

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA
HON. ANTHONY W. ISHII

JEFF SILVESTER, et al.,)	1:11-cv-2137-AWI
)	
Plaintiff,)	
)	COURT TRIAL
vs.)	
)	Day 2
KAMALA D. HARRIS, Attorney)	
General of California, and)	
DOES 1 to 20,)	
)	
Defendants.)	

Fresno, California

Wednesday, March 26, 2014

REPORTER'S TRANSCRIPT OF PROCEEDINGS

Volume 2, Pages 159 to 366, inclusive

REPORTED BY: GAIL LACY THOMAS, RMR-CRR
Official Court Reporter
CSR NO. 3278

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1 Wednesday, March 26, 2014

Fresno, California

2 9:02 a.m.

3
4 THE COURT: Before we continue with testimony, are
5 there any matters we need to take up preliminarily?

6 MR. KILMER: Just to notify the Court that the
7 parties have conferred, and that later on this morning, we'll
8 have some further stipulations as to the admissibility of some
9 of the exhibits. We're finalizing that now, Your Honor.

10 THE COURT: Great. Thank you.

11 Anything further from the defense at this time?

12 Okay. All right, are we ready, then, to proceed with
13 the defense witnesses?

14 MR. EISENBERG: Yes, Your Honor.

15 THE COURT: Okay, the defense may call its first
16 witness.

17 MR. EISENBERG: Good morning. The defense would
18 quickly like to note that Kimberly Granger, an agency
19 representative, from the Bureau of Firearms is present in the
20 courtroom. She is not a witness.

21 THE COURT: All right.

22 MR. EISENBERG: The first witness will be Assistant
23 Chief Steve Buford.

24 THE CLERK: Come right up here, sir. Raise your
25 right hand.

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STEVEN BUFORD,

called as a witness on behalf of the Defendants, having been first duly sworn, testified as follows:

THE CLERK: Take the witness stand right over there and give us your full name, please.

Counsel, you might want to get those exhibits, or whatever they are. I'm not sure you're going to need them.

MR. EISENBERG: Right.

THE CLERK: I'm not sure who they belong to.

MR. EISENBERG: These papers are not needed. They're here by mistake. We are probably going to be needing to use some of the setup exhibits over here.

THE CLERK: Okay.

MR. EISENBERG: Thank you.

THE WITNESS: My name is Steve Buford. Steven Buford, I'm sorry.

MR. EISENBERG: May I proceed?

THE COURT: Yes.

DIRECT EXAMINATION

BY MR. EISENBERG:

Q. Assistant Chief Buford, did you graduate from high school?

A. Yes.

Q. What year did you graduate?

A. 1979.

Q. Did you attend college?

1 A. Yes.

2 Q. And what years did you attend college?

3 A. In the '80's. Early '80's.

4 Q. Are you presently employed?

5 A. Yes.

6 Q. What's the name of your employer?

7 A. The State of California, Department of Justice, Division
8 of Law Enforcement, and I work for the Bureau of Firearms
9 within the division of law enforcement.

10 Q. What generally does the Bureau of Firearms do?

11 A. The Bureau of Firearms is responsible for the
12 administration, regulation, education, and enforcement of the
13 State's firearms and lawsuits.

14 Q. What is your job title?

15 A. Assistant Bureau Chief.

16 Q. How long have you had that job?

17 A. About five years.

18 Q. What generally are your job duties?

19 A. I oversee the regulatory and programs sections within the
20 Bureau of Firearms, and those sections are responsible for
21 background checks and regulations and education of firearms
22 laws.

23 Q. What are background checks in connection with the Bureau
24 of Firearms?

25 A. It's pretty much the nexus of the operation. We do a lot

1 of background checks basically. The largest part of them have
2 to do with people buying firearms throughout the state. We
3 also issue licenses and permits for folks working in the
4 firearms industry, folks that carry firearms as a part of
5 their jobs, peace officers, armed security guards, whatever
6 would have you. And other folks that are -- excuse me,
7 concealed weapons permits and things of that nature.

8 Q. Where do you rank in the organizational hierarchy at the
9 Bureau of Firearms?

10 A. I'm the Assistant Chief, and the Chief is my -- my
11 manager.

12 Q. Do you supervise any employees?

13 A. I have about 73 individuals that work under my -- my
14 direct command.

15 Q. Before you were the Assistant Chief at the Bureau of
16 Firearms, did you work for the Bureau of Firearms in some
17 other capacity?

18 A. Yes.

19 Q. When did you first start working for the Bureau of
20 Firearms?

21 A. I started working for the Bureau of Firearms in May 1989.

22 Q. So, in other words, you're just a couple months shy of 25
23 years at the agency?

24 A. That's correct, at the Bureau of Firearms. I have
25 actually 34-plus years with the Department of Justice.

1 Q. Tell me by name and by years to the best of your
2 recollection the other jobs that you've held at the Bureau of
3 Firearms.

4 A. I started in the Bureau of Firearms in 1989 as the
5 associate governmental program analyst. From there, I
6 promoted within about, I would say, about a year or two to
7 criminal -- to a field representative. Then I promoted from
8 field representative to criminal identification and
9 intelligence supervisor.

10 Then around about 1995, I promoted to the Department
11 of Justice Administrator I. I did about three or four years
12 as the Department Administrator I, and I was promoted to
13 Department of Justice Administration II, and then I was
14 subsequently promoted to Department Administrator III, and
15 then my last promotion about four or five years ago was to
16 Assistant Bureau Chief.

17 Q. Have you heard of the Waiting-Period Law, which is the
18 subject matter of this lawsuit?

19 A. Yes.

20 Q. Does the Bureau of Firearms play any role in connection
21 with the Waiting-Period Law?

22 A. The department is responsible for administrating and
23 enforcing the waiting period.

24 Q. What in your understanding is the waiting period?

25 A. The waiting period is -- excuse me. It's a 10-day waiting

1 period that all purchasers of firearms must adhere to under
2 state law.

3 Q. Are you aware of justifications that have been given for
4 having a waiting period?

5 A. Yes, a couple.

6 Q. What are the justifications that you're aware of?

7 A. The primary one -- or one of them has to do with a
8 cooling-off period for a purchaser of the firearms. The other
9 purpose is to give the department time to review the records
10 of individuals that are purchasing firearms.

11 Q. So the Bureau of Firearms itself is involved in doing the
12 background check?

13 A. Yes. I'm sorry. Not only reviewing those records, but
14 also gives us time to reach out and notify the dealers in the
15 case of prohibited purchasers, not to deliver the firearm.

16 Q. When you say "dealers," what kind of dealers are you
17 talking about?

18 A. We're talking about firearms dealers, state-wide firearms
19 dealers.

20 Q. At a very general level, how does the Bureau of Firearms
21 conduct a background check on a firearms purchaser applicant?

22 A. You want me to go through the process step by step or --

23 Q. Let's just talk about it just generally.

24 A. Generally, the process starts with the verifying the
25 purchaser's identity, verifying whether the gun involved in

1 the transaction has been lost or stolen -- had been previously
2 reported lost or stolen. And subsequently from that is
3 determining the eligibility of the purchaser to own or possess
4 firearms.

5 Q. Okay, we'll get into more detail later, but thank you for
6 that answer.

7 Did you have any involvement in setting up any part
8 of the Bureau of Firearms background checks system?

9 A. Yes.

10 Q. What involvement have you had in setting up the system?

11 A. Well, when I started with the Bureau in 1991, I was
12 responsible for developing and assisting with the development
13 of processes that would include long guns into the background
14 check process, as well as including other prohibited
15 categories into the background check process. And prior to
16 1991, the only thing that the department looked for when
17 conducting background checks were -- had the -- purchasers had
18 previously been convicted of a felony. Beginning
19 January 1991, as the -- as this part of the implementation of
20 AB 497 by Assemblyman Connelly, other categories were
21 incorporated into the background check process and that had
22 included violent misdemeanors, the mental patients, violent
23 juveniles, warrants, and restraining orders. And so part of
24 my duties at that time were to work on the systems and develop
25 processes that would incorporate those prohibited categories

1 into the background checks process.

2 Q. Around 1999, did you have any role in reengineering any of
3 the systems -- sorry, 1996?

4 A. In 1996, I began the reengineering of the process to
5 reduce the waiting period from 15 days down to 10 days. And
6 that required us to automate quite a bit of the process.
7 Prior to that, the process was completely paper. It was
8 basically a quadruplicate form that was completed by the
9 dealer and dropped in the mail to the department, which took
10 probably seven to ten days to get to us in the mail on
11 average. And so we looked at incorporating a process to allow
12 dealers to electronically submit their application information
13 to us, or telephonically submit application information to us.
14 And so I worked on that process as well.

15 I worked on the feasibility study, the budget,
16 changed proposal processes and documents and business
17 requirements necessary to adopt and implement that process.

18 Q. Around 2007, did you have any work related to the DROS
19 entry system?

20 A. I did oversee the reengineering of the system for the DROS
21 entry system because -- chiefly because the prior system that
22 we implemented in 1996 was a partnership between the
23 Department of Justice and the -- it was -- originally it was
24 MCI, and then subsequently became Verizon Wireless. Verizon
25 decided that they wanted out of their government business

1 contracts, and so they noticed us that they were dropping the
2 contract, and that the State would be required -- you know,
3 that we would either have to go out and rebid with somebody
4 else, or the State would have to bring in the process with
5 in-house. So we brought the process in-house. So we began
6 development of the new system to bring the process in-house.

7 Q. Have you yourself ever performed background checks?

8 A. Yes.

9 Q. When did you do that work?

10 A. In the past, as my past manager and supervisor roles in
11 the firearms section, I had worked -- you know, during peak --
12 peak DROS season and other times to assist in the background
13 check process when we were overridden with lots of DROS
14 transactions. And now more recently, I am pretty much only
15 involved when there's a high-profile shooting or something,
16 and the AG's office or the press office has interest and
17 they're trying to respond to press contacts regarding
18 people's -- you know, involvement in those crimes.

19 Q. I want to ask for a clarification of an acronym. You used
20 the word "DROS." What is DROS?

21 A. DROS is the acronym for Dealers Record of Sales. And it's
22 the -- formally it's essentially the -- the application and
23 the process that kicks off the background check for people
24 that are engaged in the purchase of firearms.

25 Q. How many background checks of DROS applications would you

1 estimate that you've done in your career?

2 A. Probably thousands.

3 Q. What is a DROS application? Is it a paper form that is
4 filled out, or is it some other kind of means of communicating
5 information?

6 A. Well, prior to 1996, it was a paper form. After 1996,
7 it's an electronic transaction. The dealer uses a personal
8 computer that's placed at their business. The application is
9 an electronic form. It asks for information about the
10 purchaser. It has information about the gun and information
11 about the dealership.

12 Q. Does the purchaser fill out the DROS application?

13 A. No, not necessarily. The dealer usually fills it out, but
14 has -- but has the purchaser there to ask questions.

15 Q. Where would a DROS application be filled out?

16 A. Usually at the dealer's place of business. Occasionally
17 at gun shows.

18 Q. After the DROS application is filled out and the dealer
19 handles it, what happens next to that application?

20 A. The application is electronically submitted to the
21 department. The department begins the background check
22 process, which -- which incorporates -- the first thing that
23 we do is we pull off the purchaser's name information and DMV
24 information, and we verify that against the Department of
25 Motor Vehicles files -- California Department of Motor

1 Vehicles files to ensure that the purchaser's identification
2 information is accurate. We know who we're doing the
3 background check on.

4 Q. Is it ever the case that a person applying for a firearm
5 uses an incorrect DMV license or a personal identification?

6 A. Every day.

7 Q. And if an applicant uses a mismatched or an incorrect
8 identification, what does that mean for the application?

9 A. That means that the application has to be rejected. And
10 so we reject the application and notify the dealer not to
11 deliver the firearm.

12 Q. Is the -- is the DMV check, is it against the computer
13 database, is it against written records? How is it --

14 A. It goes against the DMV electronic database, the
15 Department of Motor Vehicles files electronic database.

16 Q. Is the initial comparison done by a computer or by a
17 person?

18 A. The initial comparison is done by the computer.

19 Q. Is a human being ever involved in checking on the DMV
20 record?

21 A. When there is a mismatch.

22 Q. Why is a human being involved in that part of the process?

23 A. Because we would not be able to keep up with the work.

24 There's just so many of them that happen. Every day we
25 receive between -- at this point in time between 2 to 3,000

1 gun purchase applications a day. So that was the process
2 because we collect the identification information, because
3 that information is automated within the Department of Motor
4 Vehicles. It makes it easy for us to use the systems to run
5 that match because basically you're just matching numbers and
6 the information exactly.

7 Q. Is there -- are there any other databases that are checked
8 at that initial point along with or near in time to the DMV
9 check?

10 A. Yes. We also strip off the information relating to the
11 firearm, and we run that information against the Department of
12 Justice Automated Firearms System to see if the firearm had
13 been previously reported lost or stolen by a law enforcement
14 agency.

15 Q. Why does the Bureau of Firearms check if a firearm is
16 reported lost or stolen?

17 A. Well, I believe it's Penal Code Section 11106 or -- yes,
18 Penal Code Section 11106 basically says that's the Attorney
19 General's role is to maintain a database to return lost or
20 stolen firearms. And so part of the DROS process, a lot of
21 the firearms that are involved in that process potentially
22 could be used -- had been reported lost or stolen, and
23 occasionally we do bump into something, and we try to make
24 sure those guns are returned back to the rightful owners.

25 Q. Is the AFS check done completely by a computer, or are

1 human beings involved?

2 A. That's computerized as well because we have computerized
3 records of lost and stolen firearms as reported by law
4 enforcement.

5 Q. If a DROS application runs through the AFS system and it
6 comes back that there is a hit, that this firearm matches up
7 to a lost or stolen firearm, what happens next in the process?

8 A. The law enforcement agency that made the actual lost or
9 stolen entry is notified by the department and asked to
10 investigate to determine if the firearm involved in the
11 transaction is the actual firearm that had been previously
12 reported lost or stolen. And they're also contacted to verify
13 whether lost or stolen entry in the database is still valid
14 and active.

15 Q. So these law enforcement agencies, are they part of the
16 Bureau of Firearms?

17 A. No, these are state-wide law enforcement agency,
18 state-wide police -- police offices and sheriff's offices.

19 Q. When you say statewide, do you mean that they're part of
20 state government, and they're not part of local government?

21 A. No, they're local government. They're local chiefs --
22 local police stations, local Sheriff's Offices, County
23 Sheriff's Offices and City police and other police -- police
24 entities within the state. Police agencies, I should say.

25 Q. When there is a match for a lost or stolen firearm, and

1 the notification is made to the local law enforcement agency,
2 do they resolve that issue instantaneously or nearly
3 instantaneously?

4 A. No, not always.

5 Q. What is the process involved?

6 A. The process basically involves them actually taking an
7 active role and going out and looking at the firearm, making
8 sure that it is the firearm -- the firearm involved is
9 actually the firearm that was reported lost or stolen. And
10 occasionally, we have some agencies that, you know, depending
11 on what their priorities are, they may or may not get to it.

12 Q. Is this something that always happens within one day, that
13 the investigation is complete, or could it take longer than a
14 day?

15 A. It's rarely done within a day.

16 Q. Let's talk about a typical DR0S application coming
17 through. If it passes the DMV check without any hits, so to
18 speak, and if it passes through the AFS check without any
19 hits, what happens next?

20 A. The next process is to begin the process of inquiring into
21 the prohibited databases that might have information on the
22 purchaser that would indicate that the purchaser is not
23 eligible to own or possess firearms.

24 Q. Okay. Is there one database that's looked at, or are
25 there multiple database?

1 A. There's several.

2 Q. Are you aware of what all the different databases are?

3 A. I believe so.

4 Q. Okay. I'll go ahead and take you through them one at a
5 time based on my understanding and correct me if my
6 understanding is wrong.

7 Have you heard of a database that goes by the name
8 ACHS?

9 A. Yes. That stands for Automated Criminal History System.
10 It's the California Automated Criminal History System.

11 Q. What kind of records does the ACHS contain?

12 A. It contains criminal history information reported to the
13 department by state-wide criminal justice agencies.

14 Q. Is this database a state database, a federal database, or
15 some other entity's database?

16 A. It's a state database.

17 Q. What is the purpose of doing a check on the Automated
18 Criminal History System?

19 A. Well, under state law, as well as federal law, persons
20 that are convicted felons cannot possess firearms. So for
21 state and federal law, we would look there to see if people
22 had been convicted of a felony.

23 Under state law, there are people that if you've been
24 convicted of certain violent misdemeanors and other offenses,
25 you would be ineligible to own or possess a firearm. So we

1 would look in that database for that particular information.

2 Q. Is the ACH -- the ACHS database complete and up-to-date at
3 all times with criminal history records?

4 A. No.

5 Q. So why would the ACHS database ever be incomplete?

6 A. The database is incomplete largely due in part to various
7 reasons. One, could be there's a time lag between the actual
8 disposition being produced and the time it takes to reach the
9 department. There are priority issues and funding issues
10 within the local courts. Occasionally, records are lost,
11 purged, never reported. There's a lot of reasons. I can't
12 tell you all of them, but what I can tell you is that it's not
13 limited to California. This is a national problem. When I
14 talk to my colleagues outside of California, they have the
15 same problems.

16 Q. Is the DROS application run through the ACHS in an
17 automated fashion?

18 A. Yes.

19 Q. Is there ever a point where a human being might be
20 involved in reviewing the output of the database search?

21 A. Yes.

22 Q. Is that something that happens never, hardly ever at all,
23 a lot of the time, almost all of the time?

24 A. A lot of the time.

25 Q. Why would a human being need to be involved in looking at

1 those records?

2 A. Well, because the -- a lot of times people have been
3 arrested for offenses. They could have been convicted for
4 offenses. And the first thing we have to do is we have to
5 verify that the records that we're looking at actually match
6 the person because the background check is based on name and
7 date of birth. It's not based on any kind of biometric data,
8 so we can't positively say that that record belongs to any
9 individual, so we have to have a human come in and look at
10 that information and make that determination. That's the
11 first part.

12 The second part is that there might be information in
13 that record that we have to look at to make a determination
14 on. People can have a lot of arrests, they can have a lot of
15 convictions, but they still may not be prohibited from owning
16 or possessing a firearm. There are only certain offenses and
17 types of convictions that would make you prohibited. So we to
18 have to look through the record to make sure that we're not
19 falsely disapproving somebody and not missing people that we
20 should be disapproving.

21 Q. Isn't a person's name, John Smith, enough to find out that
22 person's complete record?

23 A. Unfortunately, no. California has 38,000,000 people. We
24 have a lot of databases that we go through and look at with
25 lots of records. John Smith, Jose Gonzalez, Robert Fong,

1 those common names create quite a conflict. There are a lot
2 of false positives. So we have to look through that, and
3 oftentimes people's date of births are very similar, very
4 close, and sometimes right on the money, and sometimes it
5 comes down to we have to have people actually go out and
6 submit fingerprints to us so we can verify that they're not
7 the same person.

8 Q. Are there ever incomplete criminal records for a
9 particular arrest?

10 A. Routinely.

11 Q. What's an example of what might be in the database and
12 what might be lacking for a particular criminal incident?

13 A. Let's say a person was recently arrested. Let's say a
14 person was arrested for 273.5, which is corporal injury on a
15 spouse, which is under both state and federal law would be a
16 prohibiting offense. There's an arrest information out there.
17 The arrest occurred, say -- say the arrest occurred two years
18 ago in 2012, and for whatever reason, the disposition is
19 missing. We don't have the disposition. So at that point in
20 time, we need to research that information to see where the
21 disposition is. Was that person actually convicted, because
22 if they were convicted, obviously they would not be eligible
23 to own and possess a firearm. If it was dismissed, then they
24 would be cleared. But we have to research that information to
25 make sure.

1 Q. Is that work that can just be done by a computer
2 instantaneously?

3 A. No.

4 Q. So does a human being need to be involved?

5 A. Yes. Typically what we do is, we have to call the courts.
6 A lot of times the courts won't take a phone call, so they'll
7 tell us you to have fax the information to us. Some courts
8 will give us electronic access to their files. Some courts
9 won't. If the information is out-of-state conviction
10 information, it can take a while to contact that out-of-state
11 agency to get them to respond back to us. So it can be a very
12 lengthy process in trying to resolve criminal history
13 information, missing information.

14 Q. Let me jump back to the AFS, Automated Firearms System
15 because I erroneously forgot to ask you a couple questions
16 that I meant to.

17 Does the AFS have records on every gun in circulation
18 in California?

19 A. No, it does not.

20 Q. What kind of firearms records does it have?

21 A. The bulk of the firearms records that are in AFS are
22 related to dealer's records of sales, and that's exactly what
23 it is. It's a dealer records of sales. It's not a
24 registration. It's simply a record of a sale that was made at
25 a particular date and time. And so that pretty much -- that's

1 a big part of the information in AFS.

2 The other part of the information in AFS has to do
3 with assault weapons registrations that were mandated back in
4 1989 and continued through -- I think through 2001 where
5 certain guns were identified as assault weapons under
6 California statute had to be registered by residents of
7 California.

8 The other records that are in AFS are records of
9 Carry Concealed Weapons license holders known as CCW's. Also
10 on file at AFS are what we call law enforcement reports, which
11 relate to firearms that had been reported lost, stolen,
12 evidence, safekeeping, held for -- retained for official use.
13 And there's a few others.

14 And there's other types of what we call ownership
15 records in AFS as well, and those people that voluntarily
16 report a firearm that they have possession or ownership of a
17 firearm; those folks that report taking possession of a
18 firearm via operation of law; those folks that report firearms
19 because of an integral familiar transfer. And also reports
20 taken in -- reported by those folks that have identified
21 themselves as curio and relic collectors.

22 Q. Is there any limit in time for long gun records, like the
23 records only go back for a certain amount of time?

24 A. With the exception of assault weapon registration, long
25 gun records, the department only began retaining long gun

1 records effective January 1st of 2014.

2 Q. I have the same question for handguns. How far back does
3 the handgun records go?

4 A. I've seen the handgun records in AFS that go back to,
5 like, the early 1900's.

6 Q. Is there complete -- are there complete handgun records
7 going back that far?

8 A. They're not necessarily complete. They were records that
9 were taken in at that particular time.

10 Q. So if you have a DROS record from the early 1900s, does
11 that tell you who has the gun today?

12 A. No, those people are probably long passed away.

13 Q. If you have a DROS record at any time, does it tell you
14 that that same person has the gun today?

15 A. No, not necessarily.

16 Q. In your work at the Bureau of Firearms, have you heard of
17 another database that goes by the acronym CARPOS?

18 A. Yes.

19 Q. What does that stand for?

20 A. California Restraining Order -- Restraining and Protective
21 Order System.

22 Q. What kind of information is contained in that database?

23 A. Typically restraining orders. For us, we're looking for
24 domestic violence restraining orders and other firearms
25 prohibiting protective orders.

1 Q. Does the DROS application go through a CARPOS check?

2 A. Electronically, yes.

3 Q. Is there ever human involvement in reviewing the records
4 from CARPOS?

5 A. Excuse me, yes.

6 Q. Why does a human being need to be involved in the process?

7 A. Once again, since we don't have biometrics, and we're
8 relying on name-based information and date of birth
9 information, we have to make sure that that record actually
10 belongs on that particular individual that's purchasing the
11 firearm.

12 Q. What are biometrics?

13 A. Biometrics are fingerprints. It could be your retina,
14 basically types of unique identifications that's unique to the
15 human body, physical body.

16 Q. If a person has a domestic violence offense, is there a
17 fingerprint or retinal scan for that person in the Bureau of
18 Firearms systems?

19 A. I think you meant to say domestic violence restraining
20 order.

21 Q. Pardon me. Yes, I did.

22 A. Yes, if you're talking about a restraining order, then the
23 answer to that question is there is no fingerprints involved
24 for restraining orders.

25 Q. If somebody has a restraining order, could that be a

1 prohibiting offense?

2 A. Yes, under both state and federal law.

3 Q. Among these databases, have you heard of the one that goes
4 by the acronym of WPS?

5 A. Yes, that stands for Wanted Persons System.

6 Q. Let me go back. I missed a question on CARPOS. Is CARPOS
7 a state database, federal database, or some other entity's
8 database?

9 A. CARPOS is a state database.

10 Q. Moving back to the WPS system. What kind of records are
11 in the WPS database?

12 A. Typically warrants, people that are wanted. So warrant
13 information is in the WPS.

14 Q. If a person is in the WPS database, does that mean that
15 the person is prohibited from having a firearm?

16 A. Potentially, yes.

17 Q. Always the case, sometimes the case?

18 A. Not always the case.

19 Q. Is the WPS database a state database, federal database, or
20 some other entity's database?

21 A. It's a state database.

22 Q. Why -- why is the Bureau of Firearms checking on whether
23 somebody's a wanted person? What does that have to do with
24 firearms?

25 A. Typically people are wanted for felons if they have

1 committed a felony offense, or they're wanted, or they have
2 been held for indictment and they're wanted, they would be
3 prohibited under state law. Under federal law, anybody that
4 has a warrant issued for them is considered a fugitive from
5 justice and would be prohibited. So under federal law, all
6 warrants are enforceable as a prohibitor.

7 Q. Is the WPS check completely computerized, or are humans
8 involved?

9 A. It's computerized.

10 Q. Are humans ever involved in a WPS check?

11 A. Humans are involved from reviewing the response
12 information resulting from a WPS check, yes.

13 Q. Why would you need to have a human being involved in that?

14 A. Once again, there are no biometrics associated with that.
15 It's based on a name information, so we to have make sure that
16 the information that we're looking at matches the person
17 that's the subject of the firearms purchase.

18 Q. Have you heard of a database that goes by the acronym
19 MHFPS in your work at the bureau?

20 A. Yes, Mental Health Firearms Prohibition System.

21 Q. What kind of records does that database contain?

22 A. Generally that database contains mental health records as
23 well as records of individuals that are -- what we call are
24 707(b) Welfare and Institutions Code, prohibited juveniles.

25 Q. Is this database a state database, a federal database, or

1 some other entity's database?

2 A. It's a state database.

3 Q. Why is the Bureau of Firearms looking at people's mental
4 health records in relation to firearms purchases?

5 A. Because under California law, people that have been
6 involuntarily admitted to a mental health facility under
7 Welfare and Institutions Code Sections 5150, 5152, 5250, or
8 5350 are prohibited for a period of five years from owning and
9 possessing firearms as well as people that have been
10 identified as Tarasoff reporting, those folks are also
11 prohibited for a period of five years, as well as people that
12 have been reported to the bureau by the courts as Penal Code
13 Section 1026, mentally -- I think that's insane, Penal Code
14 Section 1370, incompetent to stand trial, or -- and also
15 folks, I think, under 5300 of the Welfare and Institutions
16 Code Section that have been identified as gravely disabled.
17 Those folks are prohibited under California law.

18 Q. You mentioned the term "Tarasoff." What is Tarasoff?

19 A. Tarasoff, I believe, it relates back to a case called
20 *Tarasoff* under California law where essentially an individual
21 went into their licensed psychologist or psychiatrist and made
22 a threat against themselves or reasonably identifiable
23 victims, subsequently carried out that threat, and I think
24 there was a lawsuit that ensued because the psychoanalyst did
25 not report that information to law enforcement.

1 So as a result now under California law, if an
2 individual does go into their -- their licensed
3 psychotherapist or psychologist and makes a threat against
4 themselves or reasonably identifiable victim, that
5 psychotherapist is required by California law to report that
6 information to law enforcement, who, in turn, reports it to
7 the Department of Justice.

8 Q. Are there records in MHFPS complete and up-to-date for all
9 people with a mental health history?

10 A. No.

11 Q. Is there any lag about information getting into that
12 system?

13 A. There is not only a lag, but there is also underreporting,
14 which was identified recently last year by the Bureau of State
15 Audits in an audit of the State's courts, and the audit
16 revealed that many of the courts were not reporting all of
17 their mental health prohibitions to the department as required
18 under state law.

19 Q. Does the -- do records ever come in, you know, not --
20 well, do records of mental health prohibition adjudications
21 come into that MHFPS system instantaneously or nearly
22 instantaneously?

23 A. Currently not all records come in instantaneously. The
24 public and private mental health facilities statewide, and
25 there's approximately 200 of them, they have the capability to

1 report to us electronically via the Internet. They've been
2 advised and trained and told that they are required to report
3 immediately, report people that they admit and assessed S-50
4 as a danger to themselves or a danger to others immediately.
5 Some of them do report immediately. Others kind of take their
6 time. You know, when they get a nice little stack and will
7 report them.

8 And then the reports that we receive from the courts,
9 as I said earlier, there's an underreporting by the courts. A
10 lot of times many cases, the courts are underfunded,
11 understaffed. The reports that we currently receive from the
12 courts come in on paper. And so they come through the mail,
13 so that there are times when things -- there's a lag because
14 of the mail and because of the paper. We are working to
15 automate that process for the courts as well.

16 Q. Does the Bureau of Firearms get the social security number
17 for each person submitting a DROS application to purchase a
18 firearm?

19 A. No. In fact, state law in many cases prohibits government
20 agencies from requesting social security information on
21 various types of applications.

22 Q. If you had social security information, would it make it
23 faster to identify people correctly?

24 A. It would certainly help.

25 Q. I'd like to move on and discuss any other databases. Are

1 there any other systems or databases that are checked when a
2 DROS application comes through the Bureau of Firearms?

3 A. Yes. There is a check with the Consolidated Firearms
4 Information System, which is a system that's used to process
5 DROS information. It looks for whether a DROS from the --
6 this individual -- or this individual had been previously
7 denied on a purchase before. It's sort of a trigger, sort of
8 a reminder to people maybe you need to look a little harder,
9 dig a little deeper. If you don't see anything out there now,
10 they may have been previously denied, so you need to look a
11 little bit deeper.

12 We also look at the federal databases, which is the
13 National Instant Criminal History Check System, known as NICS.
14 And under the NICS umbrella, there are a number of databases.

15 Q. Let me go back quickly about CFIS. If somebody had been
16 denied before to purchase a firearm, does that mean that the
17 person is automatically going to be denied again?

18 A. No.

19 Q. Why is that -- if somebody was denied before, why aren't
20 they automatically denied again?

21 A. Because it's possible that they had a conviction that was
22 subsequently overturned. It could have been a felony
23 conviction that they subsequently went back to court and had
24 that felony reduced to a misdemeanor. It could be a number of
25 reasons why a person that had been previously denied would no

1 longer be -- be denied. Some prohibitions are -- they only
2 last a certain amount of time. For instance, the 5150
3 individuals are nonprohibited for a period of five years, so
4 after that five-year period, their prohibition expires.

5 Q. Let's talk about the NICS system. Have you actually
6 worked with the NICS system?

7 A. Yes.

8 Q. Have you personally played any role consulting or
9 development of the NICS system?

10 A. I was part of the initial -- at the inception of NICS, I
11 participated in initial meetings with the federal authorities
12 that were developing the NICS database. They had a lot of
13 questions of states that already had a background check
14 process in place, and this was back in 1998. So I did provide
15 quite a bit of input. They had a lot of questions in
16 California about how we did things, and we shared various
17 information with them on our processes and practices. In
18 fact, I was given a placard for recognition for important
19 contributions to the NICS section.

20 Q. So you mentioned that there are several databases in the
21 NICS system.

22 A. Yes.

23 Q. And these databases are checked as part of the California
24 system, or are they not checked as part of the California
25 system?

1 A. They are checked as part of the California DROS process,
2 yes.

3 Q. So is it fair to say that the California system is NICS
4 plus other checks?

5 A. Yes.

6 Q. Let me ask you about the different NICS databases. Have
7 you heard of a database that goes by the acronym triple I?

8 A. Yes, Interstate Identification Index.

9 Q. What does the triple I database contain, what kind of
10 records?

11 A. It contains criminal history records from states that
12 participate and shared their records electronically with the
13 FBI -- their criminal history records electronically with the
14 FBI.

15 Q. Does the State of California submit records to triple I?

16 A. Yes.

17 Q. So in the California background check, Bureau of Firearms
18 finds out information about criminal convictions that people
19 may have had in other states besides California?

20 A. That's correct.

21 Q. Why does the Bureau of Firearms care about out-of-state
22 convictions?

23 A. Well, California is a point of contact state for the FBI
24 NICS. And as a point of contact state, we have an agreement
25 with them to enforce federal law when we initiate our

1 background check process. As well as under state law, there
2 are -- California law says that if you're convicted of a felon
3 in any state -- a felony of any state, then you would be
4 prohibited under California law as well.

5 Q. Does the triple I database have complete and up-to-date
6 records on everybody's criminal convictions around the
7 country?

8 A. No.

9 Q. Can a triple I check be done instantaneously or nearly
10 instantaneously and be sure to get all the criminal conviction
11 records for a DROS applicant?

12 A. No. There's times when you still have to research that
13 information because there's missing disposition information.

14 Q. And so a human analyst at the Bureau of Firearms may have
15 to check the information in triple I?

16 A. We routinely chase out-of-state dispositions, yes.

17 Q. So you said routinely. This is something that happens
18 routinely, not very often, a lot?

19 A. I would say routinely, yes. I mean every day, we had
20 records from out of state that we have to check and chase down
21 dispositions.

22 Q. When you say chase down dispositions, does that just mean
23 accessing an electronic database and getting the information
24 instantaneously?

25 A. No, that often means that you call them by phone.

1 Sometimes you to have fax because the agency only accepts
2 information by fax. The FBI has produced a -- somewhat of an
3 assistance -- document that tells that -- that gives
4 information to the POC states on how to chase dispositions,
5 and depending on where the states are at or if we're chasing
6 information from federal courts or military courts. So there
7 are some protocols that we follow based on, you know,
8 experience with these courts in other states or at the federal
9 level.

10 Q. So a BOF human analyst could be calling a court in any
11 state of the union, Maine, Vermont, Hawaii?

12 A. Yes.

13 Q. Have you heard of the NICS database called NCIC?

14 A. Yes, National Crime Information Center.

15 Q. What kind of records are in the NCIC database?

16 A. Typically those are the federal level warrants, the
17 federal level domestic violence restraining orders. And there
18 are other records in NCIC. I think they also have stolen gun
19 information, things of that nature.

20 Q. Is every person who has a record in the NCIC database also
21 linked up to a set of fingerprints?

22 A. No.

23 Q. And is a check of the NCIC database done instantaneously
24 in all cases?

25 A. It's done electronically, yes.

1 Q. Is there ever a human involvement in analyzing or
2 reviewing the results?

3 A. Yes.

4 Q. Why aren't human beings involved in the check, the NCIC
5 check?

6 A. Once again, it's a name base information, so we have to
7 verify it, look at it and make sure it's the same person, same
8 individual, and also some of the information in the NCIC just
9 like California, the warrant may be in the database, but it
10 may no longer be active, so we have to contact the agency that
11 entered the warrant and say, "Is that warrant still active?"
12 Occasionally they'll tell us, "Oh, we're sorry, we forgot to
13 take it out. It's no longer valid."

14 Q. Are there any other NICS databases that are checked?

15 A. Yes.

16 Q. What are the other databases?

17 A. Under the NICS umbrella, under NICS, there's basically
18 like four different areas. There's triple I, there's NCIC.
19 There's NICS itself. And under NICS itself, you have military
20 dishonorable discharges, citizen renunciates. There's a file
21 that used to be called VICTOG files, which stood for --

22 (Reporter interruption.)

23 THE WITNESS: V-I-C-T-O-G, which stood for violent
24 gang and terrorist files. It's now called something else, but
25 they still have that file there under the NICS umbrella.

1 And then also -- there's another database that NICS
2 will spawn off to called ICE, Immigration, Customs, and
3 Enforcement, and that helps us identify illegal and unlawful
4 aliens, people in the U.S. illegally or unlawfully. There are
5 some other categories. There are people that have made Secret
6 Service files, people that made threats against the President
7 that are also part of the NICS umbrella.

8 BY MR. EISENBERG:

9 Q. Have you heard that states that just do the NICS check do
10 a large number of them instantaneously or nearly
11 instantaneously?

12 A. I know that NICS does checks for other states that don't
13 have their own background check process in place.

14 Q. And have you heard how long those checks take?

15 A. Under federal law, a NICS check can't take any longer than
16 three days.

17 Q. Is the NICS check in three days sufficient to catch
18 everyone who might be prohibited?

19 MR. KILMER: I object at this point in time, Your
20 Honor. Asking the witness to render an opinion on the federal
21 law and federal database system.

22 THE COURT: Sustained as to the form of the question,
23 basically his personal knowledge.

24 BY MR. EISENBERG:

25 Q. Do you have any knowledge that the NICS system ever allows

1 prohibited persons to be cleared and purchase firearms?

2 A. Yes, that does happen occasionally.

3 Q. Do you have data about how often that happens?

4 A. I've seen some -- I've seen some reports. I don't have
5 them in front of me right now. I may have provided them to
6 you. I don't know. I thought I may have, but I believe that
7 there is some reports that talk about when those -- ATF is
8 notified, to go out and retrieve firearms.

9 Q. If we were to show you those reports, would it refresh
10 your recollection, do you think?

11 A. I believe so.

12 MR. EISENBERG: All right, may we take a moment to
13 look at those reports?

14 THE COURT: Yes.

15 MR. EISENBERG: Your Honor, may I approach the
16 witness and supply him with one of the binders here that has
17 copies of the exhibits?

18 THE COURT: Yes.

19 MR. EISENBERG: Thank you. This is Exhibit B0.

20 MR. OTTEN: What is it?

21 MR. EISENBERG: B0.

22 MR. OTTEN: B0.

23 BY MR. EISENBERG:

24 Q. I've placed in front of you Exhibit B0. Is this a
25 document you've ever seen before?

1 A. Yes.

2 Q. If I could direct you to page AG-001803 by Bates numbers
3 little double I?

4 A. Um-hmn. Yes.

5 Q. If you look at the bottom, the very last bullet point on
6 the page, does that refresh your recollection about the number
7 of firearms that have -- may have been released in a given
8 year by the NICS system even though the person was prohibited?

9 A. Yes.

10 Q. What's your -- what's your recollection, then, of the
11 number of firearms that are released to prohibited persons on
12 NICS checks only?

13 A. I believe this covers a span of about a little bit over a
14 decade. And it's 3,166 firearms is what it says here.

15 MR. KILMER: Excuse me, what page are you on?

16 THE WITNESS: I think it's AG-001803.

17 MR. KILMER: Thank you.

18 BY MR. EISENBERG:

19 Q. I'd like to move back to the processing of the DROS
20 transactions. Do you know how many DROS transactions were
21 processed by the Bureau of Firearms in the year 2013?

22 A. Approximately 960,000 transactions.

23 Q. And do you know the number for the year 2012?

24 A. Approximately 812,000.

25 Q. And how do those totals compare to the numbers from five

1 years ago, say.

2 A. They're up substantially. I think the lowest year I
3 remember was 2003, which we were only at 290,000. So that's a
4 significant increase from 2003.

5 Q. If we have a DROS application that makes it through -- is
6 it possible for a DROS application to make it through all of
7 the databases that we just mentioned without there being any
8 hits at all?

9 A. Yes.

10 Q. Is there an internal name at BOF or a DROS application
11 that has that characteristic?

12 A. Yes, we call those auto approvals.

13 Q. What percentage of the DROS applications are auto
14 approvals?

15 A. About 20 percent.

16 Q. What's the basis for your information there?

17 A. Just looking at the numbers over years from time and
18 trying to maintain it at the lowest possible level. We try to
19 achieve a higher level than 20 percent. We worked
20 continuously to try to keep it up as high as we can.

21 Q. When you say looking at the numbers, where are these
22 numbers coming from?

23 A. I get daily reports.

24 Q. And do you know the source of the information, the
25 ultimate source of the information?

1 A. The information comes out of our Consolidated Firearms
2 Information System database. CFIS is the acronym, C-F-I-S.

3 Q. If someone's DROS application is automatically approved,
4 does that mean that there's never a human being that looks at
5 the record?

6 A. That's true. Yes.

7 Q. A human being never looks at an auto-approved record?

8 A. Well, the only time that a human being would be asked to
9 look at an auto-approved record is if sometime within the
10 waiting period, we're contacted by a potentially treating
11 psychoanalyst, or somebody that says, "Hey, I just treated
12 this guy. He told me he's purchased a gun. I want to let you
13 know that we've held him as a 5150. You need to stop that
14 transfer." So occasionally we get those kind of contacts, or
15 we'll get a contact from a peace officer somewhere, or
16 occasionally something happens along with ATF or a U.S.
17 Marshal will call us or something and say, "Hey, I see you
18 guys did a background check on this guy. Just to let you
19 know, there's something going on here. This guy is being held
20 right now for a felony." Something, somewhere else. So we'll
21 get those calls occasionally. And usually what we do is we
22 say, "Okay, you're going to have to give us something that
23 would sustain a prohibition." So if it's a treating
24 psychoanalyst, we're asking for a 5150 report or some kind of
25 order from a judge or somebody that says that that person

1 can't have a gun.

2 Q. So if somewhere in the neighborhood of 20 percent of the
3 DROS applications are auto-approved, that means that the rest
4 are not auto-approved; correct?

5 A. That's correct.

6 Q. So what happens to a DROS application if it does come
7 back, having gone through one of those databases, and it has
8 at least one hit, what's the next stage in the process?

9 A. Next stage of the process is for an analyst to review it,
10 and what happens is, electronically it drops into what we call
11 a queue, an electronic queue.

12 Q. Is there a name for the -- or a job title for the analyst
13 that do the human review of the records?

14 A. Their official state job classification is Criminal
15 Identification Specialist II.

16 Q. Have you ever heard of them referred to by an acronym?

17 A. CIS's.

18 Q. CIS's. How many CIS's are there?

19 A. I believe there's about 24 involved in the DROS process --
20 involved in just the background check process part of it.
21 There's a whole another group of individuals that we use to
22 chase dispositions.

23 Q. Are all these people within a certain unit at the Bureau
24 of Firearms?

25 A. Yes, they're in the purchaser clearance section.

1 Q. How does the CIS actually see a DROS application?

2 A. The information is brought up to them electronically on a
3 computer screen, and actually all the CIS's are equipped with
4 dual monitors. So on one monitor is the application
5 information about the individual buying a gun, so they can be
6 the applicant's name, date of birth, personal descriptors,
7 driver's license, and information. And on the other screen,
8 they can view information about the gun, or they can view
9 information about the actual hits that were associated --
10 database hits that were associated with that individual so
11 they can look back and forth and make a comparison to see if
12 it's the same individual.

13 Q. Are the hits the same on every DROS application that comes
14 through, or do they vary?

15 A. They vary.

16 Q. What is the work that the CIS does with one of these DROS
17 applications that has come up on the screen?

18 A. The primary thing that they do is they verify that the
19 individual purchasing the gun, and the individual -- the
20 prohibition record of the same individual. From there, then
21 it's a look into the record to determine is there information
22 in that record that would make that subject prohibited.

23 From there, even if there's prohibited information in
24 the record, that information has to be verified because
25 oftentimes what we find is that there's a conviction there

1 that had been reduced that had been subsequently dismissed or
2 something of that nature, so we have to look for those types
3 of things. And we're also looking to see if there's an arrest
4 with no disposition, where we have to go out and actually
5 chase that disposition. So there is quite a bit of work that
6 goes into that.

7 And then if it is determined that the subject is
8 prohibited, then the next step is to notify the dealer, reach
9 out to the dealer and make the appropriate notifications to
10 the dealer to not deliver the firearm.

11 Q. Does it always take a CIS the same amount of time to
12 process a DROS application, or does the time it takes vary?

13 A. It varies. Depends on the size of the records and number
14 of hits returned.

15 Q. Does any of this work ever take more than a day for an
16 application?

17 A. Yes.

18 Q. Would you say that that's something that rarely happens,
19 sometimes happens, often happens?

20 A. I would say -- it happens fairly routinely.

21 Q. At the end of any given workday, have the CIS's reviewed
22 all of the DROS applications that are in the queue?

23 A. No.

24 Q. Are you aware of the work hours of the CIS's?

25 A. Yes.

1 Q. Do they work a standard 40-hour week?

2 A. Typically that's what they're hired to do is to work a
3 40-hour week, but our CIS's typically work well in addition to
4 the 40 hours. We usually -- we have overtime every Saturday
5 and Sunday. We usually work the holidays, including
6 Christmas, New Years, we're at work.

7 Q. Why are the CIS's working so hard?

8 A. To keep up with the influx of DROS applications.

9 Q. So if at the end of a given day, the CIS's have not
10 finished with all the DROS applications that are in the queue,
11 what happens to those DROS applications?

12 A. They're just held over another day. They age another day,
13 and they come in the next day and try to work them the next
14 day. They work overtime. They may work 10-hour days, some
15 occasionally they work 12-hour days. They work as long as
16 they can. They go home, they get rest, they come back the
17 next day to complete the work.

18 Q. How often is it that there's a backlog, where there are
19 DROS applications that have been in the queue for more than a
20 day?

21 A. Always.

22 Q. Is the --

23 A. Or almost always.

24 Q. Is the size of the backlog always the same, or does the
25 amount of the backlog itself vary?

1 A. I would say on average, it fluctuates between day six and
2 day eight.

3 Q. Are the number of DROS applications coming in over the
4 course of the year consistent from month to month?

5 A. No.

6 Q. So there's a variance?

7 A. There's times when there are peak purchase times. For
8 instance, the holiday seasons, Christmas, that area,
9 Christmas, Thanksgiving, around Thanksgiving, things sort of
10 go crazy. Black Friday is a huge day for us. It's not
11 uncommon to see as many as 10,000 DROS applications come in on
12 a black Friday, and then throughout that whole holiday season,
13 it's peak time. Any time there's any type of a strange event,
14 for instance, a mass shooting somewhere, you'll see what we
15 call a run on guns. We've seen at times where there were
16 earthquakes, there's been a run on guns. During the Rodney
17 King riot time, there was a run on guns. And then there's
18 just the typical, you know, hunting season, things of that
19 nature, where certain peak times where people are out buying
20 firearms.

21 Q. You're a manager at the Bureau of Firearms; correct?

22 A. Yes.

23 Q. So why don't you just hire temporary workers during those
24 spike periods?

25 A. Well, the reason we don't hire temporary workers is --

1 there's a few reasons. One is the state budget process
2 doesn't allow me to just go out and start hiring people. You
3 have to go through the state process, which requires approval
4 by the state legislature as well as the governor.

5 Secondly, there is a training curve. It takes us
6 from three to six months to train an individual to be able to
7 do those background checks. They have to understand state
8 law. They have to understand federal law. They have to
9 understand that things in between, the court case decisions,
10 and things of that nature that help them -- that assist them
11 in determining whether someone is prohibited or not. They
12 have to understand how to access the database, records, read
13 those database records, analyze those database records, and
14 understand them. So it takes us a lot to train folks.

15 Q. After a CIS has finished doing the review of a DROS
16 application, are there any decisions that have to be made
17 about the application?

18 A. Yes.

19 Q. What are the decision options?

20 A. Well, it's either we're going to approve it. If it's
21 missing information, we're going to delay it and chase that
22 information down. Or if there's prohibiting information in
23 there, we're going to deny the individual. And if it's a
24 situation where the DROS is coming to its maturity of 30 days
25 old, and we've exhausted all of our chasing efforts to try to

1 resolve things and we cannot resolve it, then they would
2 identify the record or identify the record as undetermined.

3 Q. I'd like to ask you some further questions about the NICS
4 check. I may need to go get an exhibit. It seems I have
5 mismarked one.

6 Are there prohibiting events under California law
7 that are not looked for in just a NICS check?

8 A. Yes, there's several.

9 Q. What are some of those?

10 A. The most notable are our violent misdemeanors, our 5150
11 Welfare and Institutions Codes. NICS does not enforce those.
12 NICS does not enforce our 707(b) Welfare and Institutions
13 Code, violent juveniles. They don't have access to the
14 information either. NICS does not enforce California's --
15 they don't verify the identification information through DMV
16 to verify if the information -- if the -- if the person
17 involved in a transaction is really not the same person on the
18 ID.

19 NICS does not look for people -- under California
20 law, you can only buy one handgun in a 30-day period. NICS
21 does not look for, nor enforce that.

22 NICS does not look for, nor enforce California's
23 five-year prohibition on Tarasoff folks. And NICS does not
24 look for -- I can't say for sure, but I don't believe NICS
25 looks for whether guns involved in a transaction have

1 previously been reported stolen. I don't think NICS receives
2 gun information on transactions.

3 Q. California supplies some information to NICS; correct?

4 A. Yes.

5 Q. Why doesn't California just give all this information to
6 NICS so that they can be run through the NICS check?

7 A. Because federal law does not give the NICS authority to
8 enforce some of the state prohibitors.

9 Q. Can the State just force the FBI -- force them to put this
10 information into NICS?

11 A. No.

12 Q. Do you know the number of people that we're talking about
13 that would make it through a NICS check, but be barred from --
14 by a California check in a given year?

15 A. Not off the top of my head. I'd have to look through my
16 reports. We have annual reports that we can produce on demand
17 that would tell us that information.

18 MR. EISENBERG: If I may have a moment to go get that
19 report.

20 THE COURT: Yes.

21 MR. EISENBERG: It would refresh the witness'
22 recollection.

23 (Pause in the proceedings.)

24 MR. EISENBERG: Your Honor, may I go get one of the
25 other binders and give it to the witness?

1 THE COURT: Yes.

2 MR. EISENBERG: Thank you.

3 BY MR. EISENBERG:

4 Q. Assistant Chief Buford, may I have you turn to Exhibit Tab
5 AP, with the Bates number AG-002394.

6 THE CLERK: Sorry, Counsel, which exhibit is it
7 again?

8 MR. EISENBERG: AP as in "Peter." And the Bates
9 number is AG-002394.

10 THE WITNESS: Got it.

11 BY MR. EISENBERG:

12 Q. Okay, have you ever seen this document before?

13 A. Yes.

14 Q. Where have you seen this document?

15 A. This document is generated from the Consolidated Firearms
16 Information System report screen.

17 Q. And you see that the left side columns have headers or
18 subheaders with the word "denial" in them?

19 A. Yes.

20 Q. What does a denial mean in this context?

21 A. It means that the subject was matched to a prohibiting
22 record. The purchaser was matched to a prohibiting record,
23 and the transaction was denied, and the dealer was contacted
24 and told not to deliver the firearm.

25 Q. And on the right side of the left side column, there are

1 numbers. What do those numbers represent?

2 A. The number of denials.

3 Q. Are there any categories, any rows here that reflect
4 denials that the NICS system doesn't check for?

5 A. Yes.

6 Q. Can you identify them for the Court, please?

7 A. Yes. The 30-day reject -- and this report is from January
8 through December 2013. So for the 30-day reject, which would
9 enforce California law in that area, there have been 2,814
10 subjects. For the mental health, 5150 and Tarasoff folks
11 individuals, there were 802. For the violent juveniles, there
12 were 329.

13 Q. Do each of these denials represent people who were
14 prohibited from getting firearms because of the California
15 check?

16 A. Yes. And, again, there were 926 violent misdemeanors as
17 well.

18 Q. Are there other categories -- I didn't mean to cut you off
19 there.

20 A. No, that was it.

21 Q. Let me ask you to look at the -- the left side column, the
22 first entry is total DROS's received, and the number is
23 960,179? What does that number reflect?

24 A. That's the number of DROS applications that we received
25 during the calendar year 2013.

1 Q. And they were all processed through this system that we've
2 been talking about?

3 A. Yes.

4 Q. If I could turn your attention to Exhibit AQ. "Q" as in
5 "queen." Page 2407. Bates number 2407 at the bottom of the
6 page. Actually the first page of AQ.

7 A. Did you say 2407, AQ-002407.

8 Q. Right, it should be the first page?

9 A. I have 2406, and then it skips to 2408.

10 Q. Oh, boy. Okay.

11 A. You said AQ, right?

12 Q. AQ, yes.

13 A. I'm in the wrong section.

14 Q. There may be a little bit of a misstatement in some of the
15 numbering here.

16 A. I have it.

17 Q. Oh, you do have it?

18 A. Yes.

19 Q. The Bates number is AG-002407, and this document actually
20 has the AQ stamp right on there at the bottom.

21 A. I have it.

22 Q. Have you ever seen this report before?

23 A. Yes.

24 Q. What is this report in context -- in the context of the
25 Bureau of Firearms?

1 A. This report is generated out of the Consolidated Firearms
2 Information System, the reports menu. It's the -- it's an
3 on-demand report for DROS information -- DROS statistical
4 information.

5 Q. What time period does this report cover?

6 A. This report covers 1/1 of 2014 through January 31, 2014.
7 So the month of January only.

8 Q. Let's look at the right side column. First entry, Total
9 DROS Received, and there's a number 64,312. What does that
10 number reflect?

11 A. That's the number of DROS applications received during the
12 month of January 2014.

13 Q. And was each of those applications processed by one of the
14 CIS's?

15 A. Yes.

16 Q. So there 64,000 just in the month of January this year.

17 A. Yes.

18 Q. Are the categories of denials that were made under the
19 California system, but that would not have even been checked
20 for under the NICS system, present on this report?

21 A. Yes.

22 Q. Could you point out to the line numbers and the numbers of
23 denials, please?

24 A. Yeah, for the 30-day rejects, it's 122. For the violent
25 misdemeanors, it's 44. For the mental health, it's 30. For

1 the violent juveniles, it was 11.

2 Q. Are there any others? Trying to make sure it's complete.

3 A. I believe that's --

4 Q. Okay.

5 A. That's it. I mean, there's some other areas here, but I
6 can't say if they were caught under the federal areas as well.

7 Q. But, again, each of those denials represent somebody who
8 would have received a gun if only a NICS check had been done?

9 A. That's correct.

10 Q. Let me ask you to turn to Exhibit AN. AN as in "Nancy."

11 A. Got it.

12 Q. If you look at 2131, are we seeing the same kind of report
13 for just the different month, December of 2011?

14 A. Yes.

15 Q. If I could just have you flip through each of these pages,
16 are we seeing that same kind of report for each month of the
17 year, 2011?

18 A. Yes.

19 Q. And so somebody could use these charts to figure out how
20 many people were caught by the California system and denied
21 firearms because they're prohibited people. That would not
22 have even been checked for under the NICS system?

23 A. Yes.

24 Q. Let me have you turn to page -- to Exhibit A0, "0" as in
25 "Oliver." So I'm not going to take you through the same

1 series of questions for each one. I'd like to proceed more
2 generally unless the Court would prefer me to operate in
3 another way.

4 Document with Bates number AG-002144. Is this the
5 same kind of report for the year 2012?

6 A. Yes, this is for calendar year 2012.

7 Q. And if you would look at just the top right side, there's
8 total received from vendor 817,748. That represents what?

9 A. That's the number of DROS transactions received that
10 calendar year.

11 Q. And, again, if we were to take you through the other
12 denial categories, you could show which categories there are
13 California checks on and denials based on that would not have
14 been caught through the NICS system?

15 A. Yes.

16 Q. And the rest of the exhibit goes through the same data,
17 only breaks it down by month?

18 A. Yes.

19 Q. If we could have you look at AP. And I'll focus your
20 attention on just the documents with the Bates numbers 2 --
21 AG-002049 through 2046. Pardon me.

22 A. 2056.

23 Q. I think you'll see that there's -- there's two different
24 kinds of reports in here. There's like the one at 2186 that
25 has some gray lines.

1 A. Are you talking AG-002052?

2 Q. 2186.

3 A. 2186.

4 Q. And I'm only pointing those out to you to say we're not
5 going to talk about those ones.

6 A. Okay.

7 Q. But interspersed, we see a lot of these other reports that
8 are the Dealer Records of Sales Statistics for the various
9 months in 2013. Do they contain the same kind of data that
10 we've just been talking about? So like, for example, 2049,
11 2050, all the ones that say "Dealer Record of Sales
12 Statistics."

13 A. Okay. The reports from 2049 through 2051 are the same
14 report.

15 Q. Right.

16 A. The reports from 2052 to where you asked me to turn to
17 2186 and probably further, that's a totally different report.
18 That's a daily report.

19 Q. Right. Right. If you go through, you'll actually see
20 that we go back to the Dealer Record of Sales Statistics every
21 so often. They're kind of intermingled.

22 So what I'm just generally asking you are these
23 Dealer Records of Sales Statistics reports covering various
24 periods of time in 2013?

25 A. Yes.

1 Q. And if I were to take you through them laboriously, we
2 could show all the number of, you know, juvenile denials, 5150
3 denials, et cetera.

4 A. Yes.

5 Q. I am going to spare everybody the pain of going through
6 all of that.

7 MR. KILMER: And furthermore, Your Honor, we'll
8 stipulate that the records are accurate.

9 THE COURT: All right.

10 BY MR. EISENBERG:

11 Q. You said that the --

12 A. I'm going to just clarify one of the things that's not
13 reflected on the DROS statistical report that is reflected on
14 these other daily reports are the number of DMV mismatch
15 rejects.

16 Q. Right.

17 A. So those numbers as I called them off from this
18 statistical report did not include the daily amount of DMV
19 rejects that actually had been rejected.

20 Q. Okay, thank you very much for that clarification.

21 Is the DMV reject something that NICS checks for?

22 A. No. No.

23 Q. So your understanding if somebody is using a fake ID, fake
24 driver's license for a NICS check, it doesn't get caught?

25 A. No, because NICS doesn't run -- they rely on the dealer to

1 check the identification.

2 Q. I believe you testified earlier that a NICS check can take
3 up to three days. That's your understanding?

4 A. It can take no more than three days.

5 Q. So what happens if a NICS check has not been completed
6 after three days?

7 A. The dealer is advised that they may release the firearm at
8 their discretion.

9 Q. So what would happen if the NICS system finds out on the
10 fifth or sixth day that the applicant is prohibited?

11 A. NICS has to contact ATF and ask ATF to go out and retrieve
12 the firearm.

13 Q. I'm going to move on to another topic, which is the APPS
14 system. Have you heard of something called APPS within the
15 Bureau of Firearms?

16 A. Yes. It means Armed and Prohibited Persons System.

17 Q. Have you heard of something called a PAPF?

18 A. Prohibited Armed Persons File.

19 Q. Right?

20 A. Yes.

21 Q. What is APPS?

22 A. APPS is a database of persons that have been determined to
23 have a record on file with the department as being the last
24 person to be in possession of a particular firearm -- used
25 typically based on a Dealer Record of Sale that's subsequently

1 been determined to have become prohibited due to one of the
2 prohibiting categories that we talked about earlier.

3 Q. And how does PAPF relate to APPS?

4 A. PAPF and APPS are the same. PAPF is the legislative name
5 given to the process. APPS is the name that the department
6 gave to the system.

7 Q. How do you know about APPS?

8 A. I was involved in APPS since the inception. I provide
9 paper on APPS. I made presentations to DOJ management about
10 APPS. I participated in the budget change proposals that
11 obtain state resources to implement and administer APPS, the
12 feasibility study report for the electronic data system
13 associated with the APPS; participated in the development of
14 the business requirements and system requirements that needed
15 to implement the system; wrote a lot of the information
16 bulletins that went to law enforcement advising them about
17 APPS and how to use APPS; and participated in a development of
18 a lot of APPS training materials around the state. I actually
19 traveled with AG Brown to some zone meetings to present on to
20 law enforcement agencies about the APPS database.

21 Q. When APPS was being envisioned, what was it supposed to
22 do?

23 A. APPS was envisioned as a preemptive crime-fighting tool,
24 sort of to preempt crime. It was something -- the thought was
25 is that we would -- we would locate those folks that were

1 prohibited that had firearms and get to them before they had a
2 chance to use those firearms in a way that would harm the
3 public or harm themselves.

4 Q. Was APPS developed in order to do instant background
5 checks?

6 A. No.

7 Q. Why doesn't the Bureau of Firearms just use APPS for its
8 background checks?

9 A. Because the information in APPS is -- at this point, it's
10 just information. In fact, when law enforcement does an
11 inquiry in APPS, there's an admonishment notice that says do
12 not arrest based solely on this information. That information
13 has to be looked at again, refreshed on a constant basis. So
14 it's sort of a pointer tool, if nothing else. It's just a
15 pointer that says this person is -- could be armed and
16 prohibited in your jurisdiction, but before you go out and do
17 any enforcement action, you need to refresh that information,
18 because as I said earlier, that restraining order may not be
19 active anymore. That warrant may not be active anymore. That
20 criminal conviction could have been reduced, could have been
21 subsequently dismissed through a court proceeding, so it's
22 just a pointer tool.

23 Q. Could you use APPS as an instant background check at least
24 for people who purchase firearms in California before, would
25 it be an instant check for those people?

1 A. No.

2 Q. Why not?

3 A. Again, the information is not necessarily up-to-date and
4 refreshed. So we could be -- we could either be prohibiting
5 people from getting guns that are no longer prohibited, or we
6 could be giving guns to people that have become prohibited,
7 but have not been identified in APPS yet. APPS does not have
8 every person in California that have owned a firearm, that it
9 has become prohibited. It's not completely 100 percent
10 populated with that information.

11 Q. Does information -- does up-to-date information -- does
12 accurate information get populated into the APPS database
13 instantaneously or nearly instantaneously?

14 A. No.

15 Q. Why isn't information not put in there instantaneously?

16 A. The same reason, we don't have instant information for
17 DROS background checks. A lot of times we have to go chase
18 down the disposition. There is missing information. We have
19 a huge gap in our records, not only on a state basis, but on a
20 national basis.

21 Q. I'd like to move on to another topic.

22 THE COURT: Before do you that, it's about 10:30.
23 We'll take our morning recess, 15 minutes.

24 MR. EISENBERG: Thank you, Your Honor.

25 (Recess.)

1 THE COURT: Back on the record. The witness,
2 Mr. Buford, retake the witness stand.

3 MR. EISENBERG: May we proceed, Your Honor?

4 THE COURT: Yes.

5 BY MR. EISENBERG:

6 Q. Assistant Chief Buford, if I may redirect your attention
7 back to Exhibit B0, the FBI NICS report that we were talking
8 about earlier.

9 A. Sure.

10 Q. B0 as in Oliver.

11 MR. KILMER: Got it.

12 THE WITNESS: Yes.

13 BY MR. EISENBERG:

14 Q. And have you turn to page AG-001818. It's also number 14,
15 page 14 in the report itself.

16 A. Got it.

17 Q. If I could ask you to look at the first full paragraph
18 under "Firearm Retrieval Referrals." The last sentence that
19 starts, "In 2011."

20 A. Yes, I see it. "In 2011, the NICS section referred 3,166
21 firearm retrieval actions to ATF." So it was 3,166 in that
22 one year alone. Not over the 10-year period. I apologize.

23 Q. I want to ask you a general question about the
24 incompleteness of the databases. You have testified
25 essentially that the databases are not always up-to-date, and

1 they may have incomplete records. Is that fair?

2 A. That's correct, yes.

3 Q. Does the State have anything in place to try to mitigate
4 the burden of that problem?

5 A. I would say the only thing that we have on our side to
6 help mitigate that is the extra time that we have to do the
7 background checks, which is the 10-day waiting period.

8 Q. I'll move on to another topic. Have you in the course of
9 your work at the Bureau of Firearms heard of something called
10 a COE?

11 A. Yes, Certificate of Eligibility.

12 Q. What is, generally speaking, a COE?

13 A. A Certificate of Eligibility is a background check that
14 includes submission of fingerprints to the department. And
15 typically all firearms dealers are required to have a
16 Certificate of Eligibility, and it's also issued for other
17 reasons as well.

18 Q. In the course of your work at COE, have you ever heard of
19 something called a rap-back?

20 A. Yes.

21 Q. What is a rap-back?

22 A. The term "rap-back" or subsequent notification refers to
23 the capability of when a person is -- once they're
24 fingerprinted, and their fingerprints are on file with the
25 department, at any time should a fingerprint-based record be

1 submitted by a criminal justice agency, the agency or the
2 licensing authority that require the prints would be notified
3 of a subsequent arrest.

4 Q. How does a rap-back relate to a Certificate of
5 Eligibility, if at all?

6 A. Well, for the purposes of a Certificate of Eligibility,
7 people that have those in their possession, in the event they
8 are subsequently arrested in California, and California only,
9 the department would be notified of that arrest.

10 Q. Does a rap-back contain records of every possible
11 prohibiting event that could occur to someone?

12 A. Only those --

13 MR. KILMER: I'm going to object, Your Honor. That
14 misstates the testimony. I believe that a rap-back refers to
15 a recall of when an agency -- now, he's talking about as a
16 database. I'm misunderstanding.

17 THE COURT: Let me go ahead and sustain the
18 objection. Go ahead and --

19 BY MR. EISENBERG:

20 Q. What form is a rap-back in? Is it a database, is it a
21 paper record? What kind of thing are we talking about?

22 A. It can be both, depending on the agency receiving the
23 notification and depending on the process involved.

24 Q. And what agencies or people make entries on rap-backs?

25 A. For instance, armed security guards, where the Department

1 of Consumer Affairs is an issuing authority for the guard
2 card. So if there is a rap-back or a subsequent arrest, they
3 would be notified. In the past, they were notified by paper.
4 I believe we may be notifying them electronically now.

5 In the case of a COE, we -- we get paper
6 notifications in the patrol of firearms. We don't get
7 electronic notifications on rap-back. And peace officers, law
8 enforcement agencies would be subject to a rap-back, to where
9 a police officer or Sheriff's Officer employed by a law
10 enforcement agency that is subsequently arrested in California
11 where prints are submitted would be subsequent to rap-back
12 notification.

13 Q. If a person gets put on a mental health hold, is that
14 record -- is the record of that occurrence put on that
15 person's rap-back?

16 A. Not on a fingerprint-based rap-back, no.

17 Q. What's the difference between fingerprint based and
18 nonfingerprint based?

19 A. Well, rap-back is fingerprint based, so it means that the
20 match is done by fingerprint. It's a positive identification.
21 We positively know that this person was subsequently arrested
22 because we've matched their prints with the prints that were
23 previously placed on file.

24 Q. Does the rap-back for a person contain all of the checks
25 of all those databases that we mentioned before?

1 A. No. It would just be what happened lately.

2 Q. If a person has --

3 A. Let me correct that on a rap-back. What a rap-back
4 usually does is it generates an updated copy of the records.
5 So it could include all the arrests in disposition of
6 information that DOJ had available. But in some cases, DOJ
7 does sanitize the rap-back information.

8 Q. Does a restraining order appear on someone's rap-back?

9 A. Not on a fingerprint-based rap-back, no.

10 Q. If a person has a COE, does that mean that the person is
11 eligible to purchase firearms up until the date of expiration
12 of the COE?

13 A. No, not necessarily.

14 Q. Why not?

15 A. Once again, there's the issue of the records gap. There
16 could have been some new information that came in. The person
17 could have been arrested outside of California, could have
18 been admitted to a mental health facility outside of
19 California where we would not get subsequent notification of
20 that information.

21 Q. Does a person who has a COE, is that person undergoing an
22 ongoing real-time background check?

23 A. Not really. I mean, they get ongoing California criminal
24 history information based on fingerprints, and that's it.

25 Q. If someone who has a COE is convicted of a felony in

1 another state, does that go on the rap-back?

2 A. No.

3 Q. Have you heard of something called a CCW?

4 A. Yes.

5 Q. What is a CCW?

6 A. Carry concealed weapons license.

7 Q. If a person has a CCW, what does that -- what does that
8 mean?

9 A. That means that they have undergone a fingerprint
10 background check. They have applied through their local
11 police or sheriff's agency for that CCW.

12 Q. What rights or benefits does a CCW allow to you exercise?

13 A. It allows them to carry a -- a concealable handgun on
14 their person.

15 Q. If a person has a CCW, are they subject to an ongoing
16 real-time background check?

17 A. They're subsequent to rap-back.

18 Q. Anything beyond the rap-back? Or not?

19 A. There's some -- there is another system that's available
20 to those folks called the firearms eligibility applicant file,
21 where there is some subsequent information that is provided
22 there based on name information -- based on a record match
23 based on name information.

24 Q. If a person has a CCW, does that mean the person is
25 cleared to purchase firearms so long as the CCW is in effect?

1 A. No.

2 Q. I'd like to move on to the next topic, which will be the
3 statutory exemptions to the Waiting-Period Law. Do you have
4 knowledge that there are, in fact, statutory exemptions to the
5 Waiting-Period Law?

6 A. Yes.

7 Q. What's the basis of your knowledge?

8 A. My tenure with the Bureau of Firearms and reviewing
9 legislation and response to some of the proposals for some of
10 the -- the statutory exemptions.

11 Q. Have you ever communicated with members of the California
12 legislature about bills for exemptions to the Waiting-Period
13 Law?

14 A. Yes.

15 Q. How have you come into contact with the legislature on
16 that topic? Do you call people up and offer your advice, do
17 they come to you?

18 A. Typically, the contacts that I have go through our office
19 of Legislative Affairs. So I work with the department's
20 office of Legislative Affairs. Occasionally, a legislative
21 staff will request a meeting with the folks involved in the
22 process, and I've been involved in some of those meetings
23 where we met face to face on various legislative issues.

24 Q. Okay. I want to ask you about some of the exemptions in
25 particular. Have you of an exemption that is known

1 essentially as the peace officer exemption?

2 A. Yes.

3 Q. What's your understanding for why peace officers are
4 eligible for an exemption to the Waiting-Period Law?

5 A. My understanding is that peace officers are exempt from
6 the waiting period because they have undergone a Peace
7 Officers Standards Training, which is a California
8 standardized training that's put on by POST, which is the
9 Peace Officers Standards and Training. They go through
10 extensive psychological evaluation. They go through an
11 extensive background check, which involves an investigator
12 going out and talking to their family, friends, neighbors, and
13 then they carry guns as part of their duties. That the
14 legislature did not want to handle their access to firearms to
15 protect themselves while on and off duty.

16 Q. Is the background check that a peace officer goes through,
17 the background investigation, is it the same thing as the
18 background check that a DROS applicant goes through?

19 A. No, it's much more extensive. As I indicated, they send
20 an investigator out to investigate, speak with family members,
21 friends.

22 Q. Are you, sir, a peace officer?

23 A. No, I am not.

24 Q. How do you know about what the peace officers go through?

25 A. I'm involved with working with POST on various things.

1 I've actually done POST training, taught POST classes,
2 POST-certified classes on behalf of the department in the area
3 of firearms. I've been involved in some POST-related videos.
4 Excuse me.

5 Q. Let me ask you about another exemption.

6 A. Excuse me.

7 Q. Are you okay?

8 A. Yes.

9 Q. Assistant Chief Buford, have you heard of something that's
10 known as the Dangerous Weapons Permit exemption?

11 A. Yes.

12 Q. What generally is the Dangerous Weapons Permit exemption?

13 A. It exempts a holder of a dangerous weapons license from
14 the 10-day waiting period.

15 Q. What's your understanding of why there is a Dangerous
16 Weapons Permit exemption?

17 A. My understanding of that, the reason for that is because
18 licensees or dangerous weapons licensees also go through an
19 extensive background check. The department -- when we license
20 these individuals, we actually send an investigator out to
21 their homes and businesses. We speak with their friends,
22 their relatives, former employers.

23 Q. Is that the same background --

24 A. Excuse me. Fighting a cold.

25 Q. Is that the same background check that somebody who is a

1 DROS applicant to purchase a firearm goes through?

2 A. No, it's not. It's much more extensive as well.

3 Q. Let me ask you about another exemption, something that's
4 known as the Entertainment Firearms Permit. Have you heard of
5 such a thing?

6 A. Yes.

7 Q. What's your understanding of why there is that exemption?

8 A. The Entertainment Firearms Permit is -- it's a permit
9 involved for folks that are associated with a Dangerous
10 Weapons License or permittee, and essentially, these folks are
11 employees of those licensees, and the permit allows them to be
12 exempt from the waiting period, to go to a prop house --
13 that's usually typically a movie prop house, which most of
14 them are located down in Southern California to obtain
15 firearms to be used in motion picture television and
16 theatrical events.

17 Q. How are the firearms generally used in motion pictures --

18 A. They're typically used as movie props. Those are the guns
19 that we see in the movies with Arnold or -- Arnold
20 Schwarzenegger or Sylvester Stallone, whatever. Those folks
21 that do movies with firearms.

22 Q. In the consulting that you've had with the California
23 legislature and your work with -- of the bills that have led
24 to the exemptions, do you have any information that any of the
25 exemptions were passed in order to discriminate against any

1 group of people?

2 A. No.

3 MR. EISENBERG: I have no further questions for
4 Assistant Chief Buford.

5 THE COURT: All right. Cross-examination.

6 MR. EISENBERG: Should we take a break before cross?

7 THE COURT: Would you like a couple minutes?

8 THE WITNESS: Sure.

9 MR. KILMER: I have no objection to that.

10 THE COURT: Let's take a quick five-minute break.
11 We'll come back in five minutes.

12 (Recess.)

13 THE COURT: Back on the record with
14 cross-examination.

15 MR. KILMER: Thank you, Your Honor.

16 CROSS-EXAMINATION

17 BY MR. KILMER:

18 Q. Good morning, Mr. Buford. I'm Donald Kilmer. I represent
19 the plaintiffs in this case.

20 A. Good morning.

21 Q. You testified earlier that waiting periods have two
22 primary purposes, and that is to prevent -- to a cooling-off
23 period to prevent impulsive violent acts, either a homicide or
24 suicide or assault and also to permit your organization to
25 conduct background checks.

1 A. Yes, as well as to notify the dealers.

2 Q. Okay, so the second reason for the 10-day waiting period
3 is to not only perform the background check, but to notify the
4 dealer to release the weapon.

5 A. To not release the weapon.

6 Q. Okay. So is that the way the system works, if the dealer
7 doesn't hear back from you, they can just release it in 10
8 days?

9 A. Historically that's how it worked. It's different now.
10 Now they get a red light, green light. Pretty much after the
11 10-day waiting period, the light turns green. Basically a
12 button lights up and says that they can deliver the gun.

13 Q. And where is this button located?

14 A. It's on their PC.

15 Q. So this is part of the new system?

16 A. It's part of the new system. It's all automated now.

17 Q. And this is the new system that California took over on
18 its own from, I believe, Verizon?

19 A. Yes, Verizon dropped the contract, and California
20 essentially developed our own system to take on the front-end
21 part of the system.

22 Q. All right. And does this system permit your department to
23 immediately notify the dealer to take some action?

24 A. Yes, we can immediately notify them to deny a firearm.

25 Q. All right. And would it be fair to say that the three

1 categories of responses that a dealer can get from your agency
2 is to either approve the sale, deny the sale, or delay the
3 sale for further investigation?

4 A. And there is a fourth category now called "undetermined."

5 Q. And how does "undetermined" work?

6 A. "Undetermined," those are when after 30 days, we're unable
7 to -- if we're unable to obtain the disposition or the
8 information we need, and so at that point in time, under state
9 law, the law that just took effect this year, we would
10 identify the DROS, and the dealer system is an undetermined,
11 and the dealer gets a letter indicating that they can deliver
12 the firearm at their discretion.

13 Q. So that kind of almost works like a presumption of
14 innocence for the gun dealer?

15 A. Yes, very similar to the NICS system.

16 Q. All right. I want to ask you a few questions about the
17 cooling-off period. Now, I guess the logic behind the
18 cooling-off period is that we want to prevent people from
19 committing impulsive violent acts either from self-harm or
20 harm to another in buying a gun in a fit of rage; is that
21 correct?

22 A. That's part of it. That was part of the legislative
23 intent.

24 Q. What is another part?

25 A. The other part is to give the department time to review

1 the records and time to notify the dealer.

2 Q. I just want to focus right now on the cooling-off period,
3 and we'll talk about the records clearance later.

4 So the cooling-off period is designed to create a
5 period of time that hopefully the person can't get ahold of
6 that weapon while they're in that state of anger?

7 A. That's my understanding, yes.

8 Q. Would that reason for a 10-day waiting period be effective
9 for anybody who already possess their own firearms?

10 A. Potentially, because we don't know whether they own or
11 possess those firearms.

12 Q. No, my question is, is that without anybody even
13 purchasing a firearm, somebody already owns a firearm, there's
14 no way to stop them from using the firearm because they become
15 angry or upset or suicidal.

16 MR. EISENBERG: Objection. Hypothetical question.

17 THE COURT: Overruled.

18 THE WITNESS: Well, the background check that we do
19 does not assume whether or not a person has a firearm. It
20 assumes that people don't have firearms. So we don't know
21 that. So my answer to that would be, assuming from our
22 perspective, we don't know whether the person is in possession
23 of a firearm or not. We -- we adhere to the waiting period
24 because of that.

25 BY MR. KILMER:

1 Q. All right. So getting back to the cooling-off period for
2 purposes of stopping impulsive violent acts, the background
3 check really has nothing to do with that, does it?

4 A. That's separate. The background check that we do is --
5 yeah, it's making sure that -- the assumption is that we don't
6 know whether you're legally lawfully eligible to own or
7 possess that gun.

8 Q. And you mentioned a minute ago, that -- and I don't want
9 to misstate your testimony, that the DROS system basically
10 assumes everybody that applies does not have a firearm;
11 correct?

12 A. That's our assumption, yes.

13 Q. Okay. And why does the agency assume that?

14 A. Because we don't know. We don't necessarily know. That's
15 not something that we look for when we get the DROS
16 application. That's not one of the first checks we do is do
17 you have a gun? The assumption is that, you know, we're
18 essentially an administering state law that requires the
19 background check, and that's what we do.

20 Q. All right. But a point in fact, you testified earlier
21 that there is -- one of the databases that you administer is
22 something called an AFS system?

23 A. Yes.

24 Q. And that is the database of firearms or at least
25 historical firearms transactions in California?

1 A. That's true.

2 Q. And isn't it true that in California with some limited
3 exceptions -- and I'll ask you about those in a minute -- that
4 all transactions have to go through a DROS process?

5 A. Yeah, after 1991. That would be true for firearm
6 transfers that occurred subsequent to 1991.

7 Q. Okay, so subsequent to 1991, that the way people purchase
8 firearms in California is they either go to a dealer, which is
9 licensed by the federal and state government, and they go
10 through the DROS system, and if the person also wants to, say,
11 buy a gun from a private party, state law at least says that
12 they must go through a dealer to do that.

13 A. They're supposed to do that, yes.

14 Q. All right.

15 A. Not all of them do, though.

16 Q. I'm not here talking about people who break the law. I'm
17 talking about people who are following the law. Okay.

18 So since 1991, all legal transactions of acquisitions
19 to firearms are supposed to go through a Dealer Record of
20 Sales process. Is that true?

21 A. That's fair.

22 Q. Now, there are some minor exceptions, for instance,
23 interfamily transfers can happen without the DROS process;
24 correct?

25 A. That's correct.

1 Q. And an inheritance can sometimes happen -- of a firearm
2 can happen without going through the DROS process?

3 A. Yes.

4 Q. And I think antique firearms can also be transferred
5 without going through the DROS process; is that correct?

6 A. Yes. Antique long guns, yes.

7 Q. That's a good distinction. Antique handguns do require a
8 DROS process?

9 A. I believe so, yes.

10 Q. Okay. You were speaking earlier about some of the
11 statistics about denials. And you talked about something
12 called the DMV mismatch.

13 A. Yes.

14 Q. What is that?

15 A. That's when essentially we talked about the first part of
16 the Dealer Records of Sales process is we take the purchaser's
17 identification information, and we run that against the
18 Department of Motor Vehicles files, because under California
19 law, purchasers are required to have a valid California
20 drivers license or a California identification card issued by
21 the State DMV to buy a gun. So we verify that information
22 against DMV files.

23 Q. Okay, and the purpose of that verification is to make sure
24 that the person who is representing themselves to the dealer
25 is the true person?

1 A. It ensures that we're doing the background check on the
2 correct person, yes.

3 Q. And you're not doing the background check on their twin or
4 their brother or something like that?

5 A. That's the intent, yes.

6 Q. And that's to help and stop straw purchases and that sort
7 of thing?

8 A. Yes. And otherwise people that would not be eligible to
9 just use a fake ID to buy a gun.

10 Q. Are there reasons why there might be a mismatch between
11 the DMV record and the tendered dealer record of sale that is
12 not criminal or fraudulent?

13 A. Yes.

14 Q. Okay, could you give me an example?

15 A. It could be that the dealer made a typo, made a mistake
16 when they entered the information.

17 Q. Okay.

18 A. It could be that the -- the license is no longer valid, or
19 it's been revoked by DMV.

20 Q. All right. It could even be as simple as somebody got
21 married and changed their maiden name and now using a
22 different name? I mean, for instance, they were issued their
23 DMV license under their maiden name, and they're buying the
24 gun under their new married name.

25 MR. EISENBERG: Objection. Vague and unintelligible.

1 I don't believe there is a question pending.

2 THE COURT: All right, do you understand the
3 question?

4 THE WITNESS: Yes.

5 THE COURT: All right.

6 THE WITNESS: It's possible.

7 BY MR. KILMER:

8 Q. Okay. So would it be fair to say that these DMV holds or
9 mismatches don't necessarily always indicate a prohibited
10 person?

11 A. That's -- that's true. I mean, the initial mismatch,
12 that's true, yeah.

13 Q. But that would be a reason --now, the mismatch, does that
14 result in a denial or a delay?

15 A. It could result from somebody having to look at it.

16 Q. Okay.

17 A. So when we have those mismatches that we talked about
18 there where -- potentially where there is a maiden name
19 involved, or there is a typo by the dealer or something of
20 that nature, that's not an auto rejection. We'll actually
21 look at that, and we'll make some phone calls to the dealer.
22 We'll try to clarify and correct it. Just like we do when we
23 do the background check on criminal history, and it says the
24 person is prohibited, we verify that information before we
25 make that final determination.

1 Q. All right, thank you.

2 A. And that takes time.

3 Q. All right. So, for instance, if somebody's driver's
4 license is suspended for some reason, that's not
5 necessarily -- mean that they can't purchase a firearm.

6 A. It does under California law. The statute says they have
7 to have a valid California driver's license.

8 Q. So if their driver's license is suspended, and they go and
9 get a California ID and come back and try and complete the
10 DROS, would that --

11 A. Yes.

12 Q. And if the identifier for a California ID and a California
13 driver's license, they're pretty similar, aren't they?

14 A. They usually keep the same number.

15 Q. You testified earlier about something called an auto
16 approved.

17 A. Yes.

18 Q. And what might result in an auto approval? How does an
19 auto approval happen?

20 A. Typically an auto approval happens because the person
21 has -- either their name, information, mismatched against DMV
22 files. Their name information did not hit a prohibiting --
23 one of our prohibiting database files via state or federal,
24 and the gun involved in the transaction was clean and clear.
25 And that would result in an auto approval.

1 Q. And how long does that process usually take?

2 A. To determine whether a gun -- whether an auto approval can
3 happen?

4 Q. Yes.

5 A. It can happen fairly quickly, probably within an hour, an
6 hour or two of -- you know, the transactions coming in.

7 Q. You spoke earlier about the difficulty of trying to
8 identify people that are unknown to the State so that you can
9 make sure that they're not a prohibited class. You spoke
10 earlier about biometrics being an issue there. And I think
11 you mentioned fingerprints and retina scans.

12 A. Yes.

13 Q. Does the State of California currently employ retina scans
14 for biometric identification for the general public?

15 A. No, I was using biometrics as a term. Basically I was
16 saying it would be nice to have fingerprints involved in the
17 process because fingerprints provide for positive
18 identification, so you're not matching names and looking at
19 different information. If you have those fingerprints, it's
20 for sure.

21 Q. Okay. And some fingerprint records in California are just
22 a right or left thumbprint; is that correct?

23 A. Not for criminal history.

24 Q. No, but I mean for DMV record?

25 A. For DMV, yes, it's like a thumbprint.

1 Q. And I believe that part of the DROS process is that the
2 guy buyer also provides the thumbprint.

3 A. Yeah, the dealer collects a thumbprint on the back of the
4 DROS. It's not always legible.

5 Q. And is that on a paper DROS?

6 A. Yes, and dealers aren't trained to collect fingerprints,
7 so it's not always a legible print.

8 Q. And are dealers required to keep these records, or do they
9 send them to you?

10 A. They keep those records.

11 Q. So, in other words, that's a record that they keep that
12 you will use in a future investigation if necessary?

13 A. Yeah, maybe the DA. If it's determined that the purchaser
14 lied on the -- under state or federal paperwork, they can try
15 to use that to sustain whether or not the person involved in
16 the transaction was really the person who used that ID.

17 Q. Okay. Now, somebody who's issued a COE, do they provide a
18 full fingerprint scan?

19 A. Yes.

20 Q. And is there a difference between ink and card fingerprint
21 and something called live scan?

22 A. Yes, there's a minor difference. What they do -- if they
23 live scan, they take their prints directly from a terminal
24 there that electronically captures the prints. If they ink
25 the prints onto a card, those cards come into the department,

1 and they have a scanner that scans those prints and classifies
2 them electronically. So it's just a slower process.

3 Q. And what system does the Department of Justice require for
4 COE?

5 A. COE, we usually ask people to go to a live scan terminal,
6 live scan operator. If they live in California, they're
7 usually required to go to a live scan operator.

8 Q. In fact, most Sheriff's Offices have live scans, don't
9 they?

10 A. I believe so.

11 Q. Do you know whether or not people who are issued concealed
12 carry permits also submit fingerprints?

13 A. They do.

14 Q. Do you know whether or not those are live scan
15 fingerprints?

16 A. Typically they're live scan.

17 Q. Now, you mentioned almost a dozen different databases in
18 your direct testimony. Are those fingerprints for COE holders
19 contained within that database?

20 A. For the COE holders, the purpose for those fingerprints
21 are to go against California criminal histories, to speed up
22 the criminal history check.

23 Q. All right, but, in fact, you have those records on file?

24 A. Yes.

25 Q. And would that be the same for people who have concealed

1 carry permits?

2 A. Yes.

3 Q. Are you familiar with the term "globally unique
4 identifier?"

5 A. No.

6 Q. All right. There is a number that appears on -- let's
7 take them one at a time -- on a Concealed Carried Permit
8 called a CII number. Do you know what that is?

9 A. Yes.

10 Q. What is that?

11 A. That's the criminal identification number. That's the
12 number that the department uses to identify a record -- a
13 unique criminal record.

14 Q. All right. And so that number is assigned to a particular
15 person who has a record in the system?

16 A. Who has a unique set of fingerprints, yes.

17 Q. And that number is unique to that person?

18 A. Yes. In most cases, it's unique.

19 Q. And so it would speed up the process of identifying that
20 person.

21 A. Yes.

22 Q. All right. Do you know whether or not there's a CII
23 number also issued to COE holders?

24 A. Yes.

25 Q. All right. And so is it the same kind of CII that's a

1 unique identifier?

2 A. It's a unique identifier, yes. There's different types of
3 numbers. There's different types of records. Those would be
4 called an APP record as opposed to a crim record.

5 Q. All right. Now, except for the statutory 10-day wait
6 period, is there any reason why your system couldn't simply
7 notify the dealer when the background check is complete and
8 the sale is approved?

9 A. No.

10 Q. So based on your earlier testimony that sometimes these
11 auto approves take an hour?

12 A. Um-hmn.

13 Q. Then the sale could be approved and the firearm could be
14 released except for the statute?

15 A. It could, but keep in mind, within that 10 days, there
16 could be something that comes in that would -- you know, a
17 call from a mental health facility saying, you know, this
18 person is prohibited or something now because of -- they were
19 admitted involuntarily, or they're being treated at that point
20 in time. So even though that we could -- and 20 percent of
21 the time, we do have those auto approvals. There's a
22 percentage of those where we get subsequent information that
23 says that that person is no longer eligible.

24 Q. But isn't that true for every gun owner in the state that
25 they could subsequently become prohibited?

1 A. That's a possibility, yes.

2 Q. In fact, that's what the Armed Prohibited System is
3 designed to do is to try and go out and capture firearms from
4 known firearm owners who have become prohibited.

5 A. Yes.

6 Q. Is there a similar unique identifier for just the gun
7 purchaser who doesn't have a COE or a -- I'll withdraw the
8 question and rephrase it.

9 Is there a unique identifier given to every DROS?

10 A. Yes.

11 Q. And what is the nature of that unique identifier?

12 A. It's a DROS number. Part of it is the dealer ID combined
13 with the Julian date and a generated number,
14 database-generated number that makes it unique.

15 Q. So it's unique to the transaction and not necessarily the
16 gun owner?

17 A. Makes the transaction unique, yes. It's a time/date
18 stamp.

19 Q. Now, you identified earlier several databases that get
20 accessed as part of the background check. And the first one
21 is the DMV to verify the identity of the person, and then
22 there is a criminal history -- access to a criminal history
23 database, and then a mental health database, and then a wants
24 and warrants database. Have I missed any?

25 A. Yes.

1 Q. Okay.

2 A. There's the -- the check of the firearm against the
3 Automated Firearms System; the Mental Health Prohibition
4 database. I think you left that one out.

5 Q. All right.

6 A. The California Restraining Order and Protection Order
7 System database. And then all the federal systems.

8 Q. Okay. And for those auto approveds that can take as
9 little as an hour, all those databases are accessed and come
10 back with a green flag.

11 A. Yeah, there are no hits returned.

12 Q. No hits. Okay.

13 THE COURT: That raises an interesting question. Do
14 you have -- like you indicated all these various databases, do
15 you have, like, a written flow chart or something that
16 indicates all of the databases that you -- that your office
17 goes --

18 A. Yes, we do.

19 THE COURT: Can you provide that?

20 THE WITNESS: Yes, I believe Jonathan has it.

21 MR. KILMER: Actually I can help, Your Honor. I'd
22 ask that the witness -- we're going to take a look at Exhibit
23 CB, which has been previously identified and admitted.

24 MR. EISENBERG: Your Honor, if I may, we had a
25 witness that we're planning to have introduce that document,

1 the person who actually wrote it.

2 THE COURT: Oh, okay. I'm sorry. I jumped the gun.

3 MR. KILMER: I still want to talk about it.

4 THE COURT: Sure.

5 MR. KILMER: Can you turn to CB. This is a document
6 entitled, "Bureau of Firearms, Consolidated Firearms
7 Information System, Dealer of Record of Sale Processing."
8 It's been marked and identified and accepted into evidence as
9 Exhibit CB from the defendants. It is Bates stamped
10 AG-000004.

11 A. I don't believe I have that manual. I have the A's -- A
12 through AS and B through BY.

13 MR. EISENBERG: Pardon me. It's in another one of
14 these binders. With the Court's permission, I'll just bring
15 the actual document and not the binder up. Is that okay?

16 THE COURT: Yes.

17 MR. EISENBERG: Are you just planning to use this
18 one?

19 MR. KILMER: Um-hmn.

20 BY MR. KILMER:

21 Q. Mr. Buford, please study that and let me know when you've
22 had a chance to look at it.

23 A. Okay, yes, I've looked at it.

24 Q. Have you seen this document before?

25 A. Many times.

1 Q. All right. Is it an accurate representation of the
2 various databases that are accessed and records retrieved, and
3 apparently by the electronic program, decisions made before an
4 auto approved takes place?

5 A. The parts to the far right, if that's what you're asking
6 me about, that part of it is accurate. I can't talk about the
7 middle parts of it because that may have been -- that may have
8 changed a little bit since we did some redesigning.

9 Q. Okay. To identify what you're talking about here, on the
10 right-hand side of the document, if it's held in landscape,
11 there's 1, 2, 3, 4, 5, 6, 7 disks, and they're labeled DMV,
12 AFS, ACHS, WPS, CARPOS, and MHFPS and NICS, or N-I-C-S. Is
13 that what you're talking about?

14 A. Yes.

15 Q. And they're all tied into a little icon that says "CLETS."
16 What is CLETS?

17 A. Stands for California Law Enforcement Telecommunications
18 System. It's a message-switching computer.

19 Q. What does it do?

20 A. It handles all the messages that goes to those different
21 databases. So when those messages go out, what CLETS does is
22 it says this message came from this particular sender, and it
23 sends them all to all the databases, and when the messages
24 come back, CLETS grabs them, puts them all together and sends
25 them back to that particular request.

1 Q. So it's a routing --

2 A. Yeah --

3 MR. EISENBERG: I'm going to object to this line of
4 questioning as outside the scope of direct.

5 THE COURT: Overruled. And let me just indicate,
6 normally what I do on this, is if either the person -- and
7 this applies to all counsel. You can either take the witness
8 on your own, which then makes them subject to direct
9 examination by you, cross-examination by the other side, or
10 you just wait, but I just -- because it's a bench trial, I
11 think this is more convenient to go ahead and allow the
12 parties --

13 MR. KILMER: That was the assumption I was proceeding
14 under, Your Honor.

15 BY MR. KILMER:

16 Q. You were explaining CLETS.

17 A. Yes, it's a message switcher -- message-switching
18 computer, so it handles all the messages, it routes them to
19 the different appropriate databases, and when the responses
20 comes back, it gathers those responses and consolidates them
21 to the originating place where the original request came from.
22 So it kind of organizes all the messages. Kind of an
23 operator.

24 Q. So, for example, if a family law judge issues a domestic
25 violence restraining order, and for the record, the domestic

1 violence restraining order is a prohibiting category for gun
2 purchases. If a family law judge issues a domestic violence
3 restraining order, that fact and that restraining order and
4 the identification of the restraining party goes into the
5 CLETS system; is that correct?

6 A. Provided all the protocols are followed appropriately.
7 That doesn't always happen, but, yeah, provided everything
8 happens the way it's supposed to, I believe the restraining
9 order is served by the local law enforcement agency, and once
10 it's served, then it's supposed to be entered into the -- into
11 CARPOS, and those messages usually originate somehow through
12 CLETS if the agency has CLETS access.

13 Q. And that's so that a police officer who may be at a scene
14 where a domestic violence restraining order is being violated,
15 he'll have the knowledge that a restraining order has been
16 issued. He can take appropriate law enforcement action?

17 A. That's correct.

18 Q. So it's important that that CLETS system -- what are the
19 hours of the CLETS system, is it offered 24/7?

20 A. 24/7, 365, yes.

21 Q. While we're on the subject of family law judges, do you
22 know whether or not the family law judges are authorized to
23 access the AFS system when they're deciding whether or not to
24 issue a restraining order?

25 A. No, I don't preside over that part of the department.

1 MR. EISENBERG: Objection. Assumes facts not in
2 evidence.

3 THE COURT: Overruled. The answer will stand.

4 THE WITNESS: I don't -- there is another entity
5 within the department that handles all the system accesses
6 for -- for local law enforcement and that's knowledgeable
7 about that, so that's not something that I have extensive
8 knowledge about.

9 BY MR. KILMER:

10 Q. Okay, well, I'm not going to ask you about the
11 technicalities of it, but do you know whether or not judges
12 need that information when they're making decisions about
13 restraining orders?

14 MR. EISENBERG: Objection. Calls for speculation.

15 THE COURT: Foundation. Sustained.

16 THE WITNESS: Um --

17 THE COURT: That's okay. You don't have to answer.

18 BY MR. KILMER:

19 Q. Does the AFS -- can the AFS system provide information to
20 police officers in the field with regard to whether weapons
21 are contained in the home or not?

22 A. Yes.

23 Q. And how is that information accessed by the officer in the
24 field?

25 A. If some officers have mobile digital terminals in their

1 vehicles, if they have that, they have that kind of
2 connection, they can access it. Some of them don't have that.
3 They may have to call a dispatcher and ask the dispatcher at
4 the agency to run the information to see if they can get that
5 information.

6 Q. Does that come in through CLETS as well?

7 A. Yes, it's usually through CLETS.

8 Q. And then the CLETS system sends out a message, and that
9 accesses your AFS database?

10 A. Yes.

11 Q. All right. So for public safety reasons, it's possible
12 for other agencies to access your AFS system to determine if
13 somebody at least in your system, on your records is shown to
14 have purchased a firearm and had not transferred it.

15 A. AFS, again, it's a leads database. So it doesn't mean
16 just because it says that, there's a firearm in that house.
17 It doesn't mean there's an actual firearm in the house. We
18 don't have a registration process in California. It's a lead,
19 so it's possible. It alerts the officer to be a little bit
20 more cautious potentially, because potentially, there could be
21 a firearm there.

22 Q. You said that earlier in your testimony, too. You're
23 saying that California doesn't have a registration system.

24 A. Right.

25 Q. But, in fact, since 1991, at least for handguns, the State

1 of California has kept records for every transaction; correct?

2 A. There are transaction records, yes. But when people die,
3 or when they leave the State, when they sell the firearm out
4 of state, there is no requirement for them to notice the
5 department that they're no longer in possession. That firearm
6 can leave the state, can come back into the state in various
7 ways. So there is no real registration. If there is real
8 registration, you'd have to reregister your gun every so many
9 years and say you're still in possession of that gun, or let
10 us know when you're no longer in possession of that firearm.
11 We don't have that. So we're not really tracking it. All we
12 know is what we believe was the last possessor of that
13 firearm. That's what's in AFS. It's a leads database. It's
14 not an absolute database.

15 Q. All right. And so what is contained in the database? Is
16 it the firearm itself and the serial number and the person and
17 their address and their physical description?

18 A. There is -- if they run the firearm by serial number, it
19 will bring up the firearm by serial number and will give them
20 the lead on the last known possessor of that firearm, whether
21 it be a law enforcement agency, whether it be held in
22 evidence, whether it had been involved in a DROS transaction,
23 with a particular individual.

24 Q. Okay. And that AFS database that's accessing the DROS
25 information, it would also include for the California driver's

1 license.

2 A. Yes.

3 Q. Okay. You testified earlier that your databases don't
4 have access to social security numbers?

5 A. People are not required to use -- to provide social
6 security numbers, especially mental patients. You know, when
7 people go into a mental health facility, oftentimes they don't
8 even have a California driver's license on them or anything.
9 So whatever information, you know, the facility can glean from
10 them to try to provide some sort of notification is what we're
11 left with.

12 So we don't always have the most up-to-date
13 information. When somebody -- when a restraining order is
14 issued against somebody, you know, oftentimes the restrained
15 person is not even there when the restraining order is
16 initially issued, so you don't always have a lot of the
17 necessary information you would need to -- you know, to have
18 identifier -- identifying information on those individuals as
19 well.

20 Q. Does the DMV collect social security numbers?

21 A. I don't believe -- I don't work at DMV, so I can't tell
22 you whether they do or not. I don't believe so anymore. I
23 believe that the state legislature has basically said they
24 don't want California agencies collecting social security
25 number information anymore because of the identity theft

1 issues that are going on. I know the military is in the
2 process of doing away with social security numbers as well.

3 Q. All right. You testified earlier about some of the
4 exceptions, and one of the exceptions is for peace officers.
5 And they're not required to submit to the 10-day background
6 check to purchase a firearm?

7 A. No, they're exempt from the waiting period. They still go
8 through a background check.

9 Q. Thank you for correcting me.

10 So they have to go through the background check, but
11 not subject to the waiting period?

12 A. That's correct.

13 Q. All right. So there is an assumption made that peace
14 officers, somebody who is already -- what is it, Penal Code
15 Section 830, peace officer, will never need a cooling-off
16 period to prevent them from committing an impulsive violent
17 act?

18 MR. EISENBERG: Objection. Assumes facts not in
19 evidence. Calls for speculation.

20 THE COURT: Sustained. Form of the question.

21 MR. KILMER: All right.

22 BY MR. KILMER:

23 Q. Well, there are two reasons promulgated for the 10-day
24 waiting period. One is a cooling-off period to stop angry and
25 violent acts. And number two is so they don't have to go for

1 background checks. The exception for the peace officer is
2 based on the fact that they don't have to go through a
3 background check because they already have; is that correct?

4 A. They still go through the background check. They just
5 don't have to observe the waiting period.

6 Q. All right. They don't have to observe the waiting period
7 because they're basically trustworthy gun owners?

8 MR. EISENBERG: Objection. Assumes facts not in
9 evidence, calls for speculation and vague.

10 THE COURT: Sustained.

11 BY MR. KILMER:

12 Q. All right. Let's move on to the next exception.

13 There's no 10-day waiting period for a gun purchased
14 at an auction; is that correct?

15 A. Are you talking about a gun purchased by a dealer at an
16 auction or another FFL holder that's -- where the dealers are
17 buying guns from a law enforcement agency that has made those
18 guns available for sale pursuant to the Penal Code section?

19 Q. Yes. For example, I don't expect you to know this by
20 heart. I actually have a copy of the Penal Code. It's Penal
21 Code Section 26955, "Exception to waiting periods at
22 auctions."

23 May I show it to the witness, Your Honor?

24 THE COURT: Yes.

25 BY MR. KILMER:

1 Q. Ask you to review that. Let me know when you're finished.

2 MR. EISENBERG: Your Honor, I'd like to make an
3 objection to this exhibit as being incomplete on its face. It
4 references several other sections of the Penal Code, which has
5 not been presented to the witness.

6 THE COURT: Okay, well, I'll overrule the objection
7 with the understanding that all he's looking at is that which
8 is in front of him, not references to any other Penal Code
9 sections.

10 MR. KILMER: That's fine.

11 THE WITNESS: This Penal Code section was superseded
12 by federal law.

13 BY MR. KILMER:

14 Q. What federal law was it superseded by?

15 A. The Brady Act. The Brady Handgun Prevention Act of 1998.
16 And it only applied to long guns. This auction had to do with
17 like, for instance, the California Waterfowl Association and
18 some of those different associations that would have auctions
19 and fund-raisers to give away long guns only. It only applied
20 to long guns if you read the first sentence, or Subdivision A
21 of the Penal Code section. And when the Brady Handgun
22 Violence Prevention Act took effect, it superseded this
23 particular portion of California law, and it requires all
24 firearms to go through a NICS check. So these people were not
25 exempt.

1 Q. But this section says that the waiting period described in
2 26815 does not apply to a dealer. We're not talking about the
3 background check.

4 A. Does not apply to a dealer -- a dealer who delivers a
5 firearm. So it's talking about a dealer who is delivering a
6 firearm to someone at the event, which would be a participant.
7 Someone -- a member of one of those specific associations that
8 were not -- they're nonprofit associations, I believe.

9 Q. Okay. So for the nonprofit association at the auction or
10 event, there is no waiting period to deliver the firearm?

11 A. There is a waiting period. This was superseded by federal
12 law.

13 Q. But federal law -- federal law, there is no -- the NICS
14 check, you testified earlier can take no longer than three
15 days, and I believe that 90 percent of the cases, they're
16 instantaneous; is that correct?

17 A. That's my understanding of a NICS check, yes.

18 Q. So as long as a NICS check is also done, then there is no
19 waiting period for delivering a firearm at all?

20 A. California is the point of contact for NICS, and
21 California doesn't have a three-day waiting period. So people
22 that fall in this category must subscribe to the California
23 process, which is the Dealer Record of Sales process. We
24 don't have a special process for these folks because there is
25 no statutory authority to have one. Since they're subject to

1 the NICS check, then they're subject to the regular Dealer
2 Record of Sales process under California law.

3 Q. But isn't Penal Code Section 26815, which is the Penal
4 Code section that is identified earlier in the statute, isn't
5 that the 10-day waiting period in the DROS system?

6 A. Yes, but they're also required to go through the NICS
7 check, and the only NICS check that we have is the Dealer
8 Records of Sales process.

9 Q. So this exception you're saying is not applicable in
10 California?

11 A. It's no longer applicable in California.

12 Q. And this -- I believe that this statute became operative
13 January 1, 2012; is that correct?

14 A. It may have been renumbered at that time. I think this is
15 an old statute that was on the books prior to this. Probably
16 one of the old 12078 exemptions. That was renumbered to
17 26815.

18 Q. So your testimony here today is that there is still a
19 10-day waiting period for firearms to deliver a firearm at an
20 auction?

21 A. Yes. They have to go through the DROS process.

22 Q. And what is the statutory authority for that?

23 A. The NICS requirement that the people observe a NICS
24 background check, so federal authority.

25 Q. You talked earlier about an entertainment exception to the

1 10-day waiting period.

2 A. Yes.

3 Q. And that is a person who either already has or works at
4 the direction of somebody else who has a Dangerous Weapons
5 Permit?

6 A. That's correct.

7 Q. Is there -- and then these weapons are typically used by,
8 I guess, actors and actresses in movies and theatrical events?

9 A. That's correct.

10 Q. Is there any requirement that the actors and actresses go
11 through either a background check or a waiting period before
12 they're handling these firearms?

13 A. The dangerous weapons committees are educated that if
14 these people, if they know these people are prohibited, that
15 they cannot give them a gun. There are some actors and
16 actresses that can not take possession of a firearm on a set.
17 But in addition to that, the dangerous weapon licensee has to
18 be present at the theatrical event where the firearm is being
19 used. They have to be there. They have to be present. They
20 put the gun in the hand of the actor or actress, and it's up
21 to them to make sure that the actor or actress is not
22 prohibited.

23 Q. So it's kind of an honor system?

24 A. I wouldn't call it an honor system, but because typically
25 when actors or actresses are convicted, it's not -- it's

1 usually public information. It's well known that they've been
2 convicted.

3 Q. Would it be well known that they're subject to domestic
4 violence restraining orders, though?

5 MR. EISENBERG: Objection. Calls for speculation.

6 THE COURT: Overruled, if you can answer.

7 THE WITNESS: No. I don't know.

8 BY MR. KILMER:

9 Q. There is no waiting period for loaning a firearm at a
10 shooting range, is there?

11 A. No.

12 Q. So if a person goes to a shooting range regardless of what
13 their state of mind or criminal history is, if they pay the
14 fee to the gun range, range master, and the range master
15 doesn't personally know that they're prohibited, then they can
16 be handed a firearm?

17 A. That's true.

18 Q. Is there a 10-day waiting period for a gunsmith to return
19 a repaired firearm to an owner?

20 A. I believe those are -- those transactions are exempt.

21 Q. So if --

22 A. As long as it's the same gun.

23 Q. Yeah. So if a gun owner had their gun into the gunsmith's
24 for repair, and the gunsmith calls up and says, "Okay, I've
25 got your gun ready," the person can simply come in and pay

1 whatever the charges were and pick up the firearm?

2 A. Right, the assumption is they never surrendered possession
3 of the gun. They still constructively possessed that firearm.

4 Q. Okay. What is a consultant evaluator?

5 A. I believe we have one consultant evaluator in California,
6 and a consultant evaluator is a person that does research on
7 guns and then writes on their research, actually does some
8 sort of writing, usually some sort of major firearms-related
9 publication about the gun.

10 Q. Is this like mass market media or something?

11 A. I don't want to speculate on what it is. I can just tell
12 you what essentially what my understanding of it is. It's a
13 person that has some expertise in firearms. They're usually
14 some kind of firearms expert. They have enough knowledge to
15 where they can write about a firearm and its capabilities
16 and --

17 Q. Would this be like a review of the firearm? It's accurate
18 or --

19 A. Yes, it's pretty much they write reviews on the firearm,
20 things of that nature.

21 Q. So it's a popular literature writer?

22 A. Yeah, and I believe there's some sort of federal exemption
23 in federal law that allows for these people to do this.

24 Q. All right, does the Department of Justice issue a license
25 for that?

1 A. We issue a Certificate of Eligibility that allows these
2 consultant evaluators to go and obtain a firearm from a
3 dealership and do -- conduct research on that firearm and
4 write about it, yes.

5 Q. And they can take immediate possession of those firearms?

6 A. Yes.

7 Q. And is the COE for the consultant evaluator any different
8 than the COE we've been talking about earlier?

9 A. No, but the COE is accompanied by a federal clearance as
10 well. So there's some -- they have -- there's a clearance of
11 both federal law and state law, and they work together to
12 provide this authorization. So it's one of those areas of law
13 where -- where both federal legislative and the state
14 legislatures kind of got together and said they were going to
15 do something. That's these people. Apparently there is a
16 need for it.

17 Q. All right.

18 THE COURT: It's 12:00. We'll take our noon recess
19 until 1:30.

20 Just as a heads up, I do need to take just an
21 unscheduled break from 2:15 to 2:30 today. But otherwise,
22 we'll keep our regular schedule.

23 MR. KILMER: Thank you, Your Honor.

24 THE COURT: All right, we'll resume at 1:30 this
25 afternoon.

1 (Noon recess.)

2 **AFTERNOON SESSION**

3 THE COURT:

4 MR. EISENBERG: Your Honor, may we be heard on a
5 point of procedure?

6 THE COURT: Sure.

7 MR. EISENBERG: This list of the plaintiffs' files is
8 Document 76. And the docket does not list Assistant Chief
9 Buford as a witness. I submit that he's not subject to direct
10 by the plaintiffs.

11 THE COURT: Okay. All right, I'll note the
12 objection, but obviously either side may call witnesses, not
13 necessarily subpoena them, but if they're in court, obviously
14 they have a right to question them, and I think that in the
15 interest of justice, as I indicated earlier, I think all
16 parties need to have the opportunity to make a full and
17 complete record. I don't see the cross-examination or the
18 permitted direct examination so far to be so off track that it
19 is a surprise to defense counsel.

20 However, if plaintiffs' counsel raises issues that
21 have not been disclosed or discussed in pretrial discussions,
22 discovery, depositions, discovery documents, go ahead and
23 renew the objection, and if it is something new and different
24 that has not been disclosed to the defense, and the defense
25 has not had an opportunity to address or think about, then I

1 will certainly consider sustaining renewed objections.

2 MR. EISENBERG: Thank you, Your Honor.

3 THE COURT: All right. Okay, we'll continue on with
4 cross-examination.

5 MR. KILMER: Thank you, Your Honor.

6 BY MR. KILMER:

7 Q. Mr. Buford, you had earlier expressed some familiarity
8 with the NICS system. That's the National Instant Checks
9 System?

10 A. Yes.

11 Q. Are you familiar with what are the exceptions for a NICS
12 check?

13 A. Not all the exceptions. I know there are some.

14 Q. For instance, is there an exception for anybody who has a
15 permit or a license to possess, acquire, or carry a firearm?

16 A. There are certain states that have applied to have some of
17 their permits exempted.

18 Q. All right.

19 A. So it's on a state-by-state basis. To get a Brady -- it's
20 called a Brady-exempt permit. To get your permit, to be a
21 Brady-exempt permit, you have to apply to ATF and meet certain
22 criteria to have that permit basically blessed by ATF.

23 Q. Okay. And then obviously the State would have to have the
24 rule that they were going to exempt?

25 A. Yes. Typically there should be something in state -- in

1 the state statute to give authority for that.

2 Q. Okay. So there would be -- if the State of California
3 were to adopt a procedure that somebody would not need to be
4 subject to, let's say, either a background check or a waiting
5 period because the State of California was going to issue a
6 particular license, there was nothing in federal law that
7 would prevent that from happening.

8 MR. EISENBERG: Objection. Vague and ambiguous,
9 unintelligible, and asks a hypothetical question and calls for
10 speculation; lacks personal knowledge.

11 THE COURT: Sustained.

12 BY MR. KILMER:

13 Q. All right. Would California be in violation of federal
14 law if it used a CCW or a COE as a substitute for a background
15 check and 10-day waiting period?

16 MR. EISENBERG: Objection. Calls for speculation.
17 The witness is not an expert on federal law.

18 THE COURT: I'll sustain on that ground.

19 BY MR. KILMER:

20 Q. Mr. Buford, did you provide a CV in connection with this
21 litigation?

22 A. Pardon me, a CV?

23 Q. Yeah, curriculum vitae?

24 A. Yes.

25 MR. KILMER: May I approach the witness, Your Honor?

1 THE COURT: Yes.

2 BY MR. KILMER:

3 Q. Mr. Buford, I'm going to ask you to take a look at a
4 document that's been previously marked for identification and
5 admitted into evidence, Exhibit BV. It is Bates stamped AG in
6 the lower right-hand corner, AG-001922, and there is a second
7 page, Bates stamped AG-001923.

8 A. Yes.

9 Q. And is that the -- your resume?

10 A. Yes.

11 Q. It says here at the top under "Assistant Bureau Chief"
12 from May 2009 to present, that you're responsible for the
13 oversight and administration of over 30 state mandated
14 firearm-related programs. You're responsible for the
15 oversight administration -- and you also serve as a state's
16 Federal Bureau Investigation, FBI national instant background
17 checks system point of contact. What does that involve?

18 A. I'm the State's representative for issues related to NICS
19 access and use of the NICS database. I attend the annual NICS
20 conferences to discuss issues with background checks. We work
21 with -- collaboratively with the other point of contact states
22 to examine ways of improving a process and identifying
23 pitfalls and trying to overcome them.

24 Q. All right. And the CV goes on to state that you also
25 evaluate and interpret federal and state firearms laws and

1 their effect on BOF -- I presume that's the Bureau of
2 Firearms, law enforcement, and the public; is that correct?

3 A. That's correct, as they apply to the California background
4 check processes.

5 Q. Okay. So if California was to become one of those states
6 that would substitute a license to carry or CCW or a COE as an
7 alternate requirement under the NICS system, that would be the
8 procedure for -- California being exempt from NICS; is that
9 correct?

10 A. If California would have requested a Brady-exempt permit
11 you're talking about similar to the entertainment firearms
12 permit?

13 Q. As an example, yes. Then that would qualify as an
14 exemption to the 10-day waiting period.

15 A. Yes.

16 Q. All right. Now, some of the other exceptions to the
17 10-day waiting period, we kind of went over those a little bit
18 earlier. One of the other exemptions are somebody who holds a
19 machine gun license; is that correct?

20 A. That's a Dangerous Weapons License -- yeah, dangerous
21 weapons licensee or permittee, yeah.

22 Q. Now, is that a different -- are there two licenses
23 involved, is there a dangerous weapons and a machine gun
24 permit, or are they separate?

25 A. Under the dangerous license permit umbrella, there's

1 various types of permits. There's explosive permits, there's
2 destructive device permits, machine gun permits, short barrel
3 rifle and shotgun permits, assault weapon permits. All those
4 fall under the dangerous weapons umbrella.

5 Q. Okay, so it's an umbrella designation, and underneath
6 there's a separate permit --

7 A. But they're all called dangerous weapons licensees, yes.

8 Q. As far as you know, somebody who holds a machine gun
9 license that is also a Dangerous Weapons Permit, they're
10 exempt from the 10-day waiting period?

11 A. Yes.

12 Q. On all firearms?

13 A. I believe so, yes.

14 Q. And if they also hold a Short-Barrelled License Permit
15 under the Dangerous Weapons Control Permit, they're also
16 exempt.

17 A. Yes.

18 Q. And if they hold a Destructive Device Permit under the
19 Dangerous Weapons Control Permit, they're also exempt from
20 the --

21 A. Yes.

22 Q. I think there's one more, but I don't remember off the top
23 of my head.

24 One of the other exemptions to the 10-day waiting
25 period is if somebody holds a CC & R, what is a CC & R, a

1 Curio and Relic License?

2 A. You mean a Curio and Relic License?

3 Q. Yeah.

4 A. Yeah, they're exempt to buy -- to purchase curio and relic
5 firearms only. They're exempt from the waiting period. And
6 the assumption is because their curio and federal license
7 allows them to leave the state and purchase firearms under
8 federal law from out-of-state sources.

9 Q. Okay.

10 A. So that they can go and buy those firearms from out of
11 state under their federal license. They're also required to
12 have a COE under California law to take advantage of that
13 exemption. And then when they come home, they're required to
14 report those firearms to the department.

15 Q. Okay. And is there a statutory period as to when they're
16 supposed to report those firearms?

17 A. I can't remember.

18 Q. Two days or something?

19 A. I'm not sure.

20 Q. Okay. Now, but that CC & R -- that dual requirement that
21 the federal CC & R license and the COE, California says that
22 those people will be exempt, but only for buying curio and
23 relic firearms?

24 A. That's correct. And the Curio and Relic License that's
25 issued by the federal -- by ATF, it's a form of the Federal

1 Firearms License, so it's one of the versions of the FFL.

2 Q. Okay. And what kind of a background check does somebody
3 go through to get a Curio and Relic License?

4 A. I don't know what the federal background check entails. I
5 can tell you that under the state background check, it's very
6 similar to the COE process, which would include fingerprints.

7 Q. Okay. And this COE that gets coupled with the CC & R
8 license isn't any different than the regular COE we've been
9 talking about?

10 A. No, not really.

11 Q. Not a special CC & R designation?

12 A. No.

13 Q. All right. You testified about what other prohibiting
14 categories that result in a denial. I think you used the word
15 "categorical denial" or "automatic denial?" Am I remembering
16 wrong?

17 A. You mean prohibited categories?

18 Q. Yes, prohibited category.

19 A. Okay.

20 Q. And those are felons?

21 A. Yes.

22 Q. Okay. Anybody who violate -- who gets convicted of a
23 violent misdemeanor, and that's a list from the California
24 Penal Code?

25 A. Yes.

1 Q. Anybody who is convicted of a misdemeanor crime and
2 domestic violence?

3 A. Yes.

4 Q. Anybody who is subject to a domestic violence restraining
5 order?

6 A. Yes.

7 Q. And you said anybody who has been placed on a mental
8 health hold under 5150 of the Welfare and Institutions Code?

9 A. Yes.

10 Q. And I think you had another category, and that was
11 juveniles who had been adjudicated a ward of the state while a
12 minor in a violent act?

13 A. Yes.

14 Q. And they're prohibited until they're like 30 --

15 A. Age 30, yes.

16 Q. Now, for each one of those categories, though -- well,
17 let's just take them in order. In order to suffer a felony
18 conviction, somebody has to be arrested and adjudicated a
19 felon, and presumably they've had law enforcement contact in
20 order for that to happen?

21 A. Yes.

22 Q. Based on your understanding of California law and the
23 California Penal Code system, is there a pretty good chance
24 that that person's firearms have already been confiscated?

25 A. Not always.

1 MR. EISENBERG: Objection. Calls for speculation.

2 THE COURT: Sustained. Foundation.

3 BY MR. KILMER:

4 Q. If you know. I'm not asking to you speculate. If you
5 know the answer to the question, you can answer it.

6 A. The firearms are not always confiscated.

7 Q. Okay. Now, you had mentioned a specific Penal Code
8 section earlier, Penal Code Section 273.5, and what does that
9 Penal Code entail?

10 A. Corporal injury on spouse.

11 Q. And you've read that Penal Code section? You're familiar
12 with it?

13 A. I'm familiar with it, generally.

14 Q. And that's California's domestic violence statute that can
15 charge somebody with either a felony or a misdemeanor for
16 domestic violence?

17 A. Yes.

18 Q. And whether they suffer a felony or a misdemeanor
19 conviction, that not only goes in the California's database,
20 that's a national database as well, isn't it?

21 A. Yes. I believe it's a federal violation under 922(g)(9).
22 I think it's the Title 18, 922(g)(9) under federal law.

23 Q. And as a consequence of that conviction, the person would
24 then presumably also be in the NICS database as prohibited.

25 MR. EISENBERG: Objection. Calls for speculation.

1 THE COURT: Sustained. Foundation.

2 BY MR. KILMER:

3 Q. Do you know whether or not a conviction for 273.5 in
4 California results in any entry in the federal NICS system?

5 A. It does not.

6 Q. All right.

7 A. It results in an entry into the NICS triple I database as
8 a criminal record, so as part of the criminal conviction or
9 regular criminal information, it would go to the Interstate
10 Identification Index.

11 Q. Okay.

12 A. But it would not be in the NICS index where they have a
13 special file. The federal government does have a special file
14 under the NICS umbrella for 922(g)(9) convictions. So it's
15 called misdemeanor crimes of domestic violence.

16 Q. Okay.

17 A. So it's a special file. It would not automatically go
18 into that file.

19 Q. All right. But based on your understanding as set forth
20 in your CV earlier, you have some knowledge of the NICS
21 system. If someone was convicted of a 273.5 in California and
22 then relocated to another state and tried to buy a gun, is it
23 likely that NICS would pick up that conviction?

24 A. If they're savvy enough. But it could be either NICS or
25 it could be another POC state. Another POC state may not be

1 savvy enough about California law to recognize that that 273.5
2 is an all meet -- what they call an all meets under NICS law
3 for misdemeanor crime of domestic violence.

4 Q. Is California statutorily required or by some regulation
5 required to report the 273.5 to NICS?

6 A. The only time that we would report the 273.5 to the NICS
7 database is what they call a misdemeanor crime of domestic
8 violence, or MCDV, would be at the time we actually conducted
9 a background check for firearms purposes and made that
10 determination. Then at that point in time, we can make an
11 entry directly into NICS, and we usually do that.

12 Q. All right.

13 A. If we process the person and we've done the research and
14 verified that they're actually -- that the conviction was
15 actually based on MCDV, we would enter them into the database.
16 And not all 273 point -- I mean, never mind.

17 Q. All 273.5's are domestic violence.

18 A. They are.

19 Q. But it can be charged alternatively as a misdemeanor or a
20 felony.

21 A. Yes.

22 Q. All right. Does the law in the State of California
23 require mental health providers to report a 5150 hold within a
24 certain period of time?

25 A. I believe so.

1 Q. What is that?

2 A. I think the statute says immediately. It may have been --
3 I think it was just recently amended to say within a certain
4 amount of time, but I can't remember if it's 24 or 48 hours,
5 but --

6 Q. Is that a duty imposed on all mental health care providers
7 or just those that are state funded?

8 A. It's just the public and private mental health facilities.
9 And with regard to the courts, it's still not clear, you know,
10 what the timetable is for the courts to report their mental
11 health prohibitive persons.

12 Q. Now, you had talked about that earlier about courts
13 reporting mental health adjudications.

14 A. Um-hmn.

15 Q. Is that for instances where somebody is judged criminally
16 insane and unable to stand trial?

17 A. There's various reasons. It would be 1026, insane; 1370,
18 incompetent to stand trial; 5300, gravely disabled. The folks
19 that are under conservatorship, the courts are required to
20 report those folks as well.

21 Q. Okay. But the 5150 is an automatic report whether the
22 person goes to court or not; is that correct?

23 A. It's -- there's certain criteria that people have to meet
24 to be a 5150. They have to meet the criteria outlined under
25 Welfare and Institutions Code 5150, 5151, and 5152. So they

1 have to be assessed, admitted, assessed and held.

2 Q. All right. So that report would come -- a 5150 hold comes
3 directly from the hospital --

4 A. Comes from the public and private facilities, right.

5 Q. But the adjudication is whether it's for a conservatorship
6 or criminally insane, or -- that comes from the Court.

7 A. That's correct. And the Tarasoffs comes from the local
8 law enforcement.

9 Q. All right. I'd like to show you Exhibit AQ again. Let me
10 see if we can find it.

11 I'd ask you to take a look at a document that has
12 previously been admitted as Exhibit AQ. It is Bates number in
13 the lower right-hand corner AG-002407. Do you have that in
14 front of you?

15 A. Yes.

16 Q. In the lower left-hand corner, there is a designation
17 called "30-day reject denial." Can you explain what that is?

18 A. Yeah. Those are under California law, California limits
19 the amount of handguns an individual can buy, to one handgun
20 in a 30-day period. And if an individual attempts to purchase
21 a hand -- more than one handgun in a 30-day period, the
22 transaction is rejected.

23 Q. Is it a denial or is it a delay?

24 A. It's a rejection.

25 Q. It's a rejection because you can't buy more than one

1 handgun per month?

2 A. Right.

3 Q. So that reject doesn't necessarily indicate that the
4 person is prohibited from having guns?

5 A. They are prohibited because it's against the law to make
6 that application.

7 Q. Well, actually are they prohibited to purchase that gun or
8 they become a prohibited person by trying to make a purchase?

9 A. They're prohibited from purchasing that particular gun at
10 that particular time.

11 Q. Okay, so they don't fall under the category of prohibited
12 person like a felon or a misdemeanor?

13 A. No, not necessarily.

14 Q. So what's the process there, does the person say, oh, you
15 know, facepalm, and they say, oh, I bought a gun 28 days ago,
16 and they start the process over after 30 days?

17 A. I don't know. I'd be speculating on why people would try
18 to purchase more than one gun in a 30-day period.

19 Q. Okay. Is that a prosecutable offense?

20 A. I believe so.

21 Q. Do you know whether or not the Department of Justice
22 prosecutes people for those attempts to purchase a second
23 firearm within 30 days?

24 A. I'm not aware of enforcement activities.

25 Q. All right.

1 MR. KILMER: Your Honor, may I have a moment to
2 confer with cocounsel and my clients?

3 THE COURT: Yes.

4 (Pause in the proceedings.)

5 MR. KILMER: I just have two more questions for you,
6 but don't hold me to that because it may turn into three.

7 BY MR. KILMER:

8 Q. You testified earlier that you helped design the -- the
9 system of background checks.

10 A. Yes.

11 Q. All right. Could the system be designed or redesigned --
12 and I'm asking technically here, not legally -- to run a gun
13 buyer through the standard background check, then also make
14 the following inquiry whether the person has a COE, a CCW, or
15 a gun already in the system and then generate a message based
16 on that information?

17 MR. EISENBERG: Objection. Lacks and compound.

18 THE COURT: Overruled, if you can answer.

19 THE WITNESS: It could, but it would be incomplete.

20 BY MR. KILMER:

21 Q. So the answer is, yes, the system could generate --

22 A. It could check to say yes or no whether a person has a COE
23 or whether a person has a CCW. That's a simple check. It's a
24 yes-or-no answer.

25 Q. Okay.

1 A. So, yeah, we could check that. The problem is, that that
2 in itself doesn't mean that the person is still eligible to
3 own or possess a firearm.

4 Q. Yeah, and maybe I --

5 A. Because things change.

6 Q. Maybe my question was a little long. Because what I meant
7 to ask was, could the system be made to run the person through
8 the complete background check, and then as a last inquiry --
9 inquire whether they have a COE, a CCW, or a gun already in
10 the AFS system. That's the question I want.

11 A. It could run the background check, but then someone's
12 going to have to look at the hits, and someone's going to have
13 to match up the records, and someone's going to have to review
14 the record to make sure that the information in those records
15 is up-to-date, accurate, and correct.

16 Q. Okay. Now, you also testified earlier that approximately
17 20 percent of the DROS's that are processed are auto-approved
18 within an hour.

19 A. Right.

20 Q. Okay. And of those 20 percent that are auto-approved
21 within an hour, you can add as a further check whether or not
22 the person has a COE, a CCW, or a gun already in the AFS
23 system. That's possible.

24 A. That's possible.

25 MR. KILMER: Thank you. Nothing further, Your Honor.

1 THE COURT: And redirect.

2 REDIRECT EXAMINATION

3 BY MR. EISENBERG:

4 Q. Assistant Chief Buford, I want to talk a little bit about
5 the AFS.

6 A. Sure.

7 Q. Does the AFS give accurate information about whether a
8 person listed with the firearm has the firearm in working
9 condition?

10 A. No, it doesn't.

11 Q. Does the AFS system give accurate information about
12 whether the person listed as having a firearm has loaned it
13 out to someone?

14 A. No, it doesn't.

15 Q. Does it have -- does the AFS system have accurate
16 information about --

17 A. Let me back up. If the loan exceeds 30 days under state
18 law, the person is required to report that loan through a
19 dealer. But if the loan does not exceed 30 days, then, no, it
20 would not.

21 Q. Thank you for the clarification.

22 Does the AFS system tell you whether the person who
23 is listed as having the gun has working ammunition for the
24 gun?

25 A. No, it does not.

1 Q. Does the AFS system indicate whether the person who has
2 the gun has had it temporarily taken away by a family member
3 or a friend?

4 A. No, it would not.

5 Q. Does the Department of Justice mandate that firearms
6 dealers charge a certain shipping fee, a certain amount to
7 ship a firearm to another dealer?

8 A. No.

9 Q. Earlier, you were giving some testimony about something
10 called a CII?

11 A. Yes.

12 Q. Is there a CII associated with a person's mental health
13 records?

14 A. No.

15 Q. Is there a CII associated with a person's --

16 A. Let me clarify.

17 Q. Pardon?

18 A. With regard to a mental health record, there are some
19 of -- some individuals that are criminals, but are also
20 criminals -- that also have a mental health adjudication
21 attached to their criminal record. So in some cases, it is
22 possible to have a CI number attached to a mental patient.
23 But the majority of mental patients that we receive come from
24 public and private mental health facilities, and there are no
25 CI numbers associated with those individuals.

1 Q. Is there a CII number for each entry for a person in the
2 CARPOS system?

3 A. No, there is not. Some of those individuals have criminal
4 records, though, when they would have a CI number, but it
5 doesn't necessarily link up.

6 Q. During a background check, is there a check run for
7 whether the applicant has previously been approved for a
8 purchase of a firearm?

9 A. No. There is no check to determine if a person has been
10 previously approved.

11 Q. If the system could just check if a person is previously
12 approved, couldn't there be an instantaneous or a nearly
13 instantaneous approval for the current application?

14 A. No, because circumstances change. They could become
15 prohibited, as we know through the Armed and Prohibited
16 Persons System that people legally purchase guns and
17 subsequently become prohibited.

18 Q. You testified that not all of the state databases are
19 fingerprint based; correct?

20 A. That's correct.

21 Q. Do you recall which systems are fingerprint based?

22 A. The Automated Criminal History System is fingerprint
23 based.

24 Q. And what about the others?

25 A. They're not fingerprint based.

1 Q. Is it possible for a peace officer to become prohibited
2 from possessing a firearm?

3 A. Yes.

4 MR. EISENBERG: I have no further questions at this
5 time.

6 THE COURT: And recross.

7 MR. KILMER: Very short recross.

8 RECCROSS-EXAMINATION

9 BY MR. KILMER:

10 Q. You testified earlier that the AFS system is basically a
11 library of the DROS's that have happened.

12 A. Yes, that and some -- and some law enforcement records as
13 well.

14 Q. Okay, thank you.

15 Would those records also include the date of the
16 transaction?

17 A. Yes.

18 Q. So if, for example, you were to run an AFS report on me,
19 it would -- it might show you the last firearm I purchased on
20 what date and from what dealer?

21 A. Yes.

22 MR. EISENBERG: Objection. Assumes facts not in
23 evidence. It assumes that it's legal to just run an AFS check
24 on a person randomly.

25 THE COURT: All right. Sustained.

1 BY MR. KILMER:

2 Q. Suppose I had submitted a request that you run an AFS
3 check on the firearms that I have in the system. Would that
4 include the date of the last transaction?

5 A. No. Typically what we do is if you want a copy of your
6 firearms records, what we would do is we would go into the
7 system and provide you a copy of your firearms records based
8 on the information we have on hand.

9 Q. All right. But does that information also include the
10 date of the last transaction?

11 A. It could, yes.

12 Q. And that would also be the date of the last time I was
13 cleared to purchase firearms.

14 A. Most likely, yes.

15 Q. And are you aware of any -- is the California Department
16 of Justice required to notify -- strike that.

17 CCW's are typically issued by chiefs of police and a
18 county sheriff; is that correct?

19 A. That's correct.

20 Q. All right. And if the Department of Justice learns --
21 strike that.

22 And that permit, that CCW permit is also in your
23 database.

24 A. Yes.

25 Q. And if the Department of Justice learned that that person

1 becomes a prohibited person, either by all the categories we
2 named, you're required to immediately notify the issuing
3 authority, which could be a chief of police or a sheriff, that
4 that person has become prohibited.

5 A. That's correct.

6 Q. And does the Department of Justice take any independent
7 enforcement action?

8 A. No, it's up to the chief or sheriff to go out and recover
9 the CCW license.

10 Q. And is that typically what they do?

11 A. I don't know. I couldn't tell you what different chiefs
12 and sheriffs do. They all operate differently.

13 Q. Thank you very much.

14 A. You're welcome.

15 MR. KILMER: Nothing further, Your Honor.

16 THE COURT: And further redirect?

17 MR. EISENBERG: Nothing further, Your Honor.

18 THE COURT: All right, any party wish this witness
19 remain subject to recall?

20 MR. EISENBERG: Yes, we do, Your Honor.

21 THE COURT: Okay, either side may still call you back
22 to testify. You're still under oath. You can go ahead and
23 leave the courtroom, and I'll leave it to counsel to give you
24 the date and time if necessary to return to testify.

25 THE WITNESS: Thank you, Your Honor.

1 MR. CHANG: Your Honor, our next witness, Miss
2 Donnette Orsi, she's not in the courtroom per your court's
3 order. I know she's in the building. I'll need a few minutes
4 to retrieve her.

5 THE COURT: Okay.

6 MR. CHANG: Might I suggest that we go ahead and take
7 the 2:15 break now?

8 THE COURT: Well, I don't want to lose too much time
9 because I won't be back in until 2:30. We lose a half an
10 hour.

11 MR. CHANG: I can see whether she's outside.

12 THE COURT: If she's right outside, we'll have her
13 come in and we'll have her testify for about 15 minutes or so.
14 We'll take a quick break.

15 THE CLERK: Would you come right up here, ma'am.
16 Raise your right hand.

17 **DONNETTE ORSI,**
18 called as a witness on behalf of the Defendants, having been
19 first duly sworn, testified as follows:

20 THE CLERK: Take the witness stand right over there
21 and give us your full name, please.

22 THE WITNESS: My name is Donnette Orsi.

23 **DIRECT EXAMINATION**

24 **BY MR. CHANG:**

25 Q. Good afternoon, Miss Orsi. Miss Orsi, could you spell

1 your name for the court reporter, please. It's a unique name.

2 A. First name, D-O-N-N-E-T-T-E, O-R-S-I.

3 Q. Miss Orsi, please tell the Court your current employer and
4 job title.

5 A. Current employer is the Department of Housing and
6 Community Development, and I'm a Data Processing Manager II.

7 Q. And where did you work prior to your current employment?

8 A. I worked at the California Department of Justice.

9 Q. And what was your title there?

10 A. Data Processing Manager II.

11 Q. Please give the Court a brief overview of when you worked
12 at the Department of Justice and your job title or titles at
13 the Department of Justice.

14 A. I started with the Department of Justice in January of
15 1987, worked in several different positions, worked in the
16 firearms program. But in November of 2001, I started within
17 the Hawkins Data Center at DOJ as an associate programmer
18 analyst.

19 Q. And what was your next position after associate programmer
20 analyst?

21 A. Then I moved up to a staff programmer analyst, senior
22 programmer analyst, and then the data processing manager.

23 Q. When did you become the data processing manager?

24 A. June of 2010.

25 Q. And when did you leave the DOJ?

1 A. In June of 2013.

2 Q. Now, your last department at the Department of Justice was
3 as a Data Processing Manager II. What were your duties and
4 responsibilities in that position?

5 A. I managed a team of IT programmers, developers, and
6 systems analysts. We maintained systems for the Bureau of
7 Firearms and for the Bureau of Forensic Services. We
8 maintained their assistance, their applications, and also
9 developed new systems also. Part of my job duties also was to
10 analyze any new legislation and come up with impact analysis
11 for those types of things.

12 Q. Now, you mention you managed applications. Do those
13 applications include DROS processing system?

14 A. Correct.

15 Q. Okay. Does that include a DROS entry system?

16 A. Correct.

17 Q. When did you begin working with the DROS processing
18 system?

19 A. When I started in November of 2001.

20 Q. How did you come to work with the DROS processing system?

21 A. Prior to me going into the data center, as I said, I
22 worked in the firearms program, so I was familiar with the
23 business, some of the business side of firearms, and I noticed
24 I had an aptitude for IT systems. So that's when I -- when I
25 made the move into the IT world, that's when I became familiar

1 with the DROS processing system.

2 Q. Now, you said you managed programmers -- software
3 programmers, and developers.

4 A. Correct.

5 Q. And you're familiar with the program. Did you learn
6 programming or computer programming?

7 A. Yes, I learned computer programming on the job.

8 Q. And since 2001, you continued to work on the DROS
9 processing system until you moved to your current employment?

10 A. Correct.

11 Q. Now, Miss Orsi, I'm going to -- I'm going to put an
12 exhibit on your monitor. This is Exhibit CB. You'll see it
13 shortly. Okay. Do you see -- do you see Exhibit CB,
14 Miss Orsi?

15 A. Yes, I do.

16 Q. Have you seen this document before?

17 A. Yes.

18 Q. What is this document?

19 A. This is what is called a context diagram. It shows how
20 data flows through the DROS processing system.

21 Q. How are you familiar with this document?

22 A. I created this document.

23 Q. Is this an accurate representation that the Bureau of
24 Firearms processing of DROS applications?

25 A. It's pretty accurate. I see that there are a few things

1 that need to be updated on this document. But as far as the
2 data flow, it's accurate.

3 Q. You mentioned there are some changes?

4 A. Um-hmn.

5 Q. As we go through this document, would you point out those
6 changes?

7 A. Sure.

8 Q. So let's talk about the DROS processing system. You
9 mentioned that one of your duties at the Department of Justice
10 was maintaining the DROS processing system. Could you give us
11 a brief description of what is the DROS processing system.

12 A. So the DROS processing system is what we call an
13 application that the analysts within the Bureau of Firearms
14 use to review background checks that come from firearms
15 dealers regarding firearms purchases.

16 Q. Does the DROS processing system include, in addition to
17 analysts, does the DROS processing system include computerized
18 database searches?

19 A. Yes. The DROS processing system also contains, as you can
20 see on the chart, the CFIS database. That's where the data is
21 housed.

22 Q. So let's look at this exhibit, and let's start from the
23 beginning. What is the first thing that happens for a DROS
24 application to enter this DROS processing system?

25 A. So it starts at -- over on the left-hand side where it

1 says "DROS Form," that is where the individual goes to the
2 firearms dealership and submits their transaction at the point
3 of sale. One of the corrections here, it says "Verizon DROS."
4 Verizon is no longer the host of the DROS entry system. It's
5 now -- was taken in-house and is managed by the Department of
6 Justice.

7 Q. So looking at this process for the diagram, what happens
8 after the dealer submits the DROS application?

9 A. So the next step is where it says "Batch DROS
10 Transactions" into the CFIS Oracle Database. They're pulled
11 in internally into the CFIS database every minute.

12 Q. What is the CFIS database?

13 A. The CFIS database is the Consolidated Firearms Information
14 System, and it contains all of the data for several different
15 applications for firearms, one of them including the DROS
16 processing system.

17 Q. So once the DROS application is in the CFIS database, what
18 happens then?

19 A. So at that point, then the system builds the background
20 check, and it's noted here as the "BFEC Request," the Basic
21 Firearms Eligibility Check.

22 Q. Now, to the right of the CFIS Oracle Database module
23 there, you just referenced "send BFEC Request." There are
24 three modules following that flow. What are those three
25 modules?

1 A. Those three modules are the internal components that build
2 the request and are the message transportation system to go to
3 the databases that you see on the far right side. So we need
4 to utilize those systems in order to access those other
5 databases.

6 Q. Okay. Do those three systems, do they contain -- are they
7 the information, repositories, or databases that the DROS
8 processing system is searching through?

9 A. The one that's noted as CFIG, which is the California
10 Firearms Information Gateway, that system contains a lot of
11 the business logic that goes through and looks at the
12 responses coming back and parses through them and makes
13 determinations. So there is some temporary housing of data
14 within it.

15 The other two, ReDIAL and CLETS, are mainly just
16 pass-throughs. They're doing authorizations in order to get
17 to the other databases to ensure that, for instance, you know,
18 CFIS is allowed to go in and check any of those other
19 databases.

20 Q. So let's go back to talk about what happens after a dealer
21 submits the DROS application. Okay, I think -- so after the
22 information, you last talked about sending a BFEC request.
23 What happens when the CFIS sends a BFEC request?

24 A. So the first thing that happens, it's building this
25 transaction in order to go through and go to the first

1 database to start the background check.

2 Q. And what is the first database that it checks?

3 A. The first database checks is DMV.

4 Q. Could you briefly describe what information is looking for
5 in this DMV database check?

6 A. What is sent to DMV is the California driver's license
7 number or the California ID number on the DROS transaction.
8 So what is sent back to DOJ is information about the person,
9 their name, their date of birth, their license status.

10 Q. Why is their license status relevant?

11 A. The license status is relevant because what happens when
12 it comes back to us, the system is looking to see if the
13 license status is valid. So it checks for that. It also
14 checks the name and date of birth against the record that we
15 have on the DROS transaction.

16 Q. Why does it check the name and the date of birth as
17 returned against the DROS application?

18 A. It's checking to see if it's a match or not.

19 Q. Okay. So what happens if it's a match?

20 A. If it's a match, if the license status is valid and the
21 name and DOB match, then it continues on to the next check.

22 Q. What happens if there's not a match?

23 A. If it's not a match, it goes to a queue that's called the
24 DMV mismatch queue for an analyst to review within the Bureau
25 of Firearms.

1 Q. Okay. So what happens after -- okay, you said earlier
2 that if there is a match, then it goes in the queue for
3 analysts to review. Right?

4 A. If there is a mismatch. If it mismatches, then the
5 background check stops at that point in time.

6 Q. Okay.

7 A. But otherwise, if the name, date of birth match, and the
8 license status is valid, then the check continues on.

9 Q. What is the next step?

10 A. The next step is, it goes to what's noted here as AFS, the
11 Automated Firearms System, to check to see if the gun is
12 stolen.

13 Q. And this is the -- on the right-hand side of the exhibit,
14 the second module from the top; is that right?

15 A. Correct.

16 Q. Could you briefly describe this AFS database.

17 A. What this inquiry does is we send a specific transaction
18 to them with the details about the gun that's being purchased.
19 And we're specifically looking to see if the gun is entered
20 into AFS as stolen.

21 Q. And what if a positive result comes back, for example, if
22 there is a result that says the gun and the application was
23 reported stolen?

24 A. So what the system does is it takes that information about
25 that record, and that's considered a hit. So it appends that

1 result to the background check response.

2 Q. And if the gun and the application was not in the AFS
3 database, what happens then?

4 A. Continues on to the next step.

5 Q. What is the next step?

6 A. The next step is for handgun purchases only. It does a
7 30-day purchase restriction check for individuals who are not
8 exempt from purchasing more than one handgun within 30 days.

9 Q. Could you briefly describe the 30-day check?

10 A. What the system does at that point in time, it looks into
11 itself to see if it's databased and looks to see if that
12 individual purchased a handgun within the 30-day time frame.
13 And if it does find that individual has, then that information
14 is appended to the background check results, and then the
15 background check stops at that point in time.

16 Q. Okay. What happens if there is no previous application
17 within the 30 days?

18 A. If there is no previous application, then it continues on
19 to the next step.

20 Q. Okay. And what is the next step?

21 A. The next step is it looks to see if there was a previous
22 denial within the -- within DROS itself, and it looks to see
23 if that person has any DROS's that were previously denied.

24 Q. And what if that person had a previous DROS denial?

25 A. There's summary information that's appended about the

1 previous denial such as the DROS number, and that is appended
2 to whatever results are already there and will be presented to
3 the analyst for review later. But the background check
4 continues.

5 Q. Okay. So the background check, you mentioned the two
6 steps of the 30-day restriction check and the previous denial
7 check. Where in this process flow that's shown in Exhibit CB
8 do those checks occur?

9 A. Those checks, they're not within the -- any of the modules
10 on the far right. They go back over to the CFIS Oracle
11 Database.

12 Q. So the check is done with the CFIS Oracle Database.

13 A. Correct.

14 Q. So after the DROS processing system checks for previous
15 denials, what is the next step it takes?

16 A. The next step is that the system builds the transaction to
17 go out to the -- what's noted here as ACHS, the Automated
18 Criminal History System.

19 Q. What information is sent to the ACHS?

20 A. For this first transaction to ACHS, the system sends the
21 name, date of birth, and any ID information that was contained
22 in the DROS transaction.

23 Q. And are you aware of what the ACHS does with the
24 information?

25 A. Yes. What this particular transaction does, ACHS will do

1 an inquiry into its own database, but it also inquiries into
2 the other three below, noted as WPS, Wanted Person System,
3 CARPOS, the restraining order system, and the MHFPS, the
4 mental health system.

5 Q. So ACHS does a separate check of the WPS, the CARPOS,
6 C-A-R-P-O-S, and the MHFPS?

7 A. Correct.

8 Q. What is the ACHS checking for?

9 A. It's just checking to see if there are any potential hits
10 contained within those systems. It returns summary
11 information such as flags so that if the system knows there
12 may be a hit in there. So it's doing the initial checks on
13 behalf of us. If there is nothing there, there is no reason
14 why we would have to do any subsequent checks.

15 Q. You mentioned an initial check. Why is there an initial
16 check?

17 A. So this is the initial check just to see -- of those four
18 databases, is there any more detailed information that are
19 contained within any of those four databases, and if there
20 are, then the system will go out with different transaction
21 types to get the more detailed information.

22 Q. When ACHS does this initial check within the other three
23 databases, is it using the name and date of birth that's on
24 the DROS application?

25 A. Yes. What it does is, it sends the name and date of

1 birth, but there are algorithms built behind the name such as
2 on a first name, it will do what we've called a diminutive
3 search, such as Robert, Bob, Bobby, and also the last name.
4 It will look for different variations of the last name.

5 Also on a date of birth, it does a date range around
6 the date of birth. It goes three years either way of the date
7 of birth just to see if we can attain any hits on that
8 individual.

9 Q. Why does the ACHS use this name variation and date of
10 birth range when it does this initial check?

11 A. What it does is, it goes out with all these variations.
12 It will return in some instances multiple names with CII
13 numbers, and then what the system does, it takes those CII
14 numbers, and that's where it goes back with the separate
15 transaction to get the detailed information for each one of
16 those CII numbers.

17 Q. So, for example, if, you know -- so variations and
18 diminutive names are used, so if someone's name is Jeffery,
19 then does the ACHS return both results for Jeffery and Jeff?

20 A. Correct.

21 THE COURT: Okay, let me take a quick break now.
22 Fifteen minutes.

23 (Recess.)

24 THE COURT: We'll go ahead and resume testimony.

25 BY MR. CHANG:

1 Q. Now, Miss Orsi, you had just told us about how the ACHS
2 uses name variations and date of birth ranges to do an initial
3 check. What does the ACHS do with the results of that initial
4 check?

5 A. What ACHS does is it will bring back the summary
6 information, the CII number, a name associated to it, and it
7 will -- it does that for ACHS. It also sets flags for us for
8 the other three databases, WPS, CARPOS, and mental health to
9 let us know there's potentially hits in there also. So the
10 system is looking for those flags.

11 So for ACHS with the CII number, what the system does
12 is it takes that CII number and then does a subsequent check
13 to get the detailed information from criminal history system.

14 Q. When it does that subsequent detailed history check, does
15 it check any other databases besides the criminal history
16 system?

17 A. Now, these are the specific checks for those databases, so
18 for CII number, the system goes to ACHS. If there are those
19 flags for the other three, the CFIS system builds the
20 transaction based on the name and date of birth because those
21 other three databases do not contain CII numbers.

22 Q. Now, this two-check process for those databases, is it
23 illustrated in Exhibit CB?

24 A. It is -- I think it's written in the text.

25 Q. It's hard to read.

1 Your Honor, may I approach with another copy?

2 THE COURT: Yes.

3 THE WITNESS: So for the first check, that initial
4 check, it's the one that's the bullet item that says "ACHS
5 with query." That is the initial check into criminal history,
6 and then on our behalf, it goes to the other three databases
7 also.

8 The bullet item below it, "WPS, MHFPS and CARPOS
9 queries based on response from ACHS," that's where the system
10 is looking for those flags. And if it finds that -- it sees
11 those flags, then it knows, okay, we have something else in
12 any of those other databases. So it goes with the -- sends
13 the names, DOB, and ID information with the specific
14 transaction type to one or all of those three databases.

15 BY MR. CHANG:

16 Q. And what happens after this two-step check through ACHS,
17 WPS, restraining order system and the mental health system?

18 A. What this system does, we could send several messages over
19 inquiries to those systems based on how many we receive back
20 on initial inquiry. It may not just be one, it could be five
21 for each one of those systems. So when CFIS goes out and runs
22 all of those checks, all these results are bundled together
23 and appended to the background check results.

24 Q. Okay. And what happens next? What's the next step in the
25 DROS process?

1 A. So the next step is the federal database is checked. So
2 the name and date of birth is sent to NICS, and NICS then
3 checks federal databases on our behalf.

4 Q. The name and the date of birth, what is the source of that
5 name and date of birth that's fed into the federal database?

6 A. The name and date of birth is from the DROS transaction.

7 Q. It's not the same -- it's not the name variation and the
8 date of birth range that the ACHS had used?

9 A. NICS does do a name -- they have a name algorithm and a
10 date range base check also. But we just send the name and
11 date of birth that came in on the DROS transaction.

12 Q. Okay. Now, this diagram, Exhibit CB shows -- the last
13 module on the right-hand side, it shows NICS. You know, are
14 there other federal databases in addition to NICS?

15 A. Yes. So when we send the NICS check to them, it checks
16 the NICS index, NCIC, triple I, and ICE, and it will only
17 check ICE if the record contained an AR number or 994 number.

18 Q. Is NICS -- is the California DROS processing system, is
19 that on line 24/7?

20 A. No.

21 Q. Okay. When does it shut down?

22 A. It's not -- it shuts down at 10:00 at night and starts up
23 again at 5:00 AM our time. And that's due to restrictions on
24 the NICS -- the NICS system. They shut down back East, so
25 we're -- we have to wait until their systems come back up for

1 us in order to run a complete background check. Otherwise,
2 the background checks would fail.

3 Q. After this federal check with NICS and the other federal
4 databases, what is the next -- what happens if there are hits
5 in the NICS system?

6 A. So if there are hits in the NICS system, what our system
7 does, it goes in the process through the response, and it
8 looks to see if there is an FBI number or a state ID number
9 from another state included in the response. And if there is,
10 the CFIS system will send another transaction out specifically
11 to triple I with those numbers to see if there's any
12 additional information with those specific numbers.

13 Q. And what happens after -- what's the next step after this
14 check?

15 A. So after this check is complete, then the background check
16 is considered done, and all the results are appended together
17 and put into a queue that -- a DROS processing queue for an
18 analyst to review.

19 Q. Do all DROS applications go to this queue for analysts to
20 review?

21 A. Not all.

22 Q. What applications don't go to a review queue?

23 A. There are some transactions where if the system has gone
24 and checked all the databases, and there are no hits that have
25 come back from any of them, then those transactions are

1 considered an auto-approved or automatically approved by the
2 system. So they're not put into any queue for a person to
3 review.

4 Q. Let's talk about APPS. Are you familiar with APPS?

5 A. Yes.

6 Q. Are records in APPS updated -- I'll rephrase.

7 How often are records in APPS updated?

8 A. They're updated every day.

9 Q. What kind of -- how is it updated every day?

10 A. There is a nightly job that runs, that gets information
11 from the four DOJ databases, criminal history, wanted persons,
12 restraining order and mental health. It sends updates that
13 are inserted into that database every day. It's a file that's
14 created from each one, and it sends that information to the
15 APPS database.

16 Q. And what does the APPS database do with this daily update
17 of its records?

18 A. So what the APPS database does is it's doing a match on
19 any names or ID information that may be contained in the
20 record. So it's looking for a name and date of birth match or
21 an ID number match, and if there is a match, then the
22 background check starts, as I just described for the DROS
23 background check.

24 Q. So how does the APPS record matching, as you have just
25 described, how is that different than the regular DROS

1 processing?

2 A. It's looking for an exact name and date of birth match
3 that are coming from those nightly files. So that's the
4 difference.

5 Q. And how is that different from the regular DROS
6 processing?

7 A. The actual -- the background check itself is doing that --
8 you know, the name algorithm and the date range around the
9 date of birth, whereas the APPS on the matching is just
10 looking for an exact name and date of birth.

11 Q. I see. So if an entry in APPS is "Jeffrey," and a DROS
12 applicant puts "Jeff" on his DROS application, there wouldn't
13 be a match?

14 A. Correct.

15 Q. Okay. And if the -- the APPS record entry, the name is
16 Jeffrey, J-E-F-F-R-E-Y, and the DROS application spells -- the
17 "Jeffery" is spelled J-E-F-F-E-R-Y, would there be a match?

18 A. No match.

19 MR. CHANG: That's all the questions I have,
20 Miss Orsi.

21 THE COURT: Thank you. Cross-examination.

22 MR. KILMER: Thank you, Your Honor.

23 CROSS-EXAMINATION

24 BY MR. KILMER:

25 Q. Good afternoon, Miss Orsi.

1 A. Thank you.

2 Q. My name is Donald Kilmer, and I represent the plaintiffs
3 in this action.

4 The DROS system is a system designed to stop sales or
5 transfers based on the hits from the system; is that correct?

6 A. The DROS system is used for analysts to review whether --
7 to make the determination on the person's eligibility to
8 possess firearms.

9 Q. But because the DROS is used by a firearms dealer to
10 effect a transfer, whether it's a sale or a private party
11 transfer, its purpose is to stop the transfer of the firearm
12 from a gun dealer's inventory to a person or between two
13 persons; is that correct?

14 A. The purpose is to send the information to DOJ in order for
15 us to run the background check to make that determination.

16 Q. All right. But the DROS system isn't used as an
17 investigative tool to try and locate prohibited persons in
18 possession of guns, is it?

19 A. I don't know. My role is from the IT perspective.

20 Q. Okay. Well, you testified earlier that you've been
21 working for the Department of Justice for how long?

22 A. It was over 26 years.

23 Q. And how long for the Bureau of Firearms?

24 A. I worked for the Bureau of Firearms for about a year and a
25 half.

1 Q. All right. And that was the last year and a half before
2 you moved over to your new agency?

3 A. No, that was before I moved into my IT role. So I
4 actually worked on the program side for about a year and a
5 half. And then I moved into IT, maintaining their systems for
6 them.

7 Q. Okay. The APPS system that you were discussing a few
8 minutes ago, its function is a little bit different than DROS,
9 in that it is designed to try and find or locate people who
10 are known to have guns and who subsequently become prohibited;
11 is that correct?

12 A. Correct.

13 Q. Were you involved at all in the design of this current
14 system that's on the display?

15 A. Yes.

16 Q. Did you run test programs as part of the design and
17 development of that system?

18 A. Oh, yes.

19 Q. Did you run any test programs for a DROS that would
20 auto-approve, for example?

21 A. Yes.

22 Q. And approximately how long would it take a DROS that you
23 had set up to be auto-approved to be -- to go through the
24 system from the moment it was entered until the moment you got
25 an auto approval?

1 A. It depends pretty much on, you know, the status of the
2 databases at that time, the processing time, you know, what
3 other things are happening on the networks. So our focus in
4 testing is more to ensure that the record is behaving properly
5 along its way, not so much the timing of it.

6 Q. Okay. Could you give me a range, five minutes, an hour?

7 A. Just for an auto-approve?

8 Q. For a test program that you would set up for you know that
9 it's going to be an auto-approve because it's going to go
10 through -- it's going to start and follow all of these flows
11 through here, and it will go through the DMV check, the AFS
12 check, the ACHS check, the WPS check, the CARPOS check, the
13 mental health check, and the NICS check and then return an
14 auto-approved. Could you give me a range of time on how long
15 that might take?

16 A. Again, it depends. It could take anywhere from, you know,
17 a minute to five minutes.

18 Q. Thank you.

19 MR. KILMER: Nothing further, Your Honor.

20 THE COURT: And redirect.

21 REDIRECT EXAMINATION

22 BY MR. CHANG:

23 Q. Miss Orsi, you just talked about how, when you ran test
24 programs, the time that it takes to run these -- these test
25 DROS applications through the system. If there are no hits,

1 it could be a minute to five minutes; correct?

2 A. Correct.

3 Q. Now, in real life applications, are they always -- do they
4 always complete between a minute and five minutes?

5 A. No.

6 Q. What are some circumstances when it doesn't get completed
7 within a minute to five minutes?

8 A. Databases could be down. NICS goes down sometimes. We
9 get out-of-service messages, so we can't complete the
10 transaction. Even internally, we could have something go
11 down, or as I mentioned before, you know, network traffic
12 sometimes will cause slowness and the background check. And
13 the other thing that was mentioned before is, you know, we
14 shut down at 10:00 at night, so any DROS's that come in after
15 that point in time aren't run until the next day.

16 MR. CHANG: Thank you, Miss Orsi.

17 THE COURT: Okay, and recross.

18 MR. KILMER: Very short.

19 RECCROSS-EXAMINATION

20 BY MR. KILMER:

21 Q. Same sort of question. I'm not asking for how long it
22 takes to process the DROS application, but is it approximately
23 the same time frame even if the system is generating hits?

24 A. There again, it depends a lot, if we -- what I described
25 as I walked through this, this is like where we would get a

1 hit from every database, especially going after the federal
2 databases may take a little bit longer --

3 Q. Okay.

4 A. -- in order to get the information back.

5 Q. And now, you testified earlier when there are hits, it
6 goes into a queue for an analyst to take a further look at it.
7 Is that an electronic file, or does it generate a printout or
8 something?

9 A. It drops into what is called their queue, so when they
10 open up their web browser and go and look at those particular
11 hits, it's in an electronic format for him.

12 Q. And that's when the criminalist would take over and start
13 taking a look at something?

14 A. Correct.

15 Q. But once the auto-approves go -- make it through system
16 with no hits, no queue, goes automatically to an auto
17 approved?

18 A. Correct.

19 Q. Thank you.

20 MR. KILMER: Nothing further, Your Honor.

21 THE COURT: And further redirect?

22 MR. CHANG: Nothing further, Your Honor.

23 THE COURT: Any party wish this witness to remain
24 subject to recall?

25 MR. CHANG: Defendants would.

1 THE COURT: All right. Okay, any party may still
2 call you back to testify. You're still under oath, but you
3 can step down. I'll have the attorneys let you know the date
4 and time if necessary to return. Thank you.

5 MR. CHANG: Your Honor, I believe our next witness
6 is outside. We'll retrieve him now.

7 THE COURT: All right.

8 THE CLERK: Come right up here, sir. Raise your
9 right hand.

10 MITCH MATSUMOTO,
11 called as a witness on behalf of the Defendants, having been
12 first duly sworn, testified as follows:

13 THE CLERK: Take the witness stand right over there
14 and give us your full name, please. Have a seat up there,
15 please.

16 THE WITNESS: Okay. My name is Gilbert Mitchell
17 Matsumoto. I work for the Department of Justice.

18 DIRECT EXAMINATION

19 BY MR. CHANG:

20 Q. Good afternoon Mr. Matsumoto. You just mentioned you work
21 for the California Department of Justice, and you're with the
22 Bureau of Firearms; correct?

23 A. That's correct.

24 Q. Please tell the Court how long you have been with the
25 Bureau of Firearms and your position or positions within that

1 bureau.

2 A. I've been with the Bureau of Firearms 10 years. Six years
3 as a Criminal Identification Specialist II, and four years as
4 a Criminal Identification Specialist III.

5 Q. Which department of the Bureau of Firearms are you with?

6 A. The Purchaser Clearance Unit.

7 Q. And have you been with the Purchaser Clearance Unit since
8 you started with the Bureau of Firearms?

9 A. Yes.

10 Q. What is the role of the Purchaser Clearance Unit within
11 the Bureau of Firearms?

12 A. To determine eligibility of prospective purchasers of
13 firearms.

14 Q. What are your present job duties as a -- as a Criminal
15 Identification Specialist III?

16 A. To review and analyze criminal background checks on people
17 on purchasers applying to own guns in the State of California,
18 and I supervise 24 people.

19 Q. What do those people do?

20 A. They do criminal background checks on the Dealers Record
21 of Sale, applications that are submitted to the state.

22 Q. What is their title?

23 A. Criminal Identifications Specialist II's.

24 Q. Okay. Do you have any other job duties?

25 A. Just supervisory and do criminal background checks on the

1 purchasers and keeps statistics for the Chief of the Bureau of
2 Firearms.

3 Q. Do you have any training duties?

4 A. I train all the new employees that are hired by the Bureau
5 of Firearms regarding Criminal Identifications Specialist II
6 positions.

7 Q. Okay. Now, how many hours a week do these analysts that
8 work for you, how many hours of work do they work on average?

9 A. Including overtime?

10 Q. Including overtime.

11 A. Probably 80.

12 Q. How many hours of the 80 is overtime?

13 A. Forty.

14 Q. Is overtime optional or mandatory?

15 A. Mandatory.

16 Q. How many hours do you work a week on average?

17 A. Seventy.

18 Q. How many hours of that is overtime?

19 A. Thirty.

20 Q. Why do you and the analysts who work for you work so much
21 overtime?

22 A. To reduce the backlog of Dealers Record of Sales that are
23 coming into the department.

24 Q. You mentioned the backlog of Dealer Record of Sales. Is
25 that the DRoS?

1 A. Correct.

2 Q. To reduce the backlog of the DROS?

3 A. Processing.

4 Q. Processing. Can you tell us what -- how many -- let's
5 talk about that a little bit. How many DROS applications does
6 the Bureau of Firearms process a year?

7 A. A year? Last year was 960,000.

8 Q. And has the number of DROS applications submitted, has
9 that been increasing or decreasing?

10 A. Increasing.

11 Q. Has the Purchaser Clearance Unit ever cleared the DROS
12 backlog?

13 A. No.

14 Q. Typically what kind of backlog do you see?

15 A. The backlog is predicated on which day we're working on,
16 so if -- we have 10 days to process that DROS to make a
17 decision whether to delay it, deny it, or approve it, and
18 we've been working on denying.

19 Q. How many DROS applications are in this backlog?

20 A. Right now 20,000.

21 Q. There are 28,000 --

22 A. 20,000.

23 Q. 20,000?

24 A. Currently. But it depends on the time of year.

25 Q. What's the -- what's the largest backlog that you've seen?

1 A. 28,000.

2 Q. And when the backlog is high, what does the Bureau of
3 Firearms do?

4 A. Order mandatory overtime.

5 Q. Mr. Matsumoto, now I'll ask you some questions about the
6 background check process. Can you briefly describe --
7 actually let me take this exhibit.

8 Can you briefly describe the background check process
9 beginning when a DROS application is submitted to the Bureau
10 of Firearms?

11 A. Once the DROS is submitted to the Bureau of Firearms, it
12 goes into a queue, like a holding area where a basic firearms
13 or dealer check is run. When it's run, it could determine
14 auto-approves, DROS's that are automatically approved, and the
15 DMV reject queue, and then the DROS processing queue.

16 Q. You're talking about the computer database?

17 A. Computer database.

18 Q. And what happens when that computer database search is
19 complete?

20 A. Then the CIS analyst reviews the computer database to
21 determine if there's any probable prohibitors that could
22 prohibit a person from owning or possessing a firearm in
23 California.

24 Q. Other than that reason, do the analysts look for
25 prohibitors or prohibiting reasons, are there any other types

1 of DROS applications that are -- or database search results
2 that the analysts look at?

3 A. The NICS, national instant gun checks system. That's the
4 federal system. That's the FBI, the Interstate Identification
5 Index, which checks out-of-state arrests. There's a NICS
6 index that checks citizen renunciation, military, domestic
7 violence.

8 Q. Now, that's part of the computer background check, the
9 results of which the analysts are reviewing; correct?

10 A. Correct.

11 Q. Now, other than those background checks, is there any
12 other type of files or queues that the analysts are reviewing?

13 A. They're reviewing the DMV reject queue and the DROS
14 processing queue, temporary restraining orders, the wanted
15 persons queue, the firearms prohibition queue where the mental
16 health records are stored, and the wanted persons queue.

17 Q. Let's talk about them one at a time. You mentioned the
18 DMV mismatch queue or the DMV reject queue. What is the DMV
19 mismatch queue?

20 A. The DMV mismatch queue is when a DROS is -- Dealers of
21 Record of Sale is submitted to the department, and the DMV
22 mismatch -- the identification on the DMV mismatch must match
23 the identification, what's on his California driver's license.
24 It could mismatch because different date of birth, the names
25 got transposed. He's using his last name as first name, first

1 name, last name. Or his license can be suspended or revoked,
2 and that would create a mismatch.

3 Q. So what do the analysts do with these mismatched DMV
4 mismatched applications?

5 A. They reject them.

6 Q. Is it -- well, so whenever a DROS application goes into
7 the DMV mismatch queue, the analyst just rejects it?

8 A. No. They check to see if the DMV matches. They check to
9 see if there's a suspended or revoked license because
10 sometimes they could -- the dealers could enter a typo. So
11 sometimes if they enter a typo, we will fix it and send it
12 through the normal process instead of rejecting it.

13 Q. Okay. So the analyst is looking at the application in the
14 mismatch queue to see if they can fix it or make a match?

15 A. Correct.

16 Q. That was the DMV mismatch queue. Let's talk about this
17 other queue where the analyst reviewed the application after
18 it has gone through the database checks. Okay?

19 A. Okay.

20 Q. Could you briefly describe for the Court how the analysts
21 reviewed the DROS applications that are in this database
22 review queue.

23 A. After the database is populated electronically, we review
24 a person's -- a purchaser's criminal history record to see if
25 he could be prohibited or cleared of a firearm in the State of

1 California. There's various databases we would have to check.
2 Sometimes there's a current arrest that we need a disposition
3 on, so we would have to try to obtain the disposition on that.

4 Q. So let's break that down a little more.

5 A. Okay.

6 Q. So let's step back a little bit. Okay, so we're talking
7 about the analysts reviewing the DROS applications that's in
8 this review queue. And the application in the review queue, I
9 think you testified earlier that it shows the results of a
10 database searches?

11 A. Correct.

12 Q. So what is the analyst seeing at this point?

13 A. The results of the database checks from the various --
14 from the various -- like the temporary restraining order that
15 results if there's any restraining orders on the individual,
16 or the results of the mental health, to see if the subject was
17 admitted to a mental health facility. Or it checks the Wanted
18 Persons System to see if the subject has any outstanding
19 misdemeanor or felony warrants. And it checks FBI.

20 Q. So the analyst is looking at the results of these checks
21 from these databases?

22 A. Correct.

23 Q. And why is the analyst looking at these results?

24 A. To determine eligibility of a purchaser who owns and
25 possesses in the State of California.

1 Q. Why is an analyst needed for that? Can't the computer do
2 that work?

3 A. No.

4 Q. Why not?

5 A. Because the computer does not -- I'll give you an example
6 on that. The computer is not set up to determine
7 misdemeanors -- certain misdemeanors that could prohibit a
8 person for 10 years from date of conviction, or it's not set
9 up to -- if there was a straight felony, like a 211, or a
10 11350(a), health and safety, if it was reduced to a
11 misdemeanor, the computer would automatically clear it based
12 on being a misdemeanor, when technically it should not because
13 those charges would be called straight felonies, charges that
14 cannot be reduced to a misdemeanor.

15 Q. I see. So the analyst is actually looking to see whether
16 a felony that's reduced to a misdemeanor could be reduced a
17 misdemeanor?

18 A. Correct.

19 Q. And the computer would not catch that?

20 A. No.

21 Q. Are there any other examples why a human analyst is
22 needed?

23 A. Another example would be domestic violence, a domestic
24 violence offense. Say, the individual was arrested for 273.5
25 in 1988, inflict corporate injury on spouse and cohabitant.

1 In 1989, he is sentenced in muni court for a 242 P.C., which
2 is battery. That would only -- California would only carry a
3 10-year prohibition, so he would be prohibited from 1989 to
4 1999. But under federal law, under -- we would have to check
5 to see on that particular battery charge, we need to determine
6 a relationship and cohabitation because that particular arrest
7 could fall under the MCDV criteria for lifetime prohibition.

8 Q. So you mentioned that the analysts need to make a
9 determination. How does the analyst make a determination, you
10 know, as to cohabitation or some of the other factors you just
11 mentioned.

12 A. We would need to contact the arresting agency. It could
13 be the police department in that county or the Sheriff's
14 Office, and if they do have the police report or sheriff's
15 report, and it meets the MCDV, we would deny the sale of a
16 firearm. But if the Sheriff's Office or the PD report is not
17 available, we would approve it.

18 Q. Why would the sheriff or the DA's office not have the
19 latest information?

20 A. Because if the records could be destroyed or purged based
21 on the PD -- police department or Sheriff's Office purge
22 criteria.

23 Q. Are there any other reasons that you can think of why a
24 human analyst is required to review the files?

25 A. Out of state -- out-of-state arrests regarding military.

1 If an individual was arrested for -- well, say, Article 118,
2 which is possession of a controlled substance, we would need
3 to determine what happened to that arrest. If there is not a
4 disposition on the record, and we would have to determine
5 whether there was a court marshal. We also need his DD 214,
6 to determine what type of discharge he received, honorable or
7 other than honorable.

8 Q. And does factors affect whether the person be prohibited
9 or not from owning a firearm?

10 A. Yes.

11 Q. So the information on whether a military personnel was --
12 you know, how the military personnel was discharged, wouldn't
13 that be in one of the databases that the DROS processing
14 checks?

15 A. No.

16 Q. And how would the analyst make the determination as to
17 whether -- how the military personnel was discharged?

18 A. We would need -- we have a -- National Instant checks gun
19 checks system book that lists all the military contacts, and
20 we would contact that specific military, like if it was Army
21 or Air Force, Marines, that gives us a contact person that we
22 would try to obtain that information from them.

23 Q. Okay. Now, the -- you know, you mentioned this, all this
24 review is done after the DROS processing already, you know,
25 searches through the database. You know, is this the records

1 that the analyst is reviewing at this point, are they always
2 correct?

3 A. No. If a DROS was -- the purchaser purchased today and
4 were in the backlog, and we don't see it until -- we don't
5 process it until day eight or day nine, I instructed staff, it
6 would be our policy that we run another background check
7 without the NICS check to see if we missed any possible
8 prohibitors.

9 Q. So when the analyst review these DROS applications on day
10 eight, for example, the analyst actually reruns the DROS
11 application through the various databases, picks up NICS?

12 A. Correct, because NICS -- you only could do the NICS
13 background check once every 30 days.

14 Q. Why do the analysts run the database searches a second
15 time?

16 A. Just in case we miss any other information that could
17 occur between the time he purchased until the time we review.
18 There's instances where a guy purchased a gun today and
19 tomorrow he was admitted to a mental facility, if we didn't
20 run that background check, he would have been cleared to own
21 and possess a firearm, and we would miss that prohibition. So
22 that's the reason why we run the background check a second
23 time so we don't miss any possible prohibitors.

24 Q. Okay. And, you know, running this background check a
25 second time when the analysts review the files, is that a

1 Bureau of Firearms protocol?

2 A. Yes.

3 Q. Now, the databases that the DROS processing does the
4 background checks through, are those databases always updated
5 properly?

6 A. Yes, at the time, yes.

7 Q. So the information in those databases at the DROS
8 processing checks, the information in those databases are
9 up-to-date?

10 A. Current or -- you mean like missing information, that
11 type?

12 Q. For example, you know, is it missing information? Could
13 it miss information?

14 A. Yes.

15 Q. Why would it miss information?

16 A. Because an example would be -- if an individual was
17 arrested 2012 for battery, on the Automated Criminal History
18 System and without a disposition, we would not be able to
19 determine if the individual is eligible to possess a firearm
20 in California. In order for us to prohibit, there must be a
21 conviction.

22 Q. So how does the analyst determine disposition?

23 A. We need to contact the County Sheriff's Office or police
24 department, and we contact the District Attorney in that
25 county and the superior or muni court in that county and that

1 probation to try to obtain that disposition.

2 Q. Well, if there's already a disposition, then those
3 agencies, wouldn't they have already inputted that information
4 into the databases?

5 A. No.

6 Q. But under California law, aren't they required to do it
7 within two days?

8 A. Yes.

9 Q. So do you know why they don't do it?

10 A. No. They could -- backlog reasons, like they're short
11 staffs. The courts are short staffed, and other -- there's
12 other various reasons.

13 Q. Okay. So it's your understanding that these -- you know,
14 the courts and the DA offices, these agencies, they don't
15 always input information into these various databases?

16 A. Correct.

17 Q. Mr. Matsumoto, let's talk about people who already own
18 guns.

19 A. Okay.

20 Q. If someone has gone through the California DROS processing
21 and application before, could the analysts, when reviewing the
22 hits in the database, could the analysts simply review the new
23 database entries that were created after the previous DROS
24 application was submitted?

25 A. No.

1 Q. Why not?

2 A. Because some state laws or federal laws change, and he
3 could have been approved at that time, but current laws have
4 changed, he might not be approved now.

5 Q. Could you describe that or give us an example of that?

6 A. Okay. I'll give you an example of domestic violence.
7 273.5 PC, which is to inflict corporate injury on spouse and
8 cohabitant, and he was convicted of that particular offense,
9 and in 2004 is when that law changed. If the purchaser had a
10 12021(c)(2) or a 1203.4 before that time, he would have been
11 eligible to possess a firearm. But now, since that law
12 changed, ATF is no longer honoring that 12021(c)(2) or the
13 1203.4, which was an expungement.

14 Q. Do you know what a CCW is?

15 A. Carry a Concealed Weapon Permit.

16 Q. Do you know what a COE is?

17 A. Certificate of Eligibility permit.

18 Q. For a DROS applicant with a CCW or a COE, are there
19 applications treated differently than someone without one of
20 those licenses?

21 A. No.

22 Q. Why not?

23 A. Like I stated before, the laws change. He could have
24 went -- the purchaser could have been approved back then in
25 2000, but he might be prohibited now in 2014.

1 Q. Could you think of any other reasons?

2 A. Not at this time.

3 Q. Okay. Let's turn to another topic. You said earlier that
4 one of your job duties is to train analysts to perform
5 background checks; correct?

6 A. Correct.

7 Q. How long have you been training analysts?

8 A. Eight years.

9 Q. Could you briefly describe the process of how you train
10 analysts?

11 A. The process how I train an analyst is I ask -- I try to
12 determine whether they know the difference between a felony,
13 misdemeanor, or infraction, and if they understand how to read
14 a criminal rap sheet or applicant rap sheet. We have manuals
15 that we use, and Power Point examples that we use to train
16 these individuals so they could become efficient at their job.

17 Q. How long does it take you to train a new analyst
18 typically?

19 A. Six to eight months.

20 Q. After six to eight months, is the analyst then proficient
21 at reviewing or performing these background checks?

22 A. Well, after six months, I let them go into what we call
23 the live queue to process the Dealer's Record of Sale, and I
24 review -- we have a queue that we click on, and it's assigned
25 to that particular analyst, and I review each one of the

1 purchases to see if they made a mistake, or if they didn't
2 make a mistake.

3 Q. And how long do you review their results for?

4 A. Until I think they're proficient at the job.

5 Q. And how long does that typically take?

6 A. Two months.

7 Q. Is that two months after the six to eight months that you
8 train them?

9 A. No, it's after the six months. Two months is for me
10 reviewing their work to see if they're proficient enough to
11 process DROS.

12 MR. CHANG: I have no more questions, Mr. Matsumoto.

13 THE COURT: Cross-examination.

14 CROSS-EXAMINATION

15 BY MR. KILMER:

16 Q. Mr. Matsumoto, my name is Don Kilmer, and I represent the
17 plaintiff in this case and I have some questions for you.

18 A. Okay.

19 Q. Are you familiar with an acronym called CII?

20 A. Yes.

21 Q. What is that?

22 A. Criminal Identification Index.

23 Q. What is that?

24 A. It's a person's -- no, it's a subject's criminal history
25 information.

1 Q. And who are those -- who gets a CII?

2 A. An individual -- a CII is -- it could be an applicant, or
3 it could be a criminal.

4 Q. All right. Typically it's somebody who has a set of
5 fingerprints on file too.

6 A. Correct.

7 Q. Do you know whether or not Concealed Carry Permit holders
8 have a CII number issued to them?

9 A. No.

10 Q. You don't know that?

11 A. Well, that's -- I only do strictly background checks in
12 the Purchaser Clearance Unit. The Certificate of Eligibility
13 and the Carried Concealed Weapons are processed by another
14 unit.

15 Q. All right, then let me ask you about COE's. Do COE's get
16 issued a CII number?

17 A. Yes.

18 Q. All right. And how long is a COE good for?

19 A. That's up to the other unit that processes within the
20 Bureau of Firearms. It's called the Licensing and Permits
21 Unit. They process the COE's and CCW's. I don't.

22 Q. I just want to focus just on the COE. Do you know how
23 long a COE, a Certificate of Eligibility is good for, how long
24 before it has to be renewed?

25 A. Not at this time.

1 Q. You don't know? Okay.

2 You mentioned in your direct testimony that there was
3 a law change regarding the federal recognition of misdemeanor
4 crimes of domestic violence. What year did that change
5 happen?

6 A. 2004.

7 Q. And as you sit here today, do you know the name of the law
8 or the title and code section for that change?

9 A. No.

10 Q. Okay. You testified under direct that while there -- that
11 courts are required to enter conviction data within 24 hours.
12 Do you know under what law that --

13 MR. CHANG: Objection, Your Honor. Misstates --
14 assumes facts not in evidence. It misstates his prior
15 testimony.

16 THE COURT: Sustained. Go ahead and rephrase.

17 BY MR. KILMER:

18 Q. You testified earlier that convictions are supposed to be
19 entered into the Department of Justice criminal database by
20 some Superior Courts; is that correct?

21 A. Correct.

22 Q. All right, and how does that happen?

23 A. They either submit it electronically through a tape, or
24 they send it to our disposition update section in another
25 bureau within the Department of Justice.

1 Q. And so what might happen is, once the conviction is
2 entered, then presumably the clerk of the Court then either
3 enters it electronically or sends it to your agency.

4 A. Correct.

5 Q. And you stated under direct that there is a law that says
6 they have to do that.

7 A. Yes.

8 Q. Do you know what that Penal Code section is?

9 A. No.

10 Q. Do you know if it's in the government code or some other
11 code section?

12 A. No.

13 Q. But you're pretty certain it's a law.

14 A. Yes.

15 Q. All right. And does -- do you know how long they have to
16 transmit that data under that law?

17 A. Forty-eight hours or two days.

18 Q. Would that be two business days or two calendar days?

19 A. Two business days. Not Saturday and Sunday. Two business
20 days.

21 Q. So if a conviction happened on a Friday, they would have
22 until Monday or Tuesday?

23 A. Monday, correct.

24 Q. All right. You testified under direct that
25 approximately -- I think you said last year, 2013, you

1 processed 900,000 DROS's?

2 A. 960,000 DROS's were processed.

3 Q. Okay. As you sit here right now, do you know how many
4 resulted after all of your hard work resulted in an actual
5 final denial?

6 A. No.

7 MR. KILMER: Do you have your AP exhibit?

8 (Pause in the proceedings.)

9 MR. KILMER: May I approach the witness, Your Honor?

10 THE COURT: Yes.

11 BY MR. KILMER:

12 Q. Mr. Matsumoto, I've just shown you a document that's
13 previously been admitted into evidence. And it is part of
14 Exhibit AP, but it's a little bit further down in the stack.
15 It's actually Bates numbered AG-002394. Do you see that in
16 front of you?

17 A. Yes.

18 Q. All right, the Bates number is in the lower right-hand
19 side. And the upper right-hand corner, it talks about total
20 DROS's received. I'm sorry, at the top of the page, it says
21 "Dealer Record of Sales statistics for 1/1/2013 through
22 12/31/2013."

23 A. Correct.

24 Q. And do you see that?

25 A. Yes.

1 Q. And in the upper right-hand corner, it talks about total
2 DROS's received. Is that the number that you remember?

3 A. Yes, 960,000.

4 Q. And on the left-hand column down at the bottom, it looks
5 like there is a title of "Summary of Denials," and it shows a
6 total denial of 7,371.

7 A. Yes.

8 Q. Does that sound right to you? I'm not asking you for an
9 exact memory.

10 A. Yes.

11 Q. So would it be accurate to say that denials end up being
12 pretty close to 1 percent or less than 1 percent of all DROS's
13 processed by your office?

14 A. Yes.

15 Q. Thank you.

16 One of the reasons of why you have to do further
17 investigations into arrests is because you can't deny a
18 firearm on the basis of just an arrest, a mere arrest; is that
19 right?

20 A. That's correct.

21 Q. Why is that?

22 A. There must be a conviction in order for us to deny a
23 prospective purchaser.

24 Q. All right.

25 MR. KILMER: Nothing further, Your Honor. May I take

1 the exhibit back from the witness?

2 THE COURT: Yes.

3 MR. CHANG: Nothing further from the defense,
4 Your Honor.

5 THE COURT: All right, either party wish this witness
6 remain subject to recall?

7 MR. CHANG: The defense would, Your Honor.

8 THE COURT: All right. Either party may still call
9 you back to testify. You're still under oath, but you can go
10 ahead and leave the courtroom. I'll leave it to counsel to
11 let you know the date and time if necessary to return.

12 THE WITNESS: Okay.

13 THE COURT: All right, thanks.

14 MR. EISENBERG: Your Honor, the next witness will be
15 Blake Graham. He is in the building, and we are trying to
16 locate him.

17 THE COURT: All right, fine.

18 MR. EISENBERG: Your Honor, here is the witness,
19 Mr. Graham.

20 THE CLERK: Raise your right hand.

21 **BLAKE GRAHAM,**
22 called as a witness on behalf of the Defendants, having been
23 first duly sworn, testified as follows:

24 THE CLERK: Take the witness stand right over there
25 and give us your full name, please.

1 THE WITNESS: First name is Blake, B-L-A-K-E, middle
2 is William, common spelling, Graham, G-R-A-H-A-M.

3 DIRECT EXAMINATION

4 BY MR. EISENBERG:

5 Q. Hello. Sir, did you attend college?

6 A. Yes.

7 Q. Did you graduate from college?

8 A. Yes.

9 Q. What year did you graduate?

10 A. 1992.

11 Q. What was your major?

12 A. Criminal justice.

13 Q. Are you currently employed?

14 A. Yes.

15 Q. Who is your employer?

16 A. State of California, Department of Justice, Bureau of
17 Firearms.

18 Q. What is your job title?

19 A. Special agent supervisor.

20 Q. May I call you Special Agent Supervisor Graham?

21 A. Sure.

22 Q. What in general are your job responsibilities as a special
23 agent supervisor?

24 A. I supervise three different analysts, one is a special
25 agent, and that's as far as my supervisory role goes.

1 Actually an office technician as well. I'm also in charge of
2 our armory, so duty weapons, we may issue out to the agents.
3 I review firearms that are submitted to be added to our not
4 unsafe handgun roster; training of existing agents that we
5 have, some outside training. See, I actually do some criminal
6 investigations as well when I have time.

7 Q. How long have you had the title of Special Agent
8 Supervisor?

9 A. I was promoted in July of 2010.

10 Q. Before becoming a Special Agent Supervisor, did you have
11 another job with the Bureau of Firearms?

12 A. Yes.

13 Q. What was your job title?

14 A. I was a special agent with the Bureau of Firearms.

15 Q. And how long were you a special agent?

16 A. 2002 is when I transferred to the -- actually it was at
17 the time of the firearms division, which then became the
18 Bureau of Firearms.

19 Q. What in general were your job responsibilities as a
20 special agent?

21 A. Within the Bureau of Firearms, basically enforcing
22 existing weapons laws in the State of California. That could
23 be illegal possession by prohibited people. It could be -- it
24 just flat-out illegal weapon possession or manufacturing,
25 importation, those types of things.

1 Q. And do you currently, as your job title would suggest,
2 supervise special agents?

3 A. I have one person under me at this time.

4 Q. Have you had any training in law enforcement?

5 A. Yes.

6 Q. What kind of training have you had in law enforcement?

7 A. I've received training as far as weapon -- different
8 weapon systems, and how those may apply to existing Penal Code
9 sections and actually federal sections. Some of that was from
10 ATF, the ones dealing with weapons that might fall under
11 federal purview. I received training, kind of on-the-job
12 training from, at the time, staff members of Department of
13 Justice about weapons that were at the time newly classified
14 as assault weapons.

15 Q. Do you have training in the use of firearms?

16 A. Yes.

17 Q. Could you briefly describe the training that you have.

18 A. Sure. I've got certificates in -- as far as being a range
19 master for teaching other peace officers and whatnot, proper
20 range techniques and safety. I have certificates from
21 other -- well, actually firearms manufacturers on how to take
22 apart and repair various weapons systems, Heckler & Koch
23 Glock, ArmaLite, Colt. I'm trying to think of what other ones
24 are out there. Those are the ones that come to mind right
25 now.

1 Q. I want to ask you about some of your different work
2 assignments. Have you heard of something called APPS?

3 A. Yes.

4 Q. What to your understanding is APPS?

5 A. APPS is sort of like a pointer system. It's -- data in
6 APPS is pulled from other existing DOJ databases that has
7 had -- basically computer systems have pushed data together,
8 and the people that might be pushed into the APPS database are
9 sort of candidates for placement in there after one or more
10 humans has looked at that data to see if they're eligible.

11 Q. How is it that you know about APPS?

12 A. I've been with DOJ for -- well, since '99 in another
13 bureau, and then since 2002 in the firearms division and then
14 the Bureau of Firearms. So I've kind of seen the progression
15 of how this system has kind of come alive, if you will. We
16 actually worked cases that were preAPPS cases. Before the
17 system kind of went active, we would investigate the same type
18 of cases before the system really existed.

19 Q. Approximately, when did the APPS system become active?

20 A. Probably 2007 is when we actually started working the
21 cases that were kind of coming out of that system.

22 Q. Do you work with the APPS system?

23 A. Yes.

24 Q. Are you aware of what kind of records are in the APPS
25 system?

1 A. Yes.

2 Q. What kind of records are in the APPS system?

3 A. Basically there are people that have been identified by
4 the different databases that -- there's been at least one or
5 two levels of, you know, human kind of review as well. And
6 there are about 21,000 people identified as armed and
7 prohibited. And the weapons that they bought would have been
8 purchased prior to them becoming prohibited.

9 Q. Have you heard of something called the AFS in the course
10 of your work?

11 A. Yes.

12 Q. What is the AFS?

13 A. It's the Automated Firearms System.

14 Q. Does AFS have any relationship with the APPS system?

15 A. Yes.

16 Q. What's the relationship?

17 A. That's one of the databases that basically has to sort of
18 be filtered, if you will, to see if there is a person that may
19 or may not be eligible to go into the system -- into the APPS
20 system, that is.

21 Q. Do you work with the AFS?

22 A. Yes.

23 Q. Are all guns in circulation in California listed in the
24 AFS?

25 A. No.

1 Q. Why not?

2 A. Actually up until now, this -- January of this year, we
3 weren't actually allowed to track long gun sales in there. So
4 once a background check was completed, we had about five days
5 to purge the data on a successful transaction, so that none of
6 those guns are in there until January 1st of this year.

7 Transfers that were kept in that system would be like
8 a handgun transaction, those types of entries. And then you
9 have evidence entries, you'll have crime gun entries that were
10 usually pushed in there by a law enforcement entity. There
11 will be certain other categories as well like pawn -- pawn
12 redemption. You could have under observation entry, you could
13 have -- let me think, whatever else there is out there. Yeah,
14 evidence.

15 That's pretty much the majority of them. They'll
16 have assault weapon entries as well. The registration
17 material, a very abbreviated version of that will be in there
18 as well. So if someone runs a particular zero number on an
19 assault weapon, it would pop up as being a lawful registered
20 one if all the right data was put in there by the officer
21 doing the query.

22 Q. You mentioned that long gun records have been put into the
23 system systematically since the beginning of the year; is that
24 right?

25 A. Yes.

1 Q. Is there a corresponding date for handguns? Do they go
2 farther back in the system, in other words?

3 A. Yeah, they do go farther back, but the people more on the
4 database side would have that. I don't know what year all of
5 that really started. I can say that over time, there have
6 been improvements. Specifically in 1996, our systems got
7 better in the sense that they were tied to specific driver's
8 license numbers. So the handguns after '96 are kind of the
9 pool that most of the APPS candidates are pulled from. That
10 makes up the majority of the records and then records of
11 assault weapons as well.

12 Q. Is there any prohibited person who is not in the APPS
13 database?

14 A. Yes.

15 Q. How could a person be prohibited and not be in the APPS
16 database?

17 A. Well, there are 21,000, approximately, people in the APPS
18 database. And there are many, many people that are not, I
19 guess, on record as being an owner of a weapon, post-1996, or
20 they may not have registered an assault weapon with us during
21 the appropriate registration windows. So there's an unknown
22 number of prohibited people out there.

23 Q. How up-to-date are APPS records?

24 A. That's a very broad question. So it's as up-to-date as
25 the data that's sent to us, I guess, is my best answer to that

1 question.

2 Q. Does the Bureau of Firearms generate all of the data
3 that's in APPS?

4 A. No.

5 Q. Where does the data come from?

6 A. From different databases out there. We have the mental
7 health file, the hospitals generally send us the bulk of that
8 data. There's -- I don't know, I think it's 1.5 million
9 records right now in the mental health system, and last year,
10 we had 225,000 mental health events get pushed to us mostly
11 from the hospital, some are from court records. We have
12 warrants that get pushed into the system. You know, there's
13 58 different counties. Those different Sheriff's Departments
14 might push records to us. You have criminal history
15 information. The courts generally push that information to us
16 when there's -- hopefully when there's an update, they'll give
17 us all that data. If there's been a reduction, for example,
18 they're supposed to send us the data on maybe felony
19 reductions, or something like that. And then you could have
20 restraining orders. Also those would come from the courts,
21 and supervised release data would also get sent to us. So in
22 most senses, we're the repository or dumping ground if you
23 want to call it that.

24 Q. Does the Bureau of Firearms have the power to make these
25 other agencies give them the records?

1 A. In a layman's term, I would say no. We can ask
2 vigorously. I'm not sure if we have any real power to do much
3 other than send a nasty letter.

4 Q. For each person listed in APPS, is there a fingerprint?

5 A. Not necessarily.

6 Q. For each person listed in APPS, is there a social security
7 number?

8 A. Not necessarily.

9 Q. I want to move on to another area of your work. Are you
10 aware that there are gun shows that go on around the state?

11 A. Yes.

12 Q. Do you do any work related to gun shows?

13 A. Yes.

14 Q. What generally is the work that you do related to gun
15 shows?

16 A. It's kind of, I guess, twofold. It's either dealing with
17 the promoters of the shows themselves, making sure that they
18 are in compliance with state law. We also try to regulate the
19 dealers that are present selling their wares, and then there
20 are also the clients or customers that come to the shows.
21 Sometimes the customers, you just want to make sure that those
22 people aren't prohibited themselves. Maybe they're buying
23 ammunition or magazines. A prohibited person in California
24 can't acquire magazines or ammunition if they're prohibited.
25 That would be breaking the law.

1 And also if you're straw purchasing, that would be a
2 problem under state and federal law as well. Sometimes that
3 happens at gun shows.

4 Q. What is a straw purchase?

5 A. Straw purchase is kind of a -- it's called like an
6 industry slang term for a prohibited person, getting someone
7 that is, at least in their mind, cleaner than they are to go
8 out and try and acquire a weapon and then transfer it to them
9 without doing a proper transfer through a gun store or by some
10 other legal means.

11 Q. Is the straw purchaser the person who is going to end up
12 with the gun in the end?

13 A. No, that's the whole point. It's the hidden buyer in the
14 sense, the person behind in the shadows, if you will.

15 Q. So you've done work regarding straw purchasers at gun
16 shows. How many gun shows have you worked in this capacity?

17 A. Over 50 over the years. I never tracked all the shows
18 I've ever been to.

19 Q. When you do gun show work --

20 MR. KILMER: At this point, Your Honor, I'm going to
21 object to this line of question. We're getting kind of far
22 afield from the cause of action in this case.

23 MR. EISENBERG: I'll make an offer of proof if you
24 want to sustain the objection.

25 THE COURT: Proffer.

1 MR. EISENBERG: I'm asking him these questions
2 because I want to show that he does gun show investigations of
3 straw purchasers, and they can take the full 10-day waiting
4 period, and he needs the time to do that. It's part of the
5 whole Bureau of Firearms enforcement, law enforcement of the
6 firearms laws.

7 THE COURT: Anything further?

8 MR. KILMER: Objection withdrawn, Your Honor.

9 THE COURT: Go ahead.

10 BY MR. EISENBERG:

11 Q. When you work at a gun show -- I'm sorry, let me ask a
12 foundation question. Are you a peace officer?

13 A. Yes.

14 Q. Do you have a uniform?

15 A. Yes.

16 Q. When you work at a gun show, are you in uniform usually?

17 A. Not usually, no.

18 Q. What kind of clothing are you wearing?

19 A. Basically street clothes, depending on the weather.

20 Q. Why are you in plain clothes as opposed to wearing a
21 uniform?

22 A. The hope is we would -- me and my coworkers would blend in
23 and look like anyone else at the shows.

24 Q. You've actually anticipated my next question. When you're
25 working a gun show, are you working by yourself, or are you

1 working with a team of other people?

2 A. With a team.

3 Q. In a typical gun show, how big is the team of Bureau of
4 Firearms special agents?

5 A. Usually a minimum of five, and then depending on the
6 availability, probably be no more than 10 on a really big
7 show.

8 Q. Are you always the leader or the supervisor of a gun show
9 investigation?

10 A. Not necessarily.

11 Q. So there have been times when you've been just a member of
12 the team, not the leader.

13 A. Sure.

14 Q. There have also been times when you've been the leader?

15 A. Yes.

16 Q. I want to ask you some more questions about a straw
17 purchaser. What do you do to determine if somebody is
18 suspected of being a straw purchaser?

19 A. A straw purchaser is basically what we've seen over the
20 years at gun shows. Specifically is we'll see people kind of
21 make the rounds amongst the tables, and there might be a lot
22 of interest from -- let's say a couple of people are walking
23 together. And one person might be really interested in asking
24 a lot of questions and handling the weapons, and then they'll
25 make the rounds through the show, and the second time through

1 those same tables, the person that was kind of taking a second
2 seat in the sense, they're the one that actually might start
3 showing interest and actually filling out the paperwork. This
4 commonly happens with -- you know, if it's a man and a woman,
5 the man will show a lot of interest, and then maybe when the
6 time came to do the paperwork to actually purchase it, the
7 woman would actually initiate the paperwork with the dealer
8 involved.

9 Q. Are you describing scenarios that you've actually
10 witnessed?

11 A. Yes.

12 Q. After you suspect that you're observing a straw purchase,
13 what steps do you take?

14 A. Well, you try to identify the parties involved, to see if
15 there is indeed a straw purchase or not, if there is a
16 conspiracy to provide a prohibited person with some weapons or
17 ammunitions and so forth. That could involve in identifying
18 the table at which the transaction is going to be completed
19 through. Sometimes the person selling the guns isn't, in
20 fact, a dealer themselves, so they'll actually walk a weapon
21 over to a transfer dealer, who is a legitimate dealer, and
22 then that's where the paperwork gets completed. So you may
23 have to identify someone at a table, and then a second table,
24 and then you've got potentially the straw purchaser and then
25 the real -- or the hidden buyer as well. So maybe four more

1 people.

2 Q. And what are you doing to identify all the people that
3 seem to be involved in the transaction?

4 A. Sometimes you can get a license plate from one or more of
5 those parties. Sometimes it may help from a business card
6 that's laying on the table. You may have to do surveillance
7 at the closing of the show to see what cars people go to, if
8 it's people involved at the tables, and those are usually the
9 things -- a person's surveillance that goes on to identify the
10 parties.

11 Q. Do you always complete all the identification in a matter
12 of minutes?

13 A. No.

14 Q. Matter of hours?

15 A. I'd like to say, yes, but that's not always the case.

16 Q. Have you ever had an investigation that went for longer
17 than a day.

18 A. Yes.

19 Q. What are the circumstances that would make an
20 investigation go longer than a day?

21 A. Sometimes people that are engaged in straw purchasing,
22 they'll show up to shows in rental cars, and that puts another
23 hurdle in front of us in actually making a quicker
24 identification. So you may have to contact a rental car
25 company. Often the rental car company's corporate office has

1 nothing -- let's say, in San Francisco, has nothing to do with
2 the actual location of where that car was rented, for example.
3 Let's say it was a Sacramento rental, but the corporate office
4 might be down in San Francisco, which is where the vehicle is
5 actually plated to. So we've got to do follow-ups with those
6 and jump through hoops and access and then dig around and see,
7 well, who rented the car, that sort of thing.

8 Q. Have you ever had a straw purchaser investigation from a
9 gun show go longer than 10 days?

10 A. Probably like 11 or 12 because the -- maybe the person
11 didn't come and pick up the weapon, you know, right on the
12 10th day perhaps or -- and into the 11th day, that sort of
13 thing.

14 Q. Are you trying to finish the investigation within 10 days,
15 or do you not care about that 10-day deadline?

16 A. Yeah. We don't want the weapon to get out on the street
17 if we think there is a straw purchase involved. So the best
18 thing I can say is an interception of what we think is a straw
19 purchase is the best scenario in this case. We may not have
20 the people fully identified, though, because of various
21 factors, and we may actually have to contact them in the
22 parking lot at the gun store, as they walk out of the store,
23 or if we follow them back to their apartment or their house or
24 something like that. So it may not be nice and tidy in the
25 sense because of all the factors I've talked about.

1 Q. If the Waiting-Period Law was only three days, would you
2 be able to finish all of your straw purchaser investigations
3 in time to do intercepts?

4 A. No, that would be nearly impossible to do, specifically
5 the ones with the gun shows, and some of the ones that we
6 become aware of that happen at normal gun dealers, you know,
7 seven days a week.

8 Q. So if the waiting period were, say, only three days, how
9 would you stop the gun from being released to the purchaser?

10 A. I don't know that we would even have most of the parties
11 involved -- identified by then. Sometimes we do, but
12 sometimes we don't just because of the factors I've mentioned.

13 Q. Why is it preferable to intercept the firearm rather than
14 try to retrieve it?

15 A. Because the retrieval is problematic because the minute
16 that gun leaves the store, and then it's handed to the straw
17 purchaser, they may wait five minutes to transfer that weapon,
18 they may wait a, you know, day or two or longer. It's just
19 once that gun hits the streets, we have a lot of trouble, you
20 know, having a hundred percent certainty that we're going to
21 get that gun back.

22 Q. Have you ever done a gun retrieval operation?

23 A. Yes.

24 Q. What's safer, intercepting the gun before it gets to the
25 prohibited person or trying to retrieve it from the prohibited

1 person?

2 A. In the sense that the public would be put less at risk, it
3 would be safer for the public if we can intercept all of them,
4 but that's never the case. We're not in all places at all
5 times.

6 Q. Do you know the number of special agents that do this kind
7 of work in California?

8 A. Probably right now, we're somewhere in the neighborhood of
9 50 agents that are in the field that are available for this
10 kind of work. It could be higher than that. I'm not a
11 personnel specialist, so I don't know that number.

12 Q. Have you ever worked a case where the straw purchaser was
13 somebody who is not a first-time buyer of firearms?

14 A. Yes.

15 Q. So you've seen something like a repeat straw purchaser?

16 A. Yes.

17 Q. If somebody who is a second-time purchaser did not have to
18 go through the 10-day waiting period at all, how would you
19 deal with a second-time straw purchaser?

20 A. I think they most likely would end up having to do
21 retrievals, because the way I understand your question is, the
22 gun would just be immediately released after zero time or
23 three days?

24 Q. Let's say zero time. Let's say nearly instantaneous.

25 A. Yeah, we would, for the most part -- I mean maybe

1 99 percent of the time, it would go into a retrieval method
2 because of manpower issues and stuff.

3 Q. I want to ask you about some other of your work. Are
4 there other ways that the special agents become aware of
5 possible straw purchases?

6 A. Yes.

7 Q. Can you tell me what some of those other ways are?

8 A. Sometimes we get notified by the Bureau of Alcohol,
9 Tobacco, and Firearms. Sometimes we'll be notified by a gun
10 dealer himself, and it might be a corporate chain. Maybe
11 they did an audit of their past 30 days' worth of
12 transactions, and they may have caught something that they
13 thought retroactively was kind of suspicious. So they will
14 contact us occasionally.

15 Actually I think the other time would be -- we have
16 our own field inspectors that are field reps that go out and
17 inspect the guns for us, and they will, just like the ATF
18 inspectors or investigators that go out, they will come across
19 suspicious transactions after a prohibited person is denied,
20 and maybe there's a common address or common last name.

21 Q. I'll go ahead and be asking you questions about the
22 dealers' situation, and the field representative situation.
23 I'll take them one at a time.

24 A. Sure.

25 Q. So you're actually aware of cases where a dealer will call

1 the Bureau of Firearms and say, "I think somebody attempted to
2 make a straw purchase in that case."

3 A. Yes.

4 Q. When the Bureau of Firearms gets a call like that, what do
5 you do?

6 A. Usually it will -- it might come to our field
7 representatives. They'll try to pull together the data, if
8 it's available, such as transaction dates, whatever
9 information the FFL or federal firearms licensee would have
10 provided to us. And then typically I'll get something
11 e-mailed to me like in a pdf format. I'll review it and see if
12 it's something that I think is something we need to send out
13 to one of the field offices.

14 Q. You mentioned the term "field rep." What is a field rep?

15 A. A field rep for DOJ is a field representative. So they
16 have a few functions. The biggest function they do is
17 actually inspecting the guns for us. They also provide
18 training to the mental health facilities, to make sure they
19 are aware of when they have to go and let us know about maybe
20 a patient that was deemed to be a 5150, for example, those
21 types of things. There are some other training aspects of
22 their job, that by and large, it's making sure that the gun
23 source is in compliance with state law.

24 Q. If there was a suspected straw purchase that a dealer
25 called in, and you did not have a waiting period before the

1 gun was released, would you be able to intercept the sale?

2 A. If there was zero waiting period, I would assume the
3 dealer would be calling us after the facts, given your fact
4 pattern, so it would be a retrieval mode is what we would go
5 into.

6 Q. Does having a 10-day waiting period help you in your law
7 enforcement work related to the dealer reports of suspected
8 straw purchases?

9 A. Yes.

10 Q. I want to pick up the line of questioning about field
11 representatives. I think you mentioned something about field
12 representatives inspecting dealers?

13 A. Yes.

14 Q. Do field representatives actually go out and inspect
15 dealers?

16 A. Yes.

17 Q. Are these -- are these inspections announced to the
18 dealers in advance?

19 A. Sometimes they are. They're not required to be, though.
20 They can be random or unannounced, if you will.

21 Q. So are some of the inspections actually unannounced?

22 A. Yes.

23 Q. About how many gun dealers are there in California, do you
24 know?

25 A. Not exactly. I think the last number I heard was around

1 1800.

2 Q. Are all of them subject to these inspections?

3 A. Yes.

4 Q. Is there an amount of -- number of times that an average
5 dealer is audited like a field representative?

6 A. I think the general rule is, they try to get to each of
7 the dealers about every three years. The other folks that may
8 be testifying as a course of this trial may have better
9 information than that, but that's my understanding.

10 Q. Have the inspections ever uncovered straw purchases?

11 A. Yes.

12 Q. Do you have any examples of that?

13 A. Yeah, some of the times that the field reps -- I'm
14 speaking about the California DOJ field reps. They'll find
15 a -- during the course of inspection, a group of denial
16 letters that the DOJ, the mail unit has sent to the dealer.
17 Let's say there's 10 letters. And they'll look at those 10
18 letters to make sure that those guns didn't, in fact, leave
19 the store with the prohibited person. That's one of the
20 aspects of the inspection.

21 So assuming that didn't happen, the next thing is
22 they're going to go look at -- to see who that weapon -- if
23 those were subsequently sold, did they go to somebody with
24 maybe the same last name or the same physical address, those
25 are a couple things that they'll look at, and they will

1 often -- you know, let's say it's been three years since
2 they've been to that particular store. They're going to find
3 over the course of that time maybe some suspicious
4 transactions. I'll be notified and evaluate what we have,
5 and, again, I may ask for a team from the local office where
6 that store is located to go, you know, pull up some paperwork,
7 that sort of thing.

8 Q. Why is it suspicious that two people from the same address
9 would try to buy the same firearm?

10 A. Well, if there is someone that's going to get denied, I'll
11 just say a male/female situation. If a male is prohibited, he
12 goes and tries to buy a pump shotgun with a particular sale
13 number. We deny that person, for whatever reason, and then
14 nine or ten days later, a female goes in, same last name, and
15 buys the exact same weapon, the same serial number. And, in
16 fact, sometimes I've even seen them use the same credit card.
17 It's a joint credit card or that sort of situation. That --
18 you know, that's a scenario from another investigation that's
19 been pushed into our laps in a sense by a field rep
20 investigation.

21 Q. What if there's not the same last name between the two
22 people, but the same physical address, why does that give you
23 any suspicion about the transaction?

24 A. Again, the same kind of situation. They will -- maybe
25 it's a roommate, or perhaps if it's boyfriend or girlfriend if

1 it's a male and female situation again, but there is no actual
2 marriage, but a common last name. We've had that sort of
3 scenario pop up with the dealer inspection as well. It could
4 be a relative.

5 Q. Do the dealer inspections ever find guns that are actually
6 on 10-day wait?

7 A. Yes. Typically one of the batches of guns that will be in
8 a particular store are guns that are sitting there waiting to
9 be released at the conclusion of the 10-day waiting period.

10 Q. So is there a chance that if a field inspection finds, you
11 know, the attempted transaction that was denied and then the
12 person with the same last name or the same address tries to
13 make that transaction, you might actually find that gun still
14 on hold because of the 10-day waiting period. Is that
15 possible?

16 A. Yes.

17 Q. So does the fact that the gun has not yet been released
18 help you -- help you to enhance public safety in any way?

19 A. Yes. In that scenario, we would actually be able to
20 potentially intercept the weapon before it actually got onto
21 the street if you evaluated the case, and we felt it was a
22 straw purchase.

23 Q. I'd like to ask you about another topic called CCW's.
24 Have you ever heard of something called a CCW in the context
25 of your work?

1 A. Yes.

2 Q. What is your understanding of a CCW?

3 A. It's basically a Concealed Weapons Permit that is granted
4 by a local agency where the person resides.

5 Q. Does the Bureau of Firearms issue CCW's?

6 A. No.

7 Q. Does the Bureau of Firearms keep the records of each CCW
8 that's been issued in the state?

9 A. That's actually kept by the local agencies. We might put
10 some data into the AFS system, in the sense that if I have a
11 CCW, my Smith and Wesson revolver would have an entry in that
12 system that indicated that it was a CCW permitted weapon.

13 Q. If the -- are you aware of the Bureau of Firearms becoming
14 aware that a person who has a CCW license, for whatever
15 reason, becomes prohibited from having a firearm any longer?

16 A. I am aware that the DOJ Bureau of Firearms has received
17 notice from the local agencies about revocations. I'm not
18 sure about the end of your question there.

19 Q. Okay, that was not a clear question. Let me try again.

20 Are you aware of the Bureau of Firearms obtaining
21 information about criminal convictions of people in the state?

22 A. Yes.

23 Q. If the Bureau of Firearms gets a record of the criminal
24 conviction, is it possible to communicate to the local agency
25 or to -- or to an agency that has issued a CCW, that the

1 holder now has a criminal conviction?

2 A. Yeah. That's a possibility.

3 Q. Is that something that's done instantly to all of the
4 local enforcement agencies?

5 A. That's probably outside of my job scope, so I'm not sure
6 how that process would actually happen.

7 Q. It's been suggested that a person who already has -- well,
8 let me lay some foundation.

9 Have you ever heard of the concept of a cooling-off
10 period for a firearm purchase?

11 A. Yes.

12 Q. What's your understanding of that concept?

13 A. Basically the idea behind that concept, or at least my
14 understanding is, that it would allow a person to rethink
15 potential bad acts they may be planning, or something like
16 that if they were forced to delay the acquisition of a weapon
17 that they were trying to acquire.

18 Q. It's been suggested that for a person who already has a
19 firearm, a cooling-off period really could not have an effect
20 in terms of reducing violence. Are you aware of any
21 situations where the cooling-off effect could still be
22 possible if a person already has a gun?

23 MR. KILMER: Objection. Calls for speculation.

24 THE COURT: Sustained. Foundation.

25 BY MR. EISENBERG:

1 Q. Are you aware of any situations where a person who already
2 has a firearm acquires a new firearm and uses the new firearm
3 to commit an act of violence?

4 A. Yes.

5 Q. Are you aware -- let me rephrase it.

6 How could it be the cooling-off period that could
7 have an effect on whether that person commits a violent act --

8 MR. KILMER: Objection. Calls for --

9 MR. EISENBERG: -- with the new firearm.

10 MR. KILMER: Objection. Calls for speculation.

11 THE COURT: Overruled. Go ahead.

12 THE WITNESS: If someone has, let's say, a single
13 shot .22 rifle or maybe a revolver, or something like that,
14 and they were planning on doing something outlandish and
15 illegal with those weapons, or their existing pool of weapons,
16 they may seek to acquire something that they could do more
17 harm with, maybe a semiautomatic or maybe something more
18 powerful along the lines of a rifle or shotgun or something
19 like that. And you can purchase multiple long guns, for
20 example, in one transaction, so they might want to buy a clump
21 of weapons or a group of weapons on a successive purchase if
22 they already have, say, one or two. So they could arm
23 themselves more, I guess, is my final there.

24 MR. KILMER: I renew my objection, Your Honor. Move
25 to strike. The initial answer was whether or not he had

1 personal knowledge of somebody using a new firearm to commit
2 the violent act. The previous testimony was all speculation
3 based on a hypothetical person.

4 THE COURT: All right. Response?

5 MR. EISENBERG: I guess I can ask him more questions
6 to try to pin it down to a situation.

7 THE COURT: All right. I'll go ahead and sustain the
8 objection. Go ahead.

9 BY MR. EISENBERG:

10 Q. Special Officer Graham, are you merely speculating about
11 situations, or are there situations that you're aware of in
12 your law enforcement experience that are like that?

13 A. The one thing that I can think of, there is a shooting
14 that occurred in the Cupertino area of the Bay Area in
15 California. It was an individual that shot and killed
16 people -- I think it was at a rock quarry, or something like
17 this. He had lawfully purchased some firearms, and at least
18 one, and then he acquired more. So I think that was
19 responsive to your question in the way in which you phrased
20 it. And I was thinking about that specific shooting incident.

21 Q. I'd like to speak now about exemptions to the
22 Waiting-Period Law. Are you aware that there are statutory
23 exemptions to the Waiting-Period Law?

24 A. Yes.

25 Q. Are you aware that there is an exemption for peace

1 officers?

2 A. Yes.

3 Q. And you testified before that you are a peace officer?

4 A. Yes.

5 Q. So does that mean that you can go into a gun store and
6 just buy a gun any time you want and walk out the door with
7 it?

8 A. No.

9 Q. Why not?

10 A. It would require basically a department letterhead-type
11 letter, which would then have to indicate that my chain of
12 command, specifically head of agency was okay with me
13 acquiring the weapon or leaving the same day with it. And
14 there's going to be certain other verbiage in the letter that
15 has to be specific to the gun involved.

16 Q. How fast can you obtain one of these letters?

17 A. It doesn't happen very often at the California Department
18 of Justice.

19 Q. Have you ever come across a situation where, you know, you
20 saw a gun that you wanted to buy, and you took advantage of
21 the -- of the exemption that you have, and you just bought it
22 and walked out the store?

23 A. Yeah, probably over five years ago, maybe between five and
24 ten years ago.

25 Q. Is it something that occurs on a regular basis for you?

1 A. No.

2 Q. Are you aware of an exemption for dealers and the firearms
3 from the Waiting-Period Law?

4 A. Yes.

5 Q. What's your understanding of the dealer exemption?

6 A. Basically dealers can transfer weapons from themselves to
7 another fully licensed dealer. They don't have a waiting
8 period. A dealer can transfer weapons to himself in a sense
9 like, basically, initiate a DROS Dealer Record of Sales to
10 himself. And those are the two kind of most common ones.

11 Q. You indicated that people in the Bureau of Firearms do
12 dealer inspections sometimes unannounced; correct?

13 A. Yes.

14 Q. Do you ever do inspections unannounced at just ordinary
15 people's houses?

16 A. Inspect -- what would I inspect someone for?

17 Q. To go see if someone has a firearm in his or her house?

18 A. No, we don't randomly just show up to someone's house to
19 inspect an average system.

20 Q. But that is something you could do with a dealer?

21 A. Yeah, if they're open for business. There are certain
22 conditions to that. If they're open for business on certain
23 days, certain hours of the day, that's when the door is open
24 in a sense.

25 Q. Are you aware of the exemption for Dangerous Weapons

1 Permit holders?

2 A. Yes.

3 Q. What's your understanding of that exemption?

4 A. Dangerous Weapons Permits holders, I may call them DWP's
5 for slang or brevity. A DWP holder are special weapons permit
6 holders folks. They can acquire weapons without the 10-day
7 wait. They've got special -- basically a more in-depth
8 background check than most even normal dealers do.

9 Q. How are you aware that there is a special background check
10 for them?

11 A. The agent that I spoke of earlier that I supervise, one of
12 his jobs is to actually do the background checks in Northern
13 California for the Dangerous Weapons Permits applications.

14 Q. And you're the direct supervisor of this person?

15 A. Yes.

16 Q. Do you have in-depth knowledge of any of the other
17 exemptions?

18 A. I think those are probably the two that come to mind that
19 I deal with, I'm most comfortable talking about.

20 MR. EISENBERG: Okay. I have no further questions at
21 this time.

22 THE COURT: Okay, it's about 4:15. We've begun going
23 a little bit longer than the normal hour and a half because I
24 took a break a little bit earlier. I'm going to suggest that
25 we do cross-examination starting tomorrow morning.

1 MR. KILMER: That's acceptable, Your Honor, for the
2 plaintiffs. Thank you.

3 THE COURT: All right. Let me ask just for
4 scheduling purposes. We'll finish up with the witness here,
5 and then you have another witness that will be here tomorrow
6 morning; is that correct?

7 MR. EISENBERG: That's right, Your Honor.

8 THE COURT: And then I would like to spend -- I don't
9 know if there are other witnesses. Of course, there could be
10 either further testimony on behalf of plaintiffs' side or
11 rebuttal, whatever. But in terms of the exhibits, I would
12 like to then spend sometime with you folks going over the
13 exhibits.

14 MR. KILMER: That sounds like a good idea,
15 Your Honor. I mean, if we can finish with Mr. Lindley
16 tomorrow morning, and barring some unforeseen circumstances,
17 I'm not certain, but I'd like to reserve the right that
18 plaintiffs won't have any more witnesses, then we can spend
19 the afternoon dealing with the rest of the exhibits.

20 MR. EISENBERG: Would that include the request for
21 judicial notice exhibits, Your Honor?

22 THE COURT: Yes, because that would be all part of
23 what I would accept or not accept in terms of the exhibits.

24 MR. KILMER: That's acceptable to the plaintiffs.
25 Your Honor.

1 MR. EISENBERG: Certainly acceptable to the defense.
2 Certainly acceptable to the defense, Your Honor.

3 THE COURT: Okay, we'll go ahead and resume, then,
4 tomorrow morning at 9:00.

5 MR. KILMER: Thank you, Your Honor.

6 THE COURT: If you can return here at 9:00 tomorrow
7 morning for further testimony.

8 THE WITNESS: Yes, sir.

9 THE COURT: Okay, thank you.

10 You mentioned some stipulations, and maybe you can
11 let us know so we won't be worried about those over the
12 evening. If you can just give it to us informally.

13 MR. KILMER: I think it's in the nature of the
14 earlier ones where we're withdrawing some objections so that
15 we'll agree that some exhibits are admissible. I think that
16 the defendants are withdrawing some exhibits, so that we don't
17 need to keep our objections going.

18 THE COURT: Okay.

19 MR. KILMER: We can provide the Court with that first
20 thing tomorrow morning.

21 THE COURT: Okay. All right.

22 MR. KILMER: It's not very controversial. These last
23 ones aren't very controversial.

24 MR. CHANG: That's fine with the defense, Your Honor.
25 We can get that to you tomorrow morning.

1 THE COURT: Why don't we do that first thing tomorrow
2 morning, and that way, I'll know what we might be dealing with
3 when I finish the testimony.

4 MR. KILMER: Thank you.

5 (Court was adjourned at 4:19 PM.)

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