

Exhibit 5

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

DICK ANTHONY HELLER, *et al.*

Plaintiffs

v.

THE DISTRICT OF COLUMBIA, *et al.*

Defendants

)
)
)
)
) CASE: 1:08-cv-01289
) Hon. Ricardo M. Urbina
)
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)
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DECLARATION OF MARK OVERSTREET

I, Mark Overstreet, do hereby swear or affirm:

1. I am employed as the Research Coordinator for the National Rifle Association of America, Inc., in Fairfax, Virginia. One of my functions is to collect research, primarily from United States government sources, on the production and availability of firearms in the United States.

2. The following addresses estimated production of AR-15 type rifles from 1986 to the present. It also addresses production of detachable ammunition magazines.

AR-15 Type Rifle Production

3. The term "Colt AR-15 series" refers to different models of a rifle manufactured by Colt's Defense and its predecessor companies. "AR-15" is commonly used as a generic term to describe the same or similar rifles made by other manufacturers.

4. AR-15s are semiautomatic, meaning that they are designed to fire only once when the trigger is pulled. They have the capacity to accept a detachable magazine. Standard magazines hold 20 or 30 rounds of ammunition, but magazines of other

capacities are also available. They also have a pistol grip typically 3¾ to 4 inches in length that protrudes at a rearward angle beneath the action of the rifle.

5. Since Colt's introduced the AR-15 SP-1 in 1963, roughly two million AR-15s have been manufactured. This estimate is based upon annual firearm manufacturing and export statistics published by the Bureau of Alcohol, Tobacco, Firearms and Explosives ("ATF") for the years 1986-2007, as set forth below.¹

6. 1963-1985. Data for these first 23 years of AR-15 production are not reflected herein. Colt's and other manufacturers produced AR-15s in this time frame.

7. 1986-2007. In these years, more than 1.62 million AR-15s were made and not exported by the most prolific AR-15 manufacturers.² The following manufacturers, whose rifle production is limited exclusively or almost exclusively to AR-15s, reported the following numbers of rifles made and not exported produced during years 1986-2007:

Armalite	105,364
Bushmaster/Quality Parts	526,252
Colt's	496,937
CMMG	4,753
DPMS	174,623
Eagle Arms	7,107
Essential Arms	31,552
Olympic	99,332
PWA	33,807
Rock River	80,538
Sabre Defense	5,797
Sendra	3,301
Stag Arms	57,162
Total	1,626,525

¹ The annual reports for 1998-2007 are available at www.atf.gov/firearms/stats/index.htm. Reports for 1986-1997 are available in hard copy from ATF.

² See attached spreadsheet for annual production per manufacturer. ATF reports do not show model names, but show firearm types (rifle, shotgun, pistol, revolver, and miscellaneous). Manufacturers listed are known to make primarily AR-15 type rifles. The total is an undercount; it does not include AR-15s made by Smith & Wesson, Remington, and other prolific rifle manufacturers whose AR-15 production cannot be distinguished from their total rifle production within the ATF reports.

8. 2008-2009: Firearm sales have increased dramatically in recent months. The FBI reports that background checks processed through the National Instant Criminal Background Check System (NICS), which are conducted for purchases of firearms by consumers from dealers, increased approximately 11.4 percent in 2007 compared to 2006; approximately 13.7 percent in 2008 compared to 2007; and approximately 25.6 percent during the first five months of 2009 compared to the same period in 2008.³

9. Estimated AR-15 Production, 1986-2009. If the trend for AR-15 rifle production in 2008-2009 is identical to that for NICS transactions for the same period, nearly 340,000 AR-15s were made and not exported in 2008 and the first five months of 2009. That figure, added to the 1.62 million-plus noted earlier, implies a conservative estimate of nearly 1.97 million AR-15s for the period 1986-May 2009. If the 25.6 percent increase for the first five months of 2009 continues throughout the year, a projected 2,145,162 AR-15 type rifles will have been produced and not exported from 1986 through 2009. See attached spreadsheet.

10. AR-15 Production Relative to That of All U.S.-Made Firearms and Rifles. In 2007, there were 3,677,387 firearms (excluding fully-automatic firearms) made in the U.S. and not exported. Of these, 1,401,251 were rifles, including at least 202,213 AR-15s. Thus, AR-15s accounted for at least 5.5 percent of firearms, and at least 14.4 percent of rifles, made in the U.S. for the domestic market that year.

11. U.S.-Made Firearms as a Percentage of All Newly-Manufactured Firearms Available for Commercial Sale in the United States. Since at least 1986, U.S.-made firearms have accounted for roughly three-fourths of all new firearms available on the

³ FBI monthly and yearly NICS transaction data are available online at www.fbi.gov/hq/cjisd/nics/nics_checks_total.pdf.

commercial market in the United States. Even with the addition of imported firearms to the above calculations, AR-15s account for a significant percentage of newly-manufactured firearms available for commercial sale in the United States.

Magazine Production

12. The following addresses certain aspects of the manufacture and importation of ammunition feeding devices for firearms. Ammunition feeding devices that have a capacity of more than 10 rounds of ammunition are primarily detachable box magazines designed for semiautomatic rifles or semiautomatic pistols, or tubular magazines designed for .22 rimfire caliber rifles.

13. *Pistol Magazines*. Annual firearm manufacturing and export statistics published by ATF indicate that semiautomatic pistols rose as a percentage of total handguns made in the United States and not exported, from 52 percent of 1.3 million handguns in 1986, to 77 percent of 1.5 million handguns in 2007.⁴

14. Standard magazines for very commonly owned semiautomatic pistols hold up to 17 rounds of ammunition. In 2007, about two-thirds of the 1.2 million pistols made in the United States and not exported were in calibers typically using magazines that hold more than 10 rounds.

15. In recent decades, the trend in semiautomatic pistols commonly acquired by private citizens in the United States has been away from those designed to hold 10 rounds or fewer, to those designed to hold more than 10 rounds. This tracks with trends among law enforcement personnel. Before the widespread adoption of semiautomatic pistols by law enforcement agencies, most law enforcement officers carried five- or six-shot

⁴ 1998-2007 annual reports available online at www.atf.gov/firearms/stats/index.htm. Reports for 1986-1997 were provided in hard copy form by ATF.

revolvers. Today, law enforcement officers typically carry pistols the standard magazines for which hold more than 10 rounds, such as the Glock 17, the standard magazines for which hold 17 rounds. Pistols commonly carried by law enforcement officers are also widely owned by private citizens in the United States.

16. The same trend has developed relative to pistols issued in our armed forces, which are also commonly owned by private citizens in the United States. The standard magazine for the armed forces' Beretta M9 9mm service pistol holds 15 rounds. The M9 replaced the M1911 .45 caliber pistol, the standard magazine for which holds seven rounds.

17. Rifle Magazines. Beginning with the M1 Carbine, introduced in the 1940s, rifles capable of accepting detachable magazines holding more than 10 rounds, and typically equipped with such magazines, have been increasingly common among private citizens in our country. More than six million M1 Carbine series rifles have been made since their introduction in the 1940s, and the standard magazines for them hold 15 or 30 rounds.⁵ As noted above, there are roughly two million AR-15 type rifles, and they are typically sold with between one and three standard magazines. More than 800,000 Ruger Mini-14 series rifles have been produced since their introduction in 1974, and many are equipped with standard magazines of 20 or 30 rounds.⁶ Numerous other rifle makes and models also have the capacity to accept, and are commonly equipped with, magazines holding more than 10 rounds.

⁵ Edward Clinton Ezell, *Small Arms of the World, 12th Edition*, Stackpole Books, 1983, p. 779, 784.

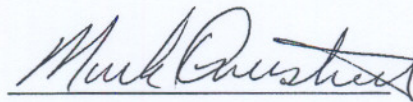
⁶ Sturm, Ruger website, rifle serial numbers by year, <http://www.ruger-firearms.com/Firearms/PS-SerialNumberHistory-RI.html#>.

18. Magazine Production Data. There are no reliable published figures for the number of magazines that are made or imported each year. ATF does not require manufacturers to report magazine production. In addition to magazines sold with firearms, many more magazines are widely available on the open market.

19. Estimates are set forth in Christopher S. Koper, *An Updated Assessment of the Federal Assault Weapons Ban: Impacts on Gun Markets and Gun Violence, 1994-2003* (Report to the National Institute of Justice, U.S. Dep't. of Justice 2004), available at http://www.sas.upenn.edu/jerrylee/research/aw_final2004.pdf. Koper reported that, as of 1994, 18 percent of civilian-owned firearms, including 21 percent of civilian-owned handguns, were equipped with magazines holding over ten rounds, and that 25 million guns were equipped with such magazines. *Id.* at 1. Some 4.7 million such magazines were imported during 1995-2000. *Id.*

20. Koper further reported that, as of 1994, 40 percent of the semiautomatic handgun models and a majority of the semiautomatic rifle models manufactured and advertised before the ban were sold with, or had a variation that was sold with, a magazine holding over 10 rounds. *Id.* at 6.

I declare under penalty of perjury that the foregoing is true and correct.



MARK OVERSTREET

Date: July 23, 2009

AR-15 type rifle production, minus export, selected manufacturers, 1986-2007*

Data source: Bureau of Alcohol, Tobacco, Firearms and Explosives

Table compiled by Mark Overstreet, Research Coordinator,

NRA Institute for Legislative Action, Research and Information Division.

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	1986	1987	1988	1989	1990	1991	1992	1993	1994	1995	1996	1997
Armalite								1,822		1,194	2,658	5,420
Bushmaster			1,235	982	2,119	1,665	1,179	-2	24,868	1,241	8,192	10,782
Colt's	12,359	18,950	16,649	14,639	35,936	35,178	25,853	48,798	49,436	48,628	13,883	20,924
CMMG												
DPMS							11	83		104	159	1,358
Eagle Arms		477	495	4,071	606	982	476					
Essential Arms	1,870	1,213	2,151	10,241		6,169	2,520	2,798				
Olympic			2,520	5,648	257	236	1,593	3,035	14,441	1,357	2,124	3,937
PWA		2,317		7,753	4,053	1,613	1,527	3,702	10,864	1,978		
Rock River												
Sabre Defense												
Sendra	1,539	1,277		485								
Stag Arms												
Annual Total	15,768	24,234	23,050	43,819	42,971	45,843	33,159	60,236	99,609	54,502	27,016	42,421
												Manufacturer
	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007		Total
Armalite	6,557	7,946	8,247	8,163	10,841	12,903	9,729	7,349	10,475	12,060		105,364
Bushmaster	25,098	64,374	39,926	31,179	44,795	45,286	44,028	65,001	57,031	57,273		526,252
Colt's	29,564	25,533	27,271	7,866	13,616	17,364	13,165	2,210	8,480	10,635		496,937
CMMG								327	2,161	2,265		4,753
DPMS	3,678	6,834	5,541	4,666	7,630	5,543	11,389	21,923	47,435	58,269		174,623
Eagle Arms												7,107
Essential Arms							450	1,089		3,051		31,552
Olympic	4,325	7,404	3,653	5,379	6,884	7,005	6,395	8,227	7,319	7,593		99,332
PWA												33,807
Rock River		330	191	1,244	2,362	14,690	8,742	12,816	17,538	22,625		80,538
Sabre Defense								1,502	1,268	3,027		5,797
Sendra												3,301
Stag Arms							2,008	7,837	21,902	25,415		57,162
Annual Total	69,222	112,421	84,829	58,497	86,128	102,791	95,906	128,281	173,609	202,213	Grand Total	1,626,525

* Manufacturers listed produce exclusively or nearly-exclusively AR-15 type rifles. Not all manufacturers of AR-15 type rifles are listed.

Note: The nation's two largest firearm manufacturers, Remington and Smith & Wesson, also produced AR-15 type rifles in 2008 and 2009.

Note: The nation's third largest firearm manufacturer, Sturm-Ruger, also manufactured AR-15 type rifles in 2009.

AR-15 type rifle production, minus export, selected manufacturers, 1986-2007*

Data source: Bureau of Alcohol, Tobacco, Firearms and Explosives

Table compiled by Mark Overstreet, Research Coordinator,

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Total U.S. firearm production, minus exports

		% Increase
2006	10,036,933	
2007	11,177,335	11.36%
2008	12,709,023	13.70%
Jan.-May 2008	4,831,693	
Jan.-May 2009	6,067,141	25.57%

Projected increase in AR-15 type rifle production, minus exports, for 2008 and Jan.-May 2009, and projected total, 1986-May 2009.

	AR-15 type rifles
production, minus exports, prolific manufacturers, 1986-2007	1,626,525
2008, with 13.7% increase	229,923
first five months 2009, with 25.6% increase	109,763
2009, with 25.6% increase	288,714
projection, 2008-May 2009	339,686
projection, 1986-May 2009	1,966,211
projection, 1986-2009	2,145,162