 8 is that correct?
 9 A. That's correct.
 10 Q. And one of the segments that couldn't be
 11 counted was 11-to-15-round pistol magazines?
 12 A. I wouldn't say that they couldn't be
 13 counted. We just didn't try to count it here.
 14 Q. You also note, as one of the
 15 limitations, that military and law enforcement
 16 sales were not counted; is that right?
 17 A. That's correct.
 18 Q. Earlier we discussed situations where a
 19 police officer may be responsible for personally
 20 purchasing their duty weapon that would come with
 21 magazines. Do you recall that discussion?
 22 A. Yes.
 23 Q. So in that scenario, an officer who
 24 purchases a duty weapon from a retailer, the

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1 magazines that are included with that firearm would
 2 be included in the survey, correct?
 3 A. If they purchased it from a retailer,
 4 certainly, we -- it would be captured within the
 5 analysis, yeah.
 6 Q. So for that law enforcement officer's
 7 sale, the magazine is captured in this report,
 8 correct?
 9 A. If they purchased it through a retailer,
 10 yes. For general consumer goods, yes.
 11 Q. What about law enforcement agencies that
 12 purchased firearms that came with magazines?
 13 A. What about them?
 14 Q. Would their purchases with the magazines
 15 be captured in this data?
 16 A. If the agency bought it, meaning that
 17 they put an order directly with the manufacturer,
 18 we asked them to exclude those from the reporting.
 19 Q. How would a manufacturer know what a law
 20 enforcement agency is acquiring from retail?
 21 A. I'm not a manufacturer. I can't really
 22 speculate on how they would do that. I'm sure
 23 their records are -- there are records that they
 24 have to track that.

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1 Q. So how do you know that?
 2 A. I just assume that our -- that our
 3 manufacturers have records.
 4 Q. You assume that your manufacturers have
 5 records of sales by law -- sales to law enforcement
 6 agencies by retailers?
 7 A. No. I said earlier, if the agency is
 8 making a purchase from a manufacturer, that would
 9 largely be -- not largely. I keep saying that
 10 word -- it would be a contract. If it's something
 11 that goes to a retailer, then there's no telling if
 12 it's Joe Citizen or law enforcement that purchased
 13 it.
 14 Q. So when you say military and law
 15 enforcement sales were not counted here, what you
 16 really mean is military and law enforcement sales
 17 by the manufacturer were not counted, correct?
 18 A. That's correct.
 19 Q. Military and law enforcement sales by
 20 retailers would be included, correct?
 21 MR. LOTHSON: Objection. I think that
 22 misstates his testimony. You haven't talked about
 23 military.
 24

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1 BY MR. WELLS:
 2 Q. We did talk about military, but let's
 3 just limit it to law enforcement. So law
 4 enforcement sales to -- by retailers would be
 5 included, correct?
 6 MR. LOTHSON: Let me -- just for
 7 clarification. Are you talking about individual
 8 Barney Fife who goes out and buys by himself, or
 9 are you talking about Mayberry, the police
 10 department?
 11 MR. WELLS: We're talking about Mayberry
 12 from -- not SIG SAUER, but one of its retailers
 13 that it sold pistols to.
 14 BY MR. WELLS:
 15 Q. Pistols are now in possession of the
 16 retailer. The retailer then sells them to a law
 17 enforcement agency.
 18 A. Yes.
 19 Q. The magazines that come with those
 20 pistols would be captured in this report, correct?
 21 A. If an agency made a bulk order from the
 22 retailer, then it could be. My understanding, that
 23 if an agency, not an individual officer, were to
 24 make a purchase, usually they go to the

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1 manufacturer and make a bulk sale, bulk purchase.
 2 That's my understanding.
 3 Q. All right. I'm going to direct your
 4 attention to the -- back to the last page of the
 5 detachable magazine report. In this discussion
 6 section in Footnote 3, there's reference to an NSSF
 7 2022 magazine capacity study. What is that study?
 8 A. I'm sorry. Could you show me where that
 9 is.
 10 Q. So it's the bottom of NSSF 001997.
 11 A. That was a study that we had Southwick
 12 and Associates conduct to explore the topic of
 13 magazines.
 14 Q. Do you know whether that's been produced
 15 in this litigation?
 16 A. I don't for sure know if it was or not.
 17 MR. WELLS: We would request that, just for
 18 counsel.
 19 BY MR. WELLS:
 20 Q. Directing your attention to the
 21 discussion in the second paragraph, do you see
 22 where it says "More than half, 53.2 percent of
 23 firearm owners, reported owning a detachable
 24 magazine for a handgun, and nearly a third reported

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1 owning a detachable magazine for rifle"?
 2 Do you see that?
 3 A. Yes.
 4 Q. And where are those figures coming from?
 5 A. That is coming from the NSSF 2022
 6 magazine capacity study.
 7 Q. And referring specifically to the
 8 53.2 percent figure, so if you do the subtraction
 9 based on that same figure, 46.8 percent of all
 10 firearms owners did not report owning a detachable
 11 magazine for a handgun, correct?
 12 A. That's correct.
 13 Q. And, again, doing the same calculation
 14 for the 32.7 percent, two-thirds of firearm owners
 15 did not report owning a detachable magazine for a
 16 rifle, correct?
 17 A. That's correct.
 18 Q. So that 32.7 percent of respondents who
 19 indicated that they did own a detachable magazine
 20 for a rifle, that's one-third of all gun owners, is
 21 that fair to say, according to your survey?
 22 A. It's 32 percent of the population
 23 sample.
 24 Q. Of the respondents to that survey?

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1 A. Correct.
 2 Q. That, and if you take that figure of
 3 one-third of gun owners -- if that survey is
 4 correct -- that one-third of gun owners owns all --
 5 let's see -- over 550 million rifle magazines?
 6 A. No. And I think there's something lost
 7 in translation here. This chart table of pistol
 8 magazines -- and pistol magazines, rifle magazines,
 9 manufacturer-consumer totals, are the ones that
 10 were made available. So they could be owned, they
 11 could be on a store shelf, they could be sitting in
 12 a distributor warehouse waiting to go somewhere.
 13 Nowhere in this did we say that -- did I say that
 14 every one of these is owned. Many of these likely
 15 are sitting on a shelf at a retailer location
 16 waiting to be sold one day.
 17 Q. All right. But we don't know -- you're
 18 talking about a study that you haven't included
 19 here, right?
 20 A. What do you mean?
 21 Q. The 2022 magazine -- NSSF magazine
 22 capacity study, we don't know what the methodology
 23 was for that study?
 24 A. No. But we can provide that to you.

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1 Q. And a reader of this document wouldn't
 2 have any idea what the methodology of that magazine
 3 capacity study was, right?
 4 A. Based off of this, no. We did not
 5 include it in here.
 6 Q. All right. Directing your attention to
 7 the conclusion section, do you see the second
 8 sentence where it says "A more comprehensive
 9 estimate would be attainable if participation from
 10 firearm and magazine manufacturers increased in
 11 future updates"?
 12 Do you see that?
 13 A. I do.
 14 Q. What does that mean?
 15 A. If we got more participation, then we
 16 could get more representative sample -- or
 17 representative estimate of how many magazines are
 18 out there.
 19 Q. Is that referring to the fact that you
 20 send out the survey to 40 -- to a population of 40
 21 and you got 13 responses?
 22 A. Yes. As we get more participation, that
 23 number would go up simply because we're adding to
 24 the count.

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1 Q. But you -- when you say that number
 2 could go up, it would be based on that
 3 interpolation methodology that you applied?
 4 A. It would be based on collecting
 5 information for 1990, 2000, so on, every 10 years,
 6 and 2021, and then interpolating between the known
 7 points.
 8 Q. And as we discussed, that generated very
 9 high figures of 30-plus-round magazine figures for
 10 1994 to 2004?
 11 MR. LOTHSON: Objection.
 12 THE WITNESS: It did.
 13 BY MR. WELLS:
 14 Q. All right. Last sentence. "Changes in
 15 legislation outlawing or granting access to these
 16 magazines may change overall market proportions,
 17 but the preference to have more ammunition
 18 available is clear."
 19 Do you see that?
 20 A. Yes.
 21 Q. Did you write that sentence?
 22 A. Yes.
 23 Q. Whose preference?
 24 A. The consumers.

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1 Q. Was this a consumer study?
 2 A. No. But if you are following, say, the
 3 trends in the ATF AFMER -- or the IIR, built off of
 4 the ATF AFMER, you see proportions of pistols,
 5 revolvers, rifles, everything else, changing over
 6 time. That's why we report so many years. As you
 7 look through, say, Exhibit 16, manufacturers aren't
 8 making more of these because they want them to sit
 9 on the shelf. They're making them because there's
 10 a demand for them.
 11 Q. So it's not a consumer survey, right?
 12 A. This one is not, but the NSSF 2022
 13 magazine capacity study was a survey of consumers.
 14 MR. WELLS: Okay. We'll do one more exhibit,
 15 and then we'll take a break, and then I'm going to
 16 try to drop some stuff.
 17 (NSSF Deposition Exhibit 17 was
 18 marked for identification.)
 19 BY MR. WELLS:
 20 Q. All right. I'm handing you what's been
 21 marked as Deposition Exhibit 17, which is NSSF
 22 002312 through 19. Do you see that?
 23 A. Yes.
 24 Q. Have you seen this document before?

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1 A. Yes.
 2 Q. What is it?
 3 A. This is the questions that we asked in
 4 our magazine survey.
 5 Q. And that magazine survey provided some
 6 of the data that you used to generate the
 7 detachable magazine report that we've been
 8 discussing?
 9 A. That's correct.
 10 Q. And is this the same survey that was
 11 sent to the 40 survey population that we talked
 12 about before?
 13 A. Yes, with one change. There was one
 14 question added to make sure that folks entered the
 15 company that they were working for. That's not
 16 reflected here, but it's not a substantial change,
 17 strictly simply because if you share the survey
 18 link, you lose the tie-in of who that first contact
 19 was.
 20 So if I send you a survey and you're
 21 like -- invite you to the survey, and then you send
 22 it to Mike, Mike answers for you, then it will come
 23 up with just kind of an unusable contact of who
 24 answered.

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1 Q. So directing your attention to the
 2 second page of this document, NSSF 002313, question
 3 one says "For each year below, what is the average
 4 number of handgun magazines that ship with a new
 5 pistol you manufacture? (Please provide your best
 6 estimate)."
 7 So is it fair to say that this
 8 question was providing the information that you
 9 used to then do the interpolation that you
 10 described?
 11 A. No. So this would be for that "Totals"
 12 sheet where then we would apply -- as long as
 13 there's a pistol manufacturer that answered this,
 14 then we would apply that average pistol number as
 15 the factor in that multiplication that we saw in --
 16 I forgot the column.
 17 Q. So the example that we used was the
 18 Glock example --
 19 A. Yes.
 20 Q. -- to come to that average of three; is
 21 that correct?
 22 A. That's right.
 23 Q. All right. And that average was based
 24 on data from five specific years?

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1 A. That's correct.
 2 Q. But not all years from 1990 to 2021; is
 3 that correct?
 4 A. And it's not the complete span of it
 5 because we also had independent research that was
 6 applied to this.
 7 Q. You said here in Q1, "please provide
 8 your best estimate"?
 9 A. Yes.
 10 Q. Did you do anything to validate the
 11 estimates that manufacturers provided?
 12 A. Outside of looking at them and making
 13 sure they tracked and they were logical, no.
 14 Q. And Q2 -- directing your attention to
 15 Q2, it says "For this question, please exclude any
 16 magazines sold to other manufacturers, law
 17 enforcement, and military."
 18 Do you see that?
 19 A. Yes.
 20 Q. So is this what you were describing
 21 earlier when you asked manufacturers to exclude
 22 sales to law enforcement and military?
 23 A. Yes.
 24 Q. Did you do anything to validate whether

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1 or not the respondents to the survey actually
 2 excluded sales to other manufacturers, law
 3 enforcement, and the military?
 4 A. We trust our manufacturers and members
 5 to answer as truthfully as possible.
 6 Q. And question Q2.1, "Please estimate what
 7 proportion of these additional accessory pistol
 8 magazines are 10-or-less-round capacity."
 9 Do you see that?
 10 A. Yes.
 11 Q. Did you do anything to validate the
 12 estimates that manufacturers provided?
 13 A. Similarly for question 2, we trust that
 14 our manufacturers are providing accurate data
 15 because they want an accurate report.
 16 Q. Q3, "Please indicate" -- so this is on
 17 NSSF 2314. "Please indicate the estimated
 18 proportion percentage of handgun magazine capacity
 19 supplied with your pistols for the following
 20 periods (please exclude magazines not shipped with
 21 a firearm)."
 22 Did you do anything to validate the
 23 estimated proportion that manufacturers provided in
 24 response to this survey?

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1 A. Similar to the last two questions, we
 2 trust that our manufacturers are providing accurate
 3 data because they want an accurate report.
 4 Q. So is it fair to say that both the --
 5 well, let's stick with the detachable magazine
 6 report. Is it fair to say that the detachable
 7 magazine report depends on getting trustworthy
 8 information from firearms manufacturers and
 9 magazine manufacturers?
 10 A. That's correct.
 11 Q. If firearms manufacturers and magazine
 12 manufacturers were not providing trustworthy
 13 information, would that impact the results of the
 14 detachable magazine report?
 15 A. It certainly can. But I have no reason
 16 to believe that anybody was untrustworthy or
 17 untruthful.
 18 Q. Similar question with the "Firearm
 19 Production in the United States" reports that we
 20 looked at and, in particular, the "Modern Sporting
 21 Rifle Production in the United States" table. So
 22 NSSF 41. That's also reliant on the
 23 trustworthiness of the information that you get
 24 from firearms manufacturers; is that right?

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1 A. They are the only ones that hold that
 2 information, and so if they are willing to give it
 3 to us, we will certainly use it.
 4 Q. Is that a "yes"?
 5 A. Yes, we rely on them to be trustworthy.
 6 And, again, they are the only ones that hold that
 7 information. So to create a best estimate, we have
 8 to rely on them.
 9 Q. Do you agree that if there were -- that
 10 prohibitions on modern sporting rifle firearms have
 11 negative financial impacts on firearms
 12 manufacturers?
 13 MR. LOTHSON: Objection; beyond the scope.
 14 If you have personal knowledge of
 15 that, go ahead.
 16 THE WITNESS: I don't have personal knowledge
 17 of the finances of our manufacturers.
 18 MR. WELLS: Why don't we take a break, and
 19 then we'll circle back.
 20 (Short recess.)
 21 MR. WELLS: We're back on the record. It's
 22 5:18. All right. I am going to have this marked,
 23 please.
 24

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1 (NSSF Deposition Exhibit 18 was
2 marked for identification.)
3 BY MR. WELLS:
4 Q. I'm handing you what's been marked as
5 Deposition Exhibit 18. Have you seen this document
6 before?
7 A. No.
8 Q. All right. This is something we got off
9 NSSF's website, "The Writer's Guide to Firearms and
10 Ammunition." But you've never seen it?
11 A. No. I'm trying to -- usually we
12 publish, like, a date that it's from.
13 MR. LOTHSON: I can tell you that on page 2
14 there's a date from 2015, and then on the back
15 there's a copyright of 2017.
16 THE WITNESS: That's why I've never seen it.
17 BY MR. WELLS:
18 Q. So it's before your time?
19 A. Yes.
20 Q. And you don't rely on this in the course
21 of your responsibilities?
22 A. I personally have never seen this.
23 Q. Okay. So you can set it to the side.
24 All right.

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1 A. What is this?
2 MR. WELLS: It has the definition of "modern
3 sporting rifle." I don't know if you're curious.
4 All right. I'm going to get this one
5 marked, then.
6 And just for the record, that prior
7 exhibit was "The Writer's Guide to Firearms and
8 Ammunition?"
9 What number are we on?
10 THE COURT REPORTER: That is number 19.
11 THE WITNESS: Out of just general curiosity,
12 I'll have to read this now. I'll go find it and
13 read it.
14 MR. LOTHSON: We have a copy.
15 (NSSF Deposition Exhibit 19 was
16 marked for identification.)
17 BY MR. WELLS:
18 Q. All right. I'm handing you what has
19 been marked as Deposition Exhibit 19, which is
20 NSSF 000100 through 180. Have you seen this
21 document before?
22 A. Yes.
23 Q. What is it?
24 A. This is our modern sporting rifle

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1 comprehensive report that was conducted by SMS on
2 our behalf.
3 Q. Who is SMS?
4 A. They are Sports Marketing Surveys USA.
5 Q. Were you involved in the creation of
6 this report?
7 A. I was involved in some of the review of
8 the questions and content of it.
9 Q. Who else at NSSF was involved in the
10 creation of this document?
11 A. The research team at the time, which
12 would have been, again, Jim Curcuruto, Elizabeth
13 McGuigan, Dianne Vrablic.
14 Q. Directing your attention to what's
15 numbered Slide 10, and it's NSSF 000109. In the
16 "Methodology" slide, the last sentence of the first
17 paragraph, do you see where it says "The aim is to
18 provide the NSSF and manufacturers insights on
19 current consumer needs and uses of MSRs as well as
20 educate those influencing public policy in the
21 effort to preserve our constitutional rights"?
22 Do you see that?
23 A. Yes.
24 Q. And do you agree that the purpose of

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1 this survey was to influence public policy in the
2 effort to preserve our constitutional rights?
3 A. It's clearly spelled out right there.
4 Q. So yes?
5 A. I would agree only because it's spelled
6 out right there in front of me.
7 Q. Who is this -- who is the target
8 audience for this report?
9 A. What do you mean? So who would benefit
10 from viewing this?
11 Q. Yes.
12 A. Primarily manufacturers of MSRs and
13 accessories thereof to see what users from this
14 very large dataset are utilizing modern sporting
15 rifles.
16 MR. WELLS: All right.
17 (NSSF Deposition Exhibit 20 was
18 marked for identification.)
19 BY MR. WELLS:
20 Q. All right. I'm handing you what's been
21 marked as Deposition Exhibit 20. Do you recognize
22 this document?
23 A. It doesn't jump out at me as something
24 that I immediately recognize, but this looks like

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1 the content of the actual study.
2 Q. When you say "the actual study," what
3 study are you referring to?
4 A. The questions from the modern sporting
5 rifle survey that SMS did on our behalf.
6 Q. And just for the record, Deposition
7 Exhibit 20 is NSSF 000181 through 97.
8 So directing your attention to the
9 first page here, do you know who created this text?
10 A. I don't know.
11 Q. Do you see how it says "Please take a
12 few minutes to complete the survey below"?
13 A. I do see that.
14 Q. Do you know whether this text was
15 provided to survey respondents who responded to the
16 National Shooting Sports Foundation's modern
17 sporting rifle online study?
18 A. I don't know if it has, but based on the
19 structure here, I have reason to believe that this
20 was provided as the prompts before the survey.
21 Q. All right. Directing your attention to
22 the second sentence of the second paragraph, do you
23 see that it says "Insights will be used to help
24 educate those influencing public policy in the

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1 effort to preserve our constitutional rights"?
2 A. Yes.
3 Q. Do you see that? And that's consistent
4 with the portion that we looked at in Exhibit 19
5 about why the survey was being conducted; is that
6 right?
7 A. Yes. Like many surveys, you need to
8 usually motivate folks to participate. And that is
9 an effort to motivate people to participate in the
10 survey.
11 Q. And am I right that you've done
12 coursework in survey methodology?
13 A. Yes.
14 Q. And are you familiar with the concept of
15 priming?
16 A. Vaguely familiar.
17 Q. What is priming?
18 A. As I sit here today, my understanding is
19 priming is giving someone information before they
20 actually enter into the portion where you collect
21 the information from them.
22 Q. That may influence how they respond; is
23 that right?
24 A. It certainly could.

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1 Q. All right. Now go back to Deposition
2 Exhibit 19. So the survey results.
3 A. Gotcha.
4 Q. Looking --
5 A. I'm sorry to interrupt. Do I need all
6 of these?
7 Q. No.
8 A. Okay.
9 Q. You can put those in the past.
10 A. Thank you.
11 Q. All right. So directing your attention
12 to NSSF 000109, looking back to the second
13 paragraph or looking to the second paragraph, do
14 you see that it says "The term 'modern sporting
15 rifle' was clearly defined as AR- or AK-platform
16 rifles such as AR-15, AR-10, AK-47, AK-74, and did
17 not include nonrifle firearms such as AR pistols,
18 et cetera"?
19 Do you see that?
20 A. That's correct.
21 Q. So do you agree that, for purposes of
22 this survey, NSSF was using a definition of modern
23 sporting rifle that excluded AR pistols?
24 A. Yes. That was purposeful because we

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1 wanted to get a narrow scope of the survey. And
2 then that way you limit to just a usable framework
3 of what you actually want to talk about. If you
4 expand that framework to the broad definition of
5 MSR that's included in the interrogatory response,
6 then, likely, even though you have a giant
7 completed survey data pool, you're going to muddy
8 the water, so to speak, and not have usable data at
9 the end of it because you asked on such a broad
10 spectrum of platforms.
11 Q. Would -- and why doesn't including MSR
12 pistols in what you're calling modern sporting
13 rifle manufacturer calculation, the calculation
14 that we looked at earlier, why doesn't that muddy
15 the waters in a similar way?
16 A. I'm sorry. Could you say that again?
17 Q. I'll withdraw it.
18 A. Okay.
19 Q. All right. Let's see. So is it fair to
20 say that, at least based on how MSR is defined
21 here, that NSSF uses the term "modern sporting
22 rifle" differently in different reports?
23 A. We did limit the scope in this study
24 only for the purposes of trying to get a narrow

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1 target audience of MSR users that own rifles.
 2 Q. And in this survey, is it fair to say
 3 that the survey only counted responses of people
 4 who said that they owned at least one modern
 5 sporting rifle?
 6 A. Yes. That was a qualification of it.
 7 Q. So this survey did not generally survey
 8 firearms -- firearm owners writ large, including
 9 firearm owners who don't own modern sporting
 10 rifles, correct?
 11 A. They could have been surveyed, but the
 12 completed responses only counted those that
 13 designated they owned MSRs.
 14 Q. And the survey also did not survey the
 15 consumer market as a whole, correct?
 16 A. It wasn't as a whole, but as far as
 17 surveys goes, this is a very large usable sample
 18 that you could use it to find -- use to represent
 19 this narrow scope of MSR owners.
 20 Q. So the sample is exclusively modern
 21 sporting rifle owners; is that right?
 22 A. Yes.
 23 Q. Okay. Let's go to NSSF 000111.
 24 Actually, you can keep going to 17. All right.

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1 Directing your attention to the left-hand side
 2 there, this slide is summarizing the results for
 3 how important various reasons are to survey
 4 respondents for why they owned an MSR. Would you
 5 agree with that?
 6 A. Yes.
 7 Q. And the responses that were generated
 8 indicate that recreational target shooting was the
 9 number one or the leading response?
 10 A. It was the leading, and almost tied with
 11 it was the home defense and -- home- and
 12 self-defense reason.
 13 Q. So the top was recreational target
 14 shooting?
 15 A. The number one, yes, by 8.7.
 16 Q. And home- and self-defense was the
 17 second reason, second most significant reason. And
 18 this is in a survey after respondents had already
 19 been told that the purpose of the survey was to
 20 preserve their constitutional rights; is that
 21 right?
 22 A. I'm not sure on the verbiage that was
 23 before, but I can confirm, by looking at the
 24 results here, home- and self-defense is second

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1 under recreational targeting shooting. If you'd
 2 like to, I can skip back and answer that portion of
 3 the question.
 4 Q. Don't worry about it.
 5 A. Okay.
 6 Q. All right. Let's go to NSSF 000125.
 7 And do you agree that this slide shows the results
 8 for how survey respondents rated the "most
 9 important reasons for buying most recently
 10 purchased MSR"? Do you see that?
 11 A. Yes.
 12 Q. And in response to this question,
 13 respondents -- the survey results indicated that
 14 home/self-defense was the tenth most important
 15 reason people gave for why they purchased their
 16 most recent modern sporting rifle; is that right?
 17 A. Yes, it's tenth.
 18 Q. And that for home/self-defense is
 19 actually just below ability to accessorize, right?
 20 A. That's correct.
 21 Q. So ability to accessorize was a more
 22 important reason for the respondents who answered
 23 this question than home/self-defense?
 24 A. Yes. Home/self-defense fell under

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1 ability to accessorize for most recently acquired
 2 MSR on this chart.
 3 Q. And this survey as a whole, did it
 4 obtain any data about the frequency of self-defense
 5 uses by the respondents of modern sporting rifles?
 6 A. I believe it does, but I can look
 7 through the document if you'd like me to.
 8 Q. All right. Directing your attention to
 9 NSSF 162 through 170.
 10 A. I'm sorry. You said 162?
 11 Q. Yes. So do you see that it says
 12 "cluster analysis market segmentation"?
 13 A. Yes.
 14 Q. What does that mean?
 15 A. It's a method of market segmentation to
 16 help marketers identify specific consumer groups.
 17 So the cluster is being pointed out in the bottom
 18 of the page: Reason for owning, annual household
 19 income, number of MSR owned, what military/law
 20 enforcement affiliation.
 21 Q. All right. So turn to the next page,
 22 NSSF 000163. And do you agree that this slide
 23 shows that, according to this, there were five
 24 clusters that were identified?

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1 A. Yes.

2 Q. How did NSSF go about determining these

3 clusters?

4 A. I'm not sure if NSSF determined the

5 clusters or if SMS determined it based off of the

6 findings of the survey. If you'd like me to, I can

7 go back and investigate that.

8 Q. Who would know the answer to that

9 question? Would Jim Curcuruto?

10 A. Likely, Keith Storey at SMS. He's the

11 president of SMS. And I -- in preparation for this

12 deposition, I went and talked to him about

13 methodology approaches, details of preparation for

14 this report. The breakdown of who decided the

15 clusters, we did not cover, but I can certainly

16 approach him about that.

17 Q. What did he tell you about the

18 methodology for this report?

19 A. We just ran through the, like,

20 high-level structure of you guys approached us, it

21 started with Jim Curcuruto, we had this intent,

22 there was a pause -- all of that is kind of laid

23 out in one of the beginning pages -- that there's a

24 pause due to COVID, we collected these responses,

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1 and then this is the summation.

2 Q. And the intent behind the survey was --

3 is described in the survey itself in the pages that

4 we looked at; is that right?

5 A. Yes.

6 Q. Do you see that, at least according to

7 the different clusters that are presented here,

8 almost half of all MSRs are owned by people

9 classified as law enforcement in competition and

10 hunting aficionado?

11 A. I'm sorry. Could you run those three

12 segments again, the three clusters. Law

13 enforcement...

14 Q. So law enforcement in competition, which

15 is one, and then hunting aficionado. And it's

16 percentage of MSRs, so it's the second row. It's

17 24 percent plus 25 percent. Do you see that?

18 A. I'm sorry. So this one -- oh, yes.

19 Thank you. Yes. I thought you were tracking a

20 third category. I apologize.

21 MR. WELLS: No problem. All right. Let's go

22 to -- Mike, if you could pull up NSSF -- let's see.

23 THE WITNESS: May I back up for a second?

24

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1 BY MR. WELLS:

2 Q. Sure.

3 A. Did you say law enforcement in

4 competition along with hunting aficionado, cluster

5 one and cluster five?

6 Q. Yeah, for the second row, percentage of

7 MSRs.

8 A. Okay. I just want to confirm that I'm

9 looking at the right thing.

10 Q. I've had my colleague bring up

11 NSSF 000200 on the screen. Have you seen this

12 document before?

13 A. Yes.

14 Q. What is it?

15 A. This is the raw data collected by SMS in

16 execution of the modern sporting rifle

17 comprehensive study.

18 Q. And is this a complete and accurate copy

19 of that data?

20 A. I have no reason to believe it's not,

21 based on what I'm seeing here.

22 Q. And is it fair to say that this is the

23 data that was used to create the comprehensive

24 consumer report for modern sporting rifles?

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1 A. I believe so.

2 Q. And scrolling over to column JN.

3 A. It's a big one.

4 Q. Just looking at JN, row 1, the cell says

5 "In a few brief sentences, please tell us your

6 favorite part about owning your modern sporting

7 rifles."

8 Do you see that?

9 A. I do.

10 Q. And have you -- do you understand that

11 column JN includes, then, the responses that survey

12 respondents provided to that question?

13 A. Yes. It's open-text-box entries by

14 respondents.

15 Q. And have you ever looked at those

16 responses?

17 A. Not in great detail.

18 Q. Did you have any involvement with the

19 preparation of the firearms retailer survey report,

20 the 2021 edition?

21 A. Yes. I do believe I provided some

22 review on that document as it was being produced.

23 (NSSF Deposition Exhibit 21 was

24 marked for identification.)

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1 BY MR. WELLS:
2 Q. I've handed you what's been marked as
3 Deposition Exhibit 21, Bates-labeled NSSF 000053
4 through 83. Have you seen this document before?
5 A. Yes, I have.
6 Q. What is it?
7 A. It's our 2021 retailer survey. It's a
8 survey that we have conducted for us by
9 Southwick Associates every other year.
10 Q. Directing your attention to NSSF 56, in
11 the overview section, do you see that it says "The
12 survey respondents included 313 retail
13 establishments located in 50 states"?
14 A. Yes.
15 Q. Do you have any sense of how many
16 firearms retailers there are in the United States?
17 A. I know I can go on the ATF website and
18 pull all the Type 1 FFLs. It's in the thousands.
19 How many there are right now, I couldn't tell you.
20 I think the last time I looked at it, there's
21 around 15-ish thousand.
22 Q. 15,000?
23 A. Yeah.
24 Q. And I'm sorry. Can you remind me the

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1 name of the person that you talked to about
2 methodology for this -- or wait. That was
3 different. Sorry.
4 Do you know who conducted this
5 survey?
6 A. Yes.
7 Q. Who was?
8 A. That was Southwick and Associates. The
9 principal people that worked on this was Ben
10 Scuderi and Rob Southwick. Ben is the analyst that
11 was in charge of this, and Rob managed it.
12 Q. And did you speak to them in preparation
13 for this deposition?
14 A. Yes.
15 Q. Did you discuss the methodology that
16 they used?
17 A. Yes.
18 Q. What did they tell you about the
19 methodology?
20 A. That, largely, a simple survey, they
21 collected the responses and then just organized the
22 responses for the charts that are included in here.
23 Q. Did you discuss whether the 313
24 responses that they got was a statistically

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1 significant sample?
2 A. I don't recall if we discussed. But,
3 like many things that -- like many surveys that we
4 do conduct, it's really hard getting folks in our
5 industry to spend the time doing this. They're
6 often busy running their operations. And
7 especially for FFLs, if they don't have the time to
8 go through and conduct this, then they're not going
9 to get a response. And also it's a very large
10 survey. I can't recall for this particular one how
11 many started it and didn't finish it. But we know
12 that it's kind of a behemoth of a survey. Takes a
13 lot of time to go collect this data, and not many
14 people finish it, resulting in that 313 that you
15 see in 2021.
16 Q. How did NSSF identify the retailers to
17 send this survey to?
18 A. From our membership records.
19 Q. So is it fair to say that the survey is
20 exclusively of NSSF members?
21 A. Either NSSF members or folks that we
22 know. There are -- there's some folks that we know
23 of that are in our system that may be members or
24 folks that have lapsed their membership. They're

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1 not current members, but they were at one point, so
2 they're in our system. But as long as they were
3 designated a firearm retailer, we extend a survey
4 invitation to them.
5 Q. All right. Directing your attention to
6 NSSF 000059. So this page appears to show results
7 responsive to the question of "Which categories of
8 new products do you currently sell retail?" Do you
9 see that?
10 A. Yes.
11 Q. And one of the categories is
12 AR-style/modern sporting rifles. Do you see that?
13 A. I do.
14 Q. What was the definition of
15 AR-style/modern sporting rifles that was provided
16 to survey respondents?
17 A. I'm not aware if a definition was
18 provided in the context of the question. I'm led
19 to believe, based off of the details that are
20 provided here, that this was probably the content
21 of the question.
22 Q. All right. Can you pull up NSSF 84. So
23 I've asked my colleague to pull up on the screen an
24 Excel file that's been produced at NSSF 000084.

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1 Have you seen this document?
 2 A. I don't think I actually have seen the
 3 metadata that comes behind the firearm retailer
 4 survey.
 5 Q. But based on what you're seeing, you're
 6 inferring that this may be the metadata behind or
 7 the data behind the firearms retailer survey?
 8 A. Yeah. This looks like the collected
 9 responses from the survey.
 10 Q. Who would be able to tell me whether or
 11 not this is the survey data?
 12 A. Probably would be Southwick and
 13 Associates.
 14 Q. What about Jim Curcuruto? Would he have
 15 been involved in this report?
 16 A. I know that this report started with
 17 him, but it was similar to other reports that we've
 18 discussed. Started it as a normal course of action
 19 for his job, and then after he left, it fell on the
 20 research department to deploy.
 21 MR. WELLS: All right. Give me one second.
 22 That is all the questions I have at
 23 this time.
 24 THE WITNESS: Okay.

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1 MR. LOTHSON: I just have a couple quick ones.
 2 EXAMINATION
 3 BY MR. LOTHSON:
 4 Q. Exhibit 8. If you could go to
 5 Exhibit 8. It's deep, it's way buried, but it's
 6 large. It's a spreadsheet.
 7 Do you have the electronic version of
 8 that you could pull up real quick? I just have a
 9 couple quick questions on that.
 10 A. Historical estimated MSR production and
 11 less exports.
 12 MR. TRESNOWSKI: I'm good.
 13 MR. WELLS: You need one and he needs one, and
 14 he needs to pull up --
 15 MR. TRESNOWSKI: 2351 Redacted.
 16 THE WITNESS: Come on, Chris. Tell me
 17 where --
 18 MR. WELLS: 2351 Redacted. I knew it had a 50
 19 in there, but it was 52.
 20 BY MR. LOTHSON:
 21 Q. If you could go to cell AB23. I believe
 22 it was 108,000. Do you see that? Right. So then
 23 during the course of questioning, there was a
 24 direction to you to review the comments to that, to

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1 that particular box, AB23.
 2 So if I can direct you to AB23, and
 3 I'll go ahead and read it just so that we're back
 4 to square one on this. It says "75 percent of
 5 total are MSR/AK made in US, but not sure if all
 6 are AK, need to contact. 90,000 rifles plus 54,000
 7 miscellaneous equals 144,000. Going to use 90K to
 8 be safe, as no response from co."
 9 All right. Now, did you -- in answer
 10 to the questions related to the 108,000 that we
 11 ultimately see in that box, were you asked to do
 12 any calculations?
 13 A. I don't think I was asked to do any
 14 calculations.
 15 Q. All right. So if you add 90 plus
 16 54,000, does that equal 144,000?
 17 A. Yes.
 18 Q. All right. So if you take 144,000 and
 19 multiply it by .75, which is the equivalent of
 20 75 percent, does that equal 108,000?
 21 A. I don't have a calculator in front of
 22 me. But just based off proportions, that sounds
 23 right. Can I use that, actually? That would be
 24 great.

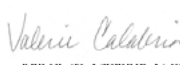
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1 MR. LOTHSON: Let the record reflect we're
 2 handing the witness a calculator.
 3 MR. WELLS: That was brought by the state's
 4 counsel.
 5 THE WITNESS: Thank you very much, state's
 6 counsel.
 7 Yeah, if you apply a 75 percent
 8 factor to 144,000, it results in 108,000, which is
 9 reflected in the content of AB23.
 10 BY MR. LOTHSON:
 11 Q. Okay. So then if, in Jim Curcuruto's
 12 assessment here, he took the "going to use 90K" for
 13 the rifles to be safe, and then 54,000 for the
 14 miscellaneous, which you've identified to include
 15 frames and receivers --
 16 A. Yes.
 17 Q. -- you get 144 total thousand,
 18 multiplied by .75, does, in fact, equal the 108,000
 19 that you see in AB23; is that correct?
 20 A. That's correct.
 21 MR. LOTHSON: No further questions.
 22 FURTHER EXAMINATION
 23 BY MR. WELLS:
 24 Q. That 75 percent is a figure that's just

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1 generated by a manufacturer that NSSF does not
 2 validate, correct?
 3 A. That is a number designated by the
 4 manufacturer. And while we do not have a way of
 5 verifying that through another party, we take our
 6 manufacturer's word that that is an accurate
 7 representation of that proportion.
 8 Q. You're trusting the manufacturer,
 9 correct?
 10 A. Yes.
 11 MR. WELLS: No further questions based on
 12 that.
 13 MR. LOTHSON: All right. We will read and
 14 sign, as well.
 15 MR. WELLS: Reserve signature?
 16 MR. LOTHSON: Yeah.
 17 FURTHER DEPONENT SAITH NAUGHT
 18 (Proceedings concluded at
 19 5:50 p.m.)
 20
 21
 22
 23
 24

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1 STATE OF ILLINOIS)
) SS:
 2 COUNTY OF COOK)
 3 I, Valerie M. Calabria, CSR, RPR, do hereby
 certify that SALAM FATOHI was duly sworn by me to
 4 testify the whole truth, and that the foregoing
 deposition was recorded stenographically by me and
 5 was reduced to computerized transcript under my
 direction, and that the said deposition constitutes
 6 a true record of the testimony given by said
 witness.
 7
 I further certify that the reading and
 8 signing of the deposition was not waived, and that
 the deposition was submitted to Mr. Andrew A.
 9 Lothson, plaintiff's counsel, for signature.
 Pursuant to Rule 30(e) of the Federal Rules of
 10 Procedure, if deponent does not appear or read and
 sign the deposition within 30 days, the deposition
 11 may be used as fully as though signed, and this
 certificate will then evidence such failure to
 12 appear as the reason for signature not being
 obtained.
 13
 I further certify that I am not a relative or
 14 employee or attorney or counsel of any of the
 parties, or a relative or employee of such attorney
 15 or counsel, or financially interested directly or
 indirectly in this action.
 16
 IN WITNESS WHEREOF, I have hereunto set my
 17 hand this 30th day of May, A.D. 2024.
 18
 19
 20 
 21 Valerie M. Calabria, CSR, RPR
 Illinois CSR License 084-003928
 22
 23
 24

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1 Veritext Legal Solutions
 1100 Superior Ave
 2 Suite 1820
 Cleveland, Ohio 44114
 3 Phone: 216-523-1313
 4 May 30, 2024
 5 To: Mr. Lothson
 6 Case Name: Barnett, Caleb, Et Al. v. Raoul, Kwame, Et Al.
 7 Veritext Reference Number: 6708458
 8 Witness: Salam Fatohi Deposition Date: 5/22/2024
 9
 Dear Sir/Madam:
 10
 11 Enclosed please find a deposition transcript. Please have the witness
 12 review the transcript and note any changes or corrections on the
 13 included errata sheet, indicating the page, line number, change, and
 14 the reason for the change. Have the witness' signature notarized and
 15 forward the completed page(s) back to us at the Production address
 shown
 16
 above, or email to production-midwest@veritext.com.
 17
 18 If the errata is not returned within thirty days of your receipt of
 19 this letter, the reading and signing will be deemed waived.
 20
 Sincerely,
 21
 Production Department
 22
 23
 24 NO NOTARY REQUIRED IN CA

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1 DEPOSITION REVIEW
 CERTIFICATION OF WITNESS
 2
 ASSIGNMENT REFERENCE NO: 6708458
 3 CASE NAME: Barnett, Caleb, Et Al. v. Raoul, Kwame, Et Al.
 DATE OF DEPOSITION: 5/22/2024
 4 WITNESS' NAME: Salam Fatohi
 5 In accordance with the Rules of Civil
 Procedure, I have read the entire transcript of
 6 my testimony or it has been read to me.
 7 I have made no changes to the testimony
 as transcribed by the court reporter.
 8
 9 Date Salam Fatohi
 10 Sworn to and subscribed before me, a
 Notary Public in and for the State and County,
 11 the referenced witness did personally appear
 and acknowledge that:
 12
 They have read the transcript;
 13 They signed the foregoing Sworn
 Statement; and
 14 Their execution of this Statement is of
 their free act and deed.
 15
 I have affixed my name and official seal
 16 this _____ day of _____, 20____.
 17
 18 _____
 Notary Public
 19
 20 _____
 Commission Expiration Date
 21
 22
 23
 24
 25

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1 DEPOSITION REVIEW
CERTIFICATION OF WITNESS

2

3 ASSIGNMENT REFERENCE NO: 6708458
CASE NAME: Barnett, Caleb, Et Al. v. Raoul, Kwame, Et Al.
DATE OF DEPOSITION: 5/22/2024

4 WITNESS' NAME: Salam Fatohi

5 In accordance with the Rules of Civil
Procedure, I have read the entire transcript of
6 my testimony or it has been read to me.

7 I have listed my changes on the attached
Errata Sheet, listing page and line numbers as
8 well as the reason(s) for the change(s).

9 I request that these changes be entered
as part of the record of my testimony.

10

11 I have executed the Errata Sheet, as well
as this Certificate, and request and authorize
that both be appended to the transcript of my
12 testimony and be incorporated therein.

13 _____
Date Salam Fatohi

14

15 Sworn to and subscribed before me, a
Notary Public in and for the State and County,
the referenced witness did personally appear
16 and acknowledge that:

17 They have read the transcript;
They have listed all of their corrections
18 in the appended Errata Sheet;
They signed the foregoing Sworn
19 Statement; and
Their execution of this Statement is of
20 their free act and deed.

21 I have affixed my name and official seal
22 this _____ day of _____, 20____.

23 _____
Notary Public

24

25 _____
Commission Expiration Date

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1 ERRATA SHEET
VERITEXT LEGAL SOLUTIONS MIDWEST

2 ASSIGNMENT NO: 6708458

3 PAGE/LINE(S) / CHANGE /REASON

4 _____

5 _____

6 _____

7 _____

8 _____

9 _____

10 _____

11 _____

12 _____

13 _____

14 _____

15 _____

16 _____

17 _____

18 _____

19 _____

20 _____
Date Salam Fatohi

21 SUBSCRIBED AND SWORN TO BEFORE ME THIS _____

22 DAY OF _____, 20____.

23 _____
Notary Public

24

25 _____
Commission Expiration Date

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Illinois Code of Civil Procedure

Article II, Part E

Rule 207, Signing and Filing Depositions

Signing and Filing Depositions

(a) Submission to Deponent; Changes; Signing.
Unless signature is waived by the deponent, the officer shall instruct the deponent that if the testimony is transcribed the deponent will be afforded an opportunity to examine the deposition at the office of the officer or reporter, or elsewhere, by reasonable arrangement at the deponent's expense, and that corrections based on errors in reporting or transcription which the deponent desires to make will be entered upon the deposition with a statement by the deponent that the reporter erred in reporting or transcribing the answer or answers involved. The deponent may not otherwise change either the form or substance of his or her answers. The deponent shall provide the officer with an electronic or physical address to which notice is to be sent when the transcript is available for examination and signing. When the deposition is fully transcribed, the officer shall deliver to the deponent, at the address supplied,

notice that it is available and may be examined at a stated place at stated times, or pursuant to arrangement. After the deponent has examined the deposition, the officer shall enter upon it any changes the deponent desires to make, with the reasons the deponent gives for making them. If the deponent does not appear at the place specified in the notice within 28 days after the mailing of the notice, or within the same 28 days make other arrangements for examination of the deposition, or after examining the deposition refuses to sign it, or after it has been made available to the deponent by arrangement it remains unsigned for 28 days, the officer's certificate shall state the reason for the omission of the signature, including any reason given by the deponent for a refusal to sign. The deposition may then be used as fully as though signed, unless on a motion to suppress under Rule 211(d) the court holds that the reasons given by the deponent for a refusal to sign require rejection of the deposition in whole or in part.

(b) Certification, Filing, and Notice of Filing.

(1) If the testimony is transcribed, the officer

shall certify within the deposition transcript that the deponent was duly sworn by the officer and that the deposition is a true record of the testimony given by the deponent. A deposition so certified requires no further proof of authenticity

(2) Deposition transcripts shall not be filed with the clerk of the court as a matter of course. The party filing a deposition shall promptly serve notice thereof on the other parties and shall file the transcript and any exhibits in the form and manner specified by local rule.

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COMPANY CERTIFICATE AND DISCLOSURE STATEMENT

Veritext Legal Solutions represents that the foregoing transcript is a true, correct and complete transcript of the colloquies, questions and answers as submitted by the court reporter. Veritext Legal Solutions further represents that the attached exhibits, if any, are true, correct and complete documents as submitted by the court reporter and/or attorneys in relation to this deposition and that the documents were processed in accordance with our litigation support and production standards.

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