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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

JOHN B. COOKE, Sheriff of Weld County, et al.,)	
)	
)	Civil Action No.
Plaintiffs,)	13-CV-1300-MSK-MJW
)	
vs.)	
)	
JOHN W. HICKENLOOPER, Governor of the State of Colorado,)	
)	
Defendant.)	

.

DEPOSITION OF PATRICIA MAISCH

November 6, 2013

Tucson, Arizona

.

Transcript Prepared by Kimberley W. Gauthier

Certified Court Reporter No. 50767

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A P P E A R A N C E S

* * * * *

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For Plaintiffs Disabled Citizens, Outdoor Buddies,
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Farm Bureau and Women for Concealed Carry

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By Mark Grueskin, Esq.

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For the Deponent

1 BE IT REMEMBERED that pursuant to notice,
2 the deposition of Patricia Maisch was taken at the
3 offices of Colville & Associates, 1309 East Broadway,
4 in the City of Tucson, County of Pima, State of
5 Arizona, before Kimberley W. Gauthier, a Certified
6 Court Reporter in and for the State of Arizona, on the
7 6th day of November, 2013, commencing at the hour of
8 11:06 a.m. on said day, in a certain cause now pending
9 in the United States District Court, District of
10 Colorado.

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I N D E X

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E X H I B I T S

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MS7	Transcription of Statement	8

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PATRICIA MAISCH,

having been first duly sworn, was examined and testified on her oath as follows:

EXAMINATION

BY MR. WESTFALL:

Q. Good morning, Ms. Maisch.

A. Good morning.

Q. Before we get started, I'd like to give you -- I'm sure you've heard from your lawyer and the lawyer from the attorney general's office who I am, but I want to make sure you do know who I am. My name is Richard Westfall. I'm with the law firm of Hale Westfall, a small firm in Denver. We represent a group of plaintiffs that are challenging the constitutionality under the second amendment of two pieces of legislation in Colorado, House Bill 1224, which regulates the size of magazines, and House Bill 1229, which expands the scope of background checks. That deals with a number of private transfers. The lead plaintiffs are a group of 55 sheriffs, and they're represented by a gentleman named Dave Kopel at the Independence Institute.

I represent a group of plaintiffs which are referred to essentially as the nonprofit plaintiffs. I represent the Colorado Farm Bureau. I

1 represent a disabled shooting organization that helps
2 people with disabilities go out and hunt and fish and
3 shoot. It's called Outdoor Buddies. I represent a
4 nonprofit organization in Northern Colorado that has a
5 program that uses firearms to help parents and their
6 children bond as a way of developing youth and
7 teaching firearm safety. That organization is called
8 Colorado Youth Outdoors. I represent the Colorado
9 Outfitters Association, and I represent two disabled
10 individuals who are paraplegics who use firearms and
11 are what we refer to as our disabled plaintiffs. So
12 that's the group I represent.

13 And again, we're challenging the
14 constitutionality of both House Bill 1224 and House
15 Bill 1229. So I wanted to make sure that you knew who
16 I am before we got started.

17 **A. Thank you.**

18 Q. Have you ever -- let's get your name and
19 where you live on the record, and then we'll go from
20 there. Please state your full name for the record.

21 **A. Patricia Rita Maisch.**

22 Q. And please spell all that.

23 **A. P-a-t-r-i-c-i-a, R-i-t-a, M-a-i-s-c-h.**

24 Q. And where do you live?

25 **A. Tucson, Arizona.**

1 Q. How long have you lived in Tucson?

2 A. **Since 1991.**

3 Q. And where did you live before that?

4 A. **I lived in Oracle, Arizona, which is a**
5 **distant suburb of Tucson.**

6 Q. How long did you live in Oracle?

7 A. **Since 1984.**

8 Q. Where before that?

9 A. **Actually, 1983.**

10 Q. Where before that?

11 A. **In South Padre Island, Texas for one year.**

12 Q. And where before that?

13 A. **Kansas City, Missouri for 10 years.**

14 Q. We'll stop there.

15 A. **Okay.**

16 Q. Where did you go to high school?

17 A. **Notre Dame High School in St. Louis,**
18 **Missouri.**

19 Q. Did you go to college?

20 A. **I have attended some college.**

21 Q. Where was that?

22 A. **Merrimack Community College, that's in St.**
23 **Louis Missouri, and Texas Southmost College, and the**
24 **Kansas City Art Institute.**

25 Q. Have you ever testified before?

1 **A. I have testified before the U.S. Senate and**
2 **before the Colorado Senate, if that's what you mean.**
3 **I've been in other court cases, but it was long ago.**

4 Q. Well, let's talk about the testimony before
5 the U.S. senate and the testimony before the Colorado
6 senate, and then we'll talk about the court cases.

7 **A. Okay. I have those with me.**

8 Q. And is that the written testimony that you
9 provided?

10 **A. Yes, this is my testimony before the U.S.**
11 **Senate. This is my testimony in front of the Colorado**
12 **Senate.**

13 MR. WESTFALL: Can you make copies for
14 me?

15 (Exhibits 6 and 7 were marked.)

16 Q. (By Mr. Westfall) Ms. Maisch, we've -- just
17 prior to the break, I'd asked you questions about your
18 testimony, testimony that you have given in previous
19 situations. You brought out two documents, and we
20 have marked them. One is MS6. And the reason I
21 marked it as 6 is because we're following the same
22 depositions that -- exhibits that we used with Mr.
23 Salzgeber earlier today. I just wanted to explain why
24 we're starting with MS6.

25 We've marked -- one of the documents

1 you brought out as MS6 is captioned, "United States
2 Senate Committee on the Judiciary, Testimony before
3 the Subcommittee on Crime and Terrorism. The Fix Gun
4 Checks Act: Better State and Federal Compliance,
5 Smarter Enforcement, November 15th, 2011, Statement of
6 Patricia Maisch." Now, what we have marked as Exhibit
7 6, this was, in fact, the testimony you gave before
8 the senate judiciary committee?

9 **A. It is.**

10 Q. And it was on November 15, 2011?

11 **A. I believe that's correct.**

12 Q. As to congress, either the House of
13 Representatives or the Senate, have you offered or
14 given any other testimony, other than the testimony
15 that we've marked as Exhibit MS 6?

16 MR. GRUESKIN: Objection, vague.

17 Q. (By Mr. Westfall) You can go ahead.

18 **A. No.**

19 Q. While you were back in Washington, did you
20 speak with either senators, or their staff, or members
21 of the house or their staff?

22 **A. Yes.**

23 Q. And what did you speak to them about?

24 **A. About the need to improve the background**
25 **checks, and about getting states to comply with the**

1 **do-not-sell list. I'm not exactly sure what the name**
2 **of that is, but for domestic abusers, for felons, for**
3 **people who do not deserve to have a gun, or should not**
4 **have a gun.**

5 Q. Other than background checks and the do-not-
6 sell list that you've just described, were there any
7 other issues that you -- involving gun regulations
8 that you spoke to members of either the house or the
9 Senate or their staff?

10 A. **No.**

11 Q. Now, turning to Exhibit MS7, what is Exhibit
12 MS7?

13 A. **It is the testimony that I did before the**
14 **Colorado Senate in the spring of this year. I do not**
15 **remember that exact date.**

16 Q. But it was this year, 2013?

17 A. **Yes, on your Gun Legislation Day.**

18 Q. I believe at the bottom of what I hope is
19 the -- we finally figured out the first page of
20 Exhibit MS7 refers to House Bill 1224. Do you see
21 that?

22 A. **I do.**

23 Q. And that was the piece of legislation you
24 were testifying about?

25 A. **Yes.**

1 Q. How did you come to testify on House Bill
2 1024?

3 A. I was invited to do that, and I accepted.

4 Q. By who?

5 A. As a matter of fact, I don't remember. It
6 was one of the advocacy groups in Colorado.

7 Q. You don't remember the name of the advocacy
8 group?

9 A. I don't, and I didn't bring that with me. I
10 can find that for you, I just don't have it --

11 Q. You can't recall here today?

12 A. I can't.

13 Q. Do you recall why they asked you to come
14 testify?

15 A. Because they felt like I could speak to high
16 capacity magazines.

17 Q. How do you define high capacity magazine?

18 A. I am not a gun person, so I -- from my
19 experiences, I believe that anything over 10 is
20 actually high capacity.

21 Q. Why do you draw the line at 10?

22 A. From what I've heard; hearsay.

23 Q. Other than your testimony before the United
24 States Senate in November 2011 and your testimony
25 before the Colorado Senate memorialized by Exhibit

1 MS7, have you given any other testimony in a
2 legislative context?

3 **A. No.**

4 Q. Let's talk about testimony in court. Have
5 you ever been involved in a court proceeding in which
6 you testified?

7 **A. In a car accident.**

8 Q. Just once?

9 **A. Yes.**

10 Q. Do you remember when that -- I take it it was
11 a court proceeding, a trial?

12 **A. It was, about 1965.**

13 Q. A while ago?

14 **A. Yes.**

15 Q. Were you the plaintiff, the defendant, or a
16 witness?

17 **A. A witness.**

18 Q. So you testified at the trial involving a car
19 accident in 1965 as a witness?

20 **A. Approximately 1965, yes.**

21 Q. Any other trials?

22 **A. No.**

23 Q. Have you ever had your deposition taken
24 before?

25 **A. I don't believe so, no.**

1 Q. Do you know what a deposition is?

2 A. **I believe it's an exploration of facts before**
3 **a trial.**

4 Q. That's a good characterization. Has this
5 process been explained to you?

6 A. **Yes.**

7 Q. Is there anything -- by who?

8 A. **By Mr. Lee and Mr. Grueskin.**

9 Q. Is there anything today that would prevent
10 you from testifying truthfully?

11 A. **Absolutely not.**

12 Q. Are you employed today, Ms. Maisch?

13 A. **Self-employed.**

14 Q. Pardon me?

15 A. **Self-employed.**

16 Q. What do you do?

17 A. **My husband and I have a heating and cooling**
18 **company.**

19 Q. How long have you had that heating and
20 cooling company?

21 A. **Since 1984.**

22 Q. Do you own a firearm today?

23 A. **No.**

24 Q. Have you ever owned a firearm?

25 A. **No.**

1 Q. Have you ever shot a firearm?

2 A. No.

3 Q. Have you ever held a firearm?

4 A. Yes.

5 Q. When?

6 A. My father had a rifle, and I had held that.

7 Q. But you never shot it?

8 A. I never shot it. I don't believe I've ever
9 held another gun.

10 Q. When you say you held your father's rifle, I
11 take it you were young at the time?

12 A. Probably teenage. It was actually a shotgun,
13 not a rifle.

14 Q. Does your father own firearms?

15 A. A shotgun.

16 Q. Just the shotgun?

17 A. Yes.

18 Q. No other guns that you can recall?

19 A. No other guns.

20 Q. Did he hunt with it?

21 A. Yes.

22 Q. What did he hunt with it?

23 A. Deer.

24 Q. Where was this -- where did you grow up, I
25 should say?

1 **A. I grew up in St. Louis, Missouri.**

2 Q. Does your husband own firearms?

3 **A. No.**

4 Q. To the best of your knowledge, has your
5 husband ever owned firearms?

6 **A. No.**

7 Q. No, meaning to the best --

8 **A. To the best of my knowledge.**

9 Q. -- of your knowledge, he has not owned any
10 firearms?

11 **A. Correct.**

12 Q. Now, Ms. Maisch, you've been listed as a
13 potential witness in this case. "This case" meaning
14 the case that I described for you that I'm involved
15 with, the constitutional challenge of House Bill 1224
16 and House Bill 1229. Do you know why you were listed
17 as a witness in this case?

18 **A. I would suspect because I was a part of an
19 active shooting.**

20 Q. And that shooting is the shooting involving
21 Congresswoman Giffords on January 8, 2011?

22 **A. Yes.**

23 Q. You say you suspect. As best as you can
24 recall today, have you ever been told by either
25 Mr. Lee or anyone else involved with this case what

1 your testimony would entail?

2 **A. Just that it's possible that I might be**
3 **called to testify.**

4 Q. Have they talked about --

5 **A. My testimony about high capacity magazines.**

6 Q. What do you recall they've told you about
7 your testimony involving high capacity magazines?

8 **A. They really haven't told me anything, just**
9 **that there was a suit and that I may be called to**
10 **testify because of my testimony at the Colorado**
11 **Senate.**

12 Q. The scope of your testimony would entail your
13 experience with the January 8th, 2011 shooting?

14 **A. Yes.**

15 Q. Anything else, other than that incident?

16 **A. No.**

17 Q. We'll get to your testimony that you gave
18 with -- to the Senate judiciary committee, MS6, and
19 then MS7. But I'd like to cover first some newspaper
20 articles that have been written about the incident,
21 and use that as a way of asking you some questions to
22 get a better idea of your recollection of what
23 happened on January 8th. I covered these with Mr.
24 Saltzgeber earlier today.

25 The first exhibit you have in front of

1 you is marked as MS Exhibit 1. And it is a New York
2 Times -- it appears to be a New York Times article
3 dated January 9, 2011. Do you have that in front of
4 you, Ms. Maisch?

5 **A. I do.**

6 Q. I'd like to call your attention to the third
7 paragraph, and that paragraph reads, "And in what was
8 perhaps the only fortunate event of the day, the
9 spring on the second clip failed. Two other men in
10 the crowd lunged at the gunman and tackled him on the
11 ground, and Ms. Maisch, responding to shouts from the
12 crowd, grabbed the empty gun clip." Now, there's a
13 few facts in that paragraph that I want to get your
14 recollection of here today.

15 Let's start with the middle fact, if
16 you will. It says that two other men in the crowd
17 lunged at the gunman and tackled him to the ground.
18 Who were those two gunman?

19 **A. Roger Salzgeber and Bill Badger.**

20 Q. And then it says, "and Ms. Maisch, responding
21 to shouts from the crowd, grabbed the empty gun clip."
22 Let me stop with the last three words, "empty gun
23 clip." Was the gun clip that you grabbed empty or
24 full?

25 **A. Full.**

1 Q. So that's not correct?

2 **A. That is incorrect.**

3 Q. Do you recall talking to a New York Times
4 reporter at the time of this incident?

5 **A. I recall talking to many reporters.**

6 Q. So the gun clip wasn't empty, it was full?

7 **A. That's correct.**

8 Q. Now, let's talk about the part here,
9 "Ms. Maisch, responding to shouts from the crowd."
10 Why don't we take a moment and just have you describe
11 what you recall from the moment that you first saw the
12 shooter -- from the moment the shooting started, and
13 when you -- up to and including the point where you --
14 did you, in fact, grab a gun clip?

15 **A. I did.**

16 Q. But it was a full gun clip?

17 **A. It was.**

18 Q. What was the capacity of that gun clip that
19 you picked up?

20 **A. I don't know.**

21 Q. Your best estimate here today, trying to do
22 the best we can as to how large or how small you
23 recall that magazine being, how large or how small was
24 it, and if you can, in the form of inches? Maybe
25 using the eight and a half dimension of the piece of

1 paper that we have in front of us, what's the best you
2 can recall as to the length of that magazine that you
3 recall picking up?

4 **A. It was shorter than eight and a half, and**
5 **less than three inches.**

6 Q. So shorter than eight and a half. And what
7 was the last thing you said? I'm sorry.

8 **A. Less than three inches wide.**

9 Q. You're talking the width of the magazine, not
10 the length of the magazine?

11 **A. The length was shorter than eight and a half.**
12 **The width, not the depth, was shorter than three**
13 **inches.**

14 Q. So width shorter than three, and the depth
15 then using the third dimension?

16 **A. I don't know. Probably three quarters of an**
17 **inch. I don't know.**

18 Q. I just wanted to get an approximation. Do
19 you believe the magazine was full? I take it there
20 was a -- certainly a cartridge in the top of the
21 magazine?

22 **A. The magazine was full.**

23 Q. How do you know that?

24 **A. Down the side of the magazine I believe was**
25 **an indicate -- was a space where you could see the**

1 **bullets, and you could see a bullet at the top and at**
2 **the bottom. I would like to strike the part about the**
3 **piece down the center, because I'm not sure of that**
4 **anymore. So I think that there was, but I'm not**
5 **positive, that there's an open space along the length**
6 **of it that you see bullets in.**

7 Q. That's as you recall here today?

8 **A. Yes.**

9 Q. Actually, let me ask you one more question on
10 Exhibit 1 before we go back to the event. And it
11 says, "In what was perhaps the only fortunate event of
12 the day, the spring on the second clip failed."

13 **A. I don't know that. That's not something that**
14 **I knew.**

15 Q. Okay. So you have no knowledge about whether
16 the spring on the second clip failed?

17 **A. That's correct.**

18 Q. I'd like to call your attention to Exhibit
19 MS2. I think I've got them in order. Do you have
20 that in front of you, Ms. Maisch?

21 **A. I do.**

22 Q. First of all, take a moment and tell me if
23 you've read this article before. It appears to be a
24 computer printout of an Arizona Daily Star article
25 dated January 10, 2011.

1 **A. I did read it, but some time ago.**

2 Q. Let's start on the beginning of this article
3 that appears as Exhibit 2. It reads, "Patricia Maisch
4 had a choice. She could run or she could fall to the
5 ground. A gunman was firing off shots in quick
6 succession, an initial pop, an instance of silence,
7 then a series of pops. Maisch chose to fall down.

8 As she remembers it, two men tackled
9 the shooter outside the Safeway store at North Oracle
10 and West Ina roads, pushing him to the ground beside
11 her. While the men grappled, someone was yelling to
12 get the gun. Maisch knelt over the gunman and went
13 for it. I see the gun. I'm starting to reach for it,
14 but I know I can't, remembers Maisch, the stately
15 woman of 61.

16 The gun was in or near the attacker's
17 right hand. His left hand was pulling a magazine out
18 of his pocket, an extended magazine that would give
19 him up to 33 more shots on the Glock nine millimeter
20 pistol. Already" -- turning to the top of page 2 --
21 "already a federal judge and five other people lay
22 dead or dying, and many more were wounded, including
23 U.S. representative Gabrielle Giffords, who was shot
24 in the head."

25 And the last paragraph I'm going to

1 read here is, "He pulls the magazine out and he drops
2 it, Maisch remembers. He's able to reach for it, but
3 I'm able to get to it first. So I have the magazine
4 now in my hand." Is what is contained in Exhibit MS2,
5 and is what I just read accurate --

6 **A. No.**

7 Q. -- based upon your recollection?

8 **A. No.**

9 Q. What would you correct?

10 **A. The extended magazine that would give him 33**
11 **more shots, it was not an extended magazine. It was**
12 **the standard magazine.**

13 Q. Do you know that?

14 **A. After the fact I was shown an extended clip.**

15 Q. By whom?

16 **A. By the U.S. Justice Department.**

17 Q. So somebody in the U.S. Department of Justice
18 showed you the extended magazine?

19 **A. Yes.**

20 Q. And I say the extended magazine, the one that
21 was actually used?

22 **A. No, an extended magazine.**

23 Q. An extended magazine?

24 **A. It may have been. I don't think so. But I**
25 **cannot tell you that it was the one that was used**

1 **there.**

2 Q. Yes, you don't know that for a fact?

3 **A. That's correct.**

4 Q. He showed you an extended magazine?

5 **A. Correct.**

6 Q. Was this part of his investigation?

7 **A. Yes.**

8 Q. Then he showed you a standard magazine?

9 **A. Yes.**

10 Q. Do you know how many rounds the standard
11 magazine had?

12 **A. I don't know that.**

13 Q. So he wanted you to -- for you to tell him,
14 as part of his investigation, whether this magazine
15 that you took possession of was either an extended
16 magazine or a standard magazine?

17 **A. I assume that.**

18 Q. You said the magazine was the standard
19 magazine?

20 **A. Correct.**

21 Q. Do you believe that to be true here today?

22 **A. I do.**

23 Q. Take a moment, and looking at the beginning
24 of the article on Exhibit 2, and what -- up to and
25 including the part we had just read, where we stopped

1 at the top of page 2. Besides the incorrectness of
2 the size of magazine that you took possession of, is
3 there anything else you would correct?

4 **A. No, I think it's accurate.**

5 Q. Where were you standing -- let me take a step
6 back.

7 What's your relationship with
8 Congresswoman Giffords?

9 **A. I am one of her constituents.**

10 Q. Have you worked on her campaign?

11 **A. No.**

12 Q. Have you ever contributed to her campaign?

13 **A. Not to that campaign. Actually no, I have**
14 **not contributed to her campaign.**

15 Q. Why were you there on January 8?

16 **A. I was there to thank for her for her work on**
17 **my behalf.**

18 Q. Had you met Congresswoman Giffords before?

19 **A. I had not.**

20 Q. So this was going to be your first time to
21 meet Congresswoman Giffords?

22 **A. Yes.**

23 Q. Now, it's my understanding the event was to
24 start at 10:00 that morning, correct?

25 **A. Yes.**

1 Q. What time did you get there?

2 **A. Approximately 9:30.**

3 Q. Were there other people in front of you in
4 the line? Actually, let me ask you this question:
5 Was there a line when you got there?

6 **A. There was not a line.**

7 Q. Were there other people there?

8 **A. There were.**

9 Q. When did the event start?

10 **A. Approximately 10:00.**

11 Q. Did a line form?

12 **A. A line did form.**

13 Q. Where were you in the line?

14 **A. I was at the very end.**

15 Q. Approximately how many people were in front
16 of you?

17 **A. Maybe 25. I don't know that for sure.**

18 Q. In that range?

19 **A. Uh-huh.**

20 Q. Do you recall when the shooting started?

21 **A. A few minutes after the event. I will tell
22 you I've heard it started at 10:10, but --**

23 Q. You've heard that after the fact?

24 **A. Yes.**

25 Q. Does that comport with your recollection?

1 **A. Approximately. I would say that's fairly**
2 **accurate.**

3 Q. Had you moved up in the line at all?

4 **A. No.**

5 Q. So at the time the shooting started, the
6 first couple of people were still up talking to
7 Congresswoman Giffords?

8 **A. Yes.**

9 Q. When did you first see the assailant?

10 **A. As he was walking down the sidewalk and**
11 **shooting.**

12 Q. When he was walking down the sidewalk
13 shooting?

14 **A. Uh-huh.**

15 Q. So you did not notice the assailant prior to
16 him commencing shooting?

17 **A. Correct.**

18 Q. How long after the shooting started did you
19 first see the assailant?

20 **A. A second or two.**

21 Q. Describe to the best of your recollection
22 from the moment you first noticed the assailant, to
23 what you recall happening up until the time that you
24 took possession of the standard magazine.

25 **A. Well, there was an initial shot, just as it**

1 **said in here, and a pause. And when that initial shot**
2 **went off, I knew it was a gunshot. It sounded like a**
3 **gunshot to me. And it was a couple of seconds after**
4 **that, that he was underneath the patio roof that**
5 **covered the sidewalk, that I noticed a figure moving**
6 **in my direction and shooting.**

7 Q. From the time the shooting started to the
8 time that Mr. Badger and Mr. Salzgeber tackled the
9 shooter, what's your best recollection of how long
10 that took?

11 A. **Seconds. I understand it to be approximately**
12 **20 seconds.**

13 Q. Is the shooter -- during this 20-second
14 interval, from the time the shooting began to the time
15 he was tackled -- to the time the shooter was tackled,
16 he was moving in your direction?

17 A. **Yes.**

18 Q. Did you move during this 20-second time?

19 A. **I laid down on the sidewalk. I did not move**
20 **out of my place in line, but I laid down on the**
21 **sidewalk.**

22 Q. You just laid down?

23 A. **Uh-huh.**

24 Q. Were you watching the attacker during this
25 entire time?

1 **A. No.**

2 Q. What were you looking at?

3 **A. I was looking at shadows in the sidewalk, or**
4 **on the line, and at the sidewalk.**

5 Q. I'm sorry. I couldn't hear that last part.

6 **A. And at the sidewalk.**

7 Q. And at the sidewalk. Did you actually see
8 Mr. Salzgeber and Mr. Badger tackle the assailant?

9 **A. No.**

10 Q. When did you first see the assailant after
11 you laid down on the sidewalk?

12 **A. When Bill Badger and Roger Salzgeber knocked**
13 **him down, essentially on top of me, right next to me.**

14 Q. So they tackled him, you turn your head and
15 you see the assailant?

16 **A. My head was already turned in that direction.**

17 Q. So they just came -- they -- I want to say
18 crashing down, but I'm saying I don't -- I'm trying to
19 find some term that's not value laden. The three of
20 them hit the ground as a result of the tackling?

21 **A. Bill Badger and Roger did not hit the ground,**
22 **that I know of, only the assailant. They forced him**
23 **to the ground.**

24 Q. They knocked him down?

25 **A. Yes.**

1 Q. But they didn't come down at the same time
2 with him?

3 A. Correct.

4 Q. So there's a moment then where you're looking
5 -- you're looking at the assailant, and Mr. Salzgeber
6 and Mr. Badger are standing above him?

7 A. Yes.

8 Q. Describe, then, from the moment that you
9 first saw him what happened until the time that he was
10 incapacitated?

11 A. Well, I didn't actually see -- I saw him
12 coming down the sidewalk. Then the first time I'm
13 able to see him up close --

14 Q. You see him coming down the sidewalk and he's
15 shooting, then you hit the ground?

16 A. Yes. So as soon as they had him on the
17 ground by me, I knelt up. And that's when I saw him
18 more completely.

19 A. Okay.

20 Q. At the time that you knelt up, where were Mr.
21 Salzgeber and Mr. Badger?

22 A. I believe that Mr. Salzgeber was right by me,
23 and Mr. Badger was on the left side of the shooter.

24 Q. Where was the shooter relative to you?

25 A. The shooter, when I knelt up, was secured on

1 **his right side. And when I knelt up, I was at the**
2 **small of his back.**

3 Q. You say the word "secured." He was secured
4 on his right side is what you said?

5 A. **Yes. Bill Badger and Roger Salzgeber had**
6 **forced him down, and he was laying on his right side.**
7 **The shooter was laying on his right side.**

8 Q. Where was his right arm?

9 A. **Outstretched.**

10 Q. Was he shooting with his right hand?

11 A. **Yes.**

12 Q. Where was the gun at the time that you knelt
13 up and saw that he was secured?

14 A. **In his right hand.**

15 Q. Was the gun physically in his right hand at
16 the time?

17 A. **I don't know that for a fact. I believe it**
18 **was.**

19 Q. Based on your recollection?

20 A. **Based on my recollection.**

21 Q. He was laying on his right side and his right
22 arm is outstretched?

23 A. **Yes.**

24 Q. And you believe the gun was in his hand, but
25 you don't know for certain?

1 **A. Yes.**

2 Q. Where was his left hand?

3 **A. His left hand was in his left jean pocket, or**
4 **his left -- I'm not sure if he had jeans or sweats on.**
5 **He had a pocket in his pants, and he was getting the**
6 **magazine out of that pocket.**

7 Q. Do you recall what pants he was wearing that
8 day?

9 **A. No.**

10 Q. When you say getting the magazine out of his
11 pocket, could you describe that, please?

12 **A. Put his hand in his pocket and came out with**
13 **a magazine.**

14 Q. So Mr. Salzgeber and Mr. Badger had not yet
15 incapacitated his left arm?

16 **A. Correct.**

17 Q. Okay. What happened next?

18 **A. He dropped the magazine, and I managed to get**
19 **it before he could.**

20 Q. Best as you can recall, what caused him to
21 drop the magazine?

22 **A. I don't have an opinion on that. I don't**
23 **know.**

24 Q. But you watched him drop it?

25 **A. Uh-huh.**

1 Q. And then you picked it up?

2 A. Yes.

3 Q. What did you do next?

4 A. I held the magazine in my hand. I put one
5 knee on each of his ankles to secure his ankles.

6 Q. So you were securing his ankles. Describe as
7 best you can recall what Mr. Salzgeber was doing and
8 what Mr. Badger was doing as you can recall here
9 today?

10 A. I can't tell you what each one of them were
11 doing. I can tell you where they were situated for
12 the most part, but I don't know who was doing what.

13 Q. Okay. Best as you can recall, where were
14 they situated?

15 A. Bill Badger --

16 Q. So you're on his ankles. You've got a knee
17 on each ankle?

18 A. Bill Badger is to the left of his head.
19 Roger Salzgeber is on the right side of his his body.
20 Maybe I shouldn't say head, but up on his --

21 Q. Is he laying facedown, the assailant?

22 A. No, he's secured on his right side.

23 Q. On his right side?

24 A. Yes.

25 Q. So you have his ankles, Mr. Salzgeber is on

1 his right side, Mr. Badger is on his left side?

2 **A. On the right of his body.**

3 Q. On the right side of his body?

4 **A. Yes, to the back.**

5 Q. He's laying on his right side?

6 **A. Yes. So Roger is at the back of his head or**
7 **in that general area.**

8 Q. Okay. And then Mr. Badger would be on his
9 front side because he's laying on his right side,
10 facing left?

11 **A. Yes.**

12 Q. How long did the three of you secure the
13 assailant in the configuration you just described?

14 **A. I stayed there only for a very short time,**
15 **because I noticed that Bill Badger had a head wound**
16 **and was bleeding. And I thought I needed to get a**
17 **compress and put it on his head. So I asked another**
18 **young man to take over kneeling or securing the**
19 **shooter's legs.**

20 Q. Do you know who that was?

21 **A. I do.**

22 Q. Who was that?

23 **A. Joe Zamudio.**

24 Q. How long from the time that you first put
25 your knees on the assailant's ankles, to the time that

1 you were relieved by Mr. Zamudio in securing his legs?

2 **A. I would say less than a minute.**

3 Q. What did you do then?

4 **A. I ran into Safeway, asked them for some**
5 **towels, came back out, put a compress on Bill's head**
6 **with paper towels.**

7 Q. Where was Bill Badger at that time?

8 **A. In the same spot that he was earlier.**

9 Q. So you were tending to Mr. Badger while he
10 was still continuing to incapacitate the assailant?

11 **A. Yes.**

12 Q. And was Mr. Zamudio then still continuing to
13 restrain the legs and ankles of the assailant?

14 **A. Yes.**

15 Q. Did anybody else besides Mr. -- you, Mr.
16 Zamudio, Mr. Badger and Mr. Salzgeber, take part in
17 incapacitating the assailant?

18 **A. Not to my knowledge.**

19 Q. So you come back out of the Safeway; you
20 attend to Mr. Badger's wound as you've just described?

21 **A. Yes.**

22 Q. And he and Mr. Salzgeber and Mr. Zamudio all
23 are continuing to incapacitate the assailant?

24 **A. Yes.**

25 Q. Did they continue to incapacitate the

1 assailant until law enforcement arrived?

2 **A. Yes.**

3 Q. How long did it take from the time that they
4 first tackled the assailant to the time law
5 enforcement arrived?

6 **A. I don't know that for sure. Approximately**
7 **five minutes.**

8 Q. That's your best estimate?

9 **A. That's my best estimate.**

10 Q. At that time that you're tending to Mr.
11 Badger, where was the magazine that you had taken from
12 the assailant?

13 **A. In my hand.**

14 Q. So you were holding onto the magazine with
15 one hand and attending to Mr. Badger with the other
16 hand?

17 **A. Yes.**

18 Q. You did that until law enforcement arrived?

19 **A. Yes.**

20 Q. Once law enforcement arrived, what happened
21 next?

22 **A. They secured the shooter and took him away.**
23 **I gave the magazine to the female officer. There was**
24 **a male deputy and a female deputy that arrived on the**
25 **scene first, and I gave the magazine to the female**

1 **officer.**

2 Q. That was shortly after law enforcement
3 arrived?

4 **A. Yes.**

5 Q. Let's turn your attention to Exhibit MS7.
6 Again, this is your testimony before the Colorado
7 State Senate?

8 **A. Uh-huh.**

9 Q. Let's turn to the second page of that
10 document. And the actual --

11 MR. GRUESKIN: Let me just clarify.
12 The references to speaking to the Colorado State
13 Senate -- in fact, I believe it was the committee
14 instead of the full Senate, just for the record.

15 MR. WESTFALL: Yes. Nobody testifies
16 before the full Senate.

17 MR. GRUESKIN: Exactly, but I just
18 thought it would be helpful.

19 MR. WESTFALL: I would note
20 Mr. Grueskin's clarification that the testimony before
21 the Colorado State Senate is almost always before a
22 committee if it involves testimony by a nonmember of
23 the body.

24 Q. (By Mr. Westfall) Do you recall which
25 committee you testified before?

1 **A. No.**

2 Q. Now, just so the record is clear, I think
3 we've got the pagination right. Exhibit MS7 consists
4 of four pages, for purposes of this deposition. Page
5 number 1 contains the pagination of 0028 and 0029.
6 The second page of Exhibit MS7 contains pagination
7 0030 and 0031. The third page of Exhibit MS7 contains
8 what appears to be the pagination 0032 and 0033. And
9 the fourth page of Exhibit MS7 contains the pagination
10 0034 and 0035. Does that appear to be correct,
11 Ms. Maisch?

12 **A. Yes.**

13 Q. How did you get Exhibit MS7?

14 **A. I asked Debbie Bendel in Lee's office, or in
15 the Attorney General's office of Colorado to forward
16 it to me, since it was actually what I said, and not
17 necessarily the remarks that I had prepared exactly.**

18 Q. Okay. So you requested it and they provided
19 it to you?

20 **A. Yes.**

21 Q. Okay. Now, going to the second page of
22 Exhibit MS7, I'd like to call your attention to the
23 middle of the page. It would be beginning at line
24 nine of page -- what appears to be pagination 0030,
25 and it's a paragraph that begins, "You have likely

1 been bombarded with numbers and statistics." Do you
2 see that?

3 **A. I do.**

4 Q. And that reads -- that entire paragraph
5 reads, "You have likely been bombarded with numbers
6 and statistics, but I want you to think about numbers
7 that mean a great deal to me and the other Tucson
8 survivors. 33 is the number of bullets discharged
9 into the crowd from a single extended magazine. 13 is
10 the number of innocent who lay on the cold sidewalk
11 that day with physical wounds, many life-threatening."
12 Did I read that correctly?

13 **A. Yes.**

14 Q. This was your testimony?

15 **A. Yes.**

16 Q. And I'd like to focus the attention on the
17 sentence, "33 is the number of the bullets discharged
18 in the crowd from a single extended magazine." Did
19 you count the number of bullets that were discharged
20 at the time of the incident?

21 **A. No, that's from FBI information, or the U.S.**
22 **Justice Department. I'm not sure, but it's --**

23 Q. One of the law enforcement agencies you dealt
24 with?

25 **A. Yes, a law enforcement agency.**

1 Q. They told you that that 33 rounds were
2 discharged?

3 **A. Yes.**

4 Q. Were any more rounds discharged besides --
5 beyond 33, based upon what they told you?

6 **A. I don't believe so.**

7 Q. Do you have any recollection that more than
8 33 were discharged?

9 **A. I did not count them.**

10 Q. The next paragraph down, "Six is the number
11 of innocents who were brutally slaughtered on that
12 some cold sidewalk in front of the Safeway. 19 is the
13 number of seconds it took that young man with the gun
14 to slaughter six, physically -- slaughter six,
15 physically wound 13, and emotionally wound countless
16 others." So you say here 19 seconds. And I think
17 your previous testimony was approximately 20 seconds?

18 **A. Yes, they said it was less than 20 seconds.**

19 Q. "They" meaning law enforcement?

20 **A. Yes.**

21 Q. So law enforcement informed you it was less
22 than 20 seconds?

23 **A. Yes.**

24 Q. Do you know how they knew; did they tell you?

25 **A. No.**

1 Q. The next paragraph, "When those 19 seconds of
2 rapid fire turned to the 20th second, with a momentary
3 pause in a firing, two brave men, Richard" --

4 A. I --

5 Q. Roger Salzgeber --

6 A. **Yeah, I corrected that.**

7 Q. Corrected. "And Bill Badger tackled that
8 deranged young man with a gun. The killing spree
9 stopped after 19 seconds and 33 bullets."

10 We've already talked about Mr.
11 Salzgeber and Mr. Badger, and we talked about their
12 role. And we mentioned the 19 seconds and the 33
13 rounds. You mention here a momentary pause in the
14 firing. Describe that momentary pause.

15 A. **Well, as I know it now, the first shot was**
16 **into Gabby Giffords' head at close range. Then he --**
17 **there was a pause in the noise, and then a continuous**
18 **series of pops.**

19 Q. But the pause that's being referred to
20 appears to be tied to the Mr. Salzgeber and Mr. Badger
21 tackling?

22 A. **Oh, well that's the secondary pause.**

23 Q. Describe that pause.

24 A. **Actually, that is incorrect. It should be**
25 **the shooting stopped.**

1 Q. Okay. Sitting here today, as best as you can
2 recall, how many seconds from the time the shooting
3 stopped to the time that Mr. Salzgeber and Mr. Badger
4 tackled the assailant?

5 A. I don't know that. It was instantaneous.

6 Q. Okay. Let's turn to the next page, page 3 of
7 Exhibit MS7. The very top of the page, I'd like to
8 start with the sentence, "Our shooter was stopped, not
9 by a good guy with a gun, but by two ordinary citizens
10 without a gun. The gunman was reloading with a second
11 33 magazine that failed." Please describe as best you
12 can, did you see the gunman reload?

13 A. I did not.

14 Q. What's the basis for your statement, then,
15 that the gunman was reloading?

16 A. Law enforcement.

17 Q. And it says, "the gunman was reloading with a
18 second 33-round magazine that failed." You found that
19 out from law enforcement?

20 A. Yes.

21 Q. Had he, in fact, loaded a second magazine
22 into the firearm?

23 A. I don't know that for a fact.

24 Q. You just recall law enforcement telling you
25 that the second magazine failed?

1 **A. Yes.**

2 Q. Do you recall which specific -- which agency
3 of law enforcement?

4 **A. I don't.**

5 Q. One of those?

6 **A. Yes.**

7 Q. And then you have, "When Roger and Bill
8 brought him down on the sidewalk right next to me,
9 their heroism gave way" -- I'm reading out -- excuse
10 me. Let me stop. The record is not clear on that.
11 I'm reading now -- continuing to read from the top of
12 page 3 of Exhibit MS7. The first full paragraph,
13 "When Roger and Bill brought him down on the sidewalk
14 right next to me, their heroism gave me the
15 opportunity to grab a third magazine from the shooter.
16 Their heroism stopped the killing." How do you know
17 that was the third magazine?

18 **A. I didn't at the time. I know it from a
19 report.**

20 Q. Again, this is what law enforcement has told
21 you?

22 **A. Yes. And I'd like to clarify that it's not
23 necessarily they told me directly, but that they had
24 reported, that law enforcement had reported.**

25 Q. Well, let's explore that. Other than telling

1 you directly, how would you learn this from law
2 enforcement?

3 **A. News reports.**

4 Q. Let's go back to Exhibit 1. In the third
5 full paragraph, it reads, "In what was perhaps the
6 only fortunate event of that day, the spring on the
7 second clip failed." Is this one of the news reports
8 you're referring to?

9 **A. Possibly. I can't -- I don't know. I'm not**
10 **sure on that.**

11 Q. But to the best of your knowledge, sitting
12 here today, the clip you grabbed was the third clip?

13 **A. Yes.**

14 Q. Ms. Maisch, I covered this a lot with Mr.
15 Salzgeber this morning about Mr. Badger describing the
16 assailant being hit by a chair. Are you familiar with
17 Mr. Badger's assertion that the assailant was hit by a
18 chair?

19 **A. I am.**

20 Q. Do you believe the assailant was hit by a
21 chair?

22 **A. No.**

23 Q. Why not?

24 **A. Because of information from law enforcement**
25 **saying that it's not on -- there's no evidence of**

1 **that.**

2 Q. You didn't see any --

3 **A. I did not.**

4 Q. -- use of a chair?

5 **A. That's correct.**

6 Q. I call your attention to what's Exhibit MS4.
7 Have you seen the article that's reflected in Exhibit
8 MS4 before?

9 **A. I've seen that picture. I don't know that**
10 **I've seen this article.**

11 Q. You recognize that picture?

12 **A. I do.**

13 Q. Who is that picture of?

14 **A. Roger Salzgeber, me and Bill Badger.**

15 Q. Have you talked to Mr. Badger about his
16 assertion about the use of the chair?

17 **A. I have not discredited his statement.**

18 Q. Has he told you why he believes the chair was
19 used?

20 **A. He believes it was. I believe it may be that**
21 **somebody was moving a chair to get to somebody to**
22 **help.**

23 Q. Do you know if you've taken any position on
24 the background check bill in Colorado, House Bill
25 1229?

1 **A. If I've taken any what?**

2 Q. Taken any position on it? Talked to people
3 about it, lobbied on behalf of it?

4 **A. We did lobby some of the senators before the**
5 **vote. After my testimony, we went to some of their**
6 **offices and asked them to listen to our stories, and**
7 **to vote for comprehensive background checks.**

8 Q. Besides talking with state legislators about
9 the background check legislation, did you do anything
10 else regarding Colorado's background check bill, House
11 Bill, 1229?

12 MR. GRUESKIN: Objection, vague.

13 A. No, not that I recall.

14 Q. (By Mr. Westfall) Now, turning to the
15 magazine bill, House Bill 1224, your Exhibit MS7 is
16 your testimony you gave on House Bill 1224, correct?

17 **A. Yes.**

18 Q. Anything else that you did regarding House
19 Bill 1224?

20 MR. GRUESKIN: Objection, vague.

21 A. The same thing, visited senator's offices.
22 Legislators. I'm not sure they were all senators. We
23 visited legislators' offices, asked them to listen to
24 our stories, and to take that into consideration when
25 they voted.

1 Q. (By Mr. Westfall) Other than House Bill
2 1229, the background check bill, and House Bill 1224,
3 the magazine restriction bill, and the bill that you
4 testified about in congress, as reflected in Exhibit
5 MS6, have you advocated for gun control legislation in
6 any other context?

7 A. In the state of Nevada.

8 Q. Describe that, if you would, please.

9 A. Essentially the same thing. I went to Nevada
10 when they were having their gun legislation sessions,
11 asked them to listen to our stories, and to consider
12 our experiences and how that might change things when
13 they voted.

14 MR. WESTFALL: If we can take a short
15 break so I can take a restroom break, and I think
16 we'll be able to wrap up with a few more questions.
17 It won't take too much longer.

18 (A break was taken.)

19 Q. (By Mr. Westfall) Do you have a view of
20 whether House Bill 1224, the legislation that you
21 lobbied in Colorado, if it were in effect in Arizona,
22 would have prevented, or in any way impacted the
23 shooting that took place on January 8th?

24 A. I don't have any way of knowing that. I
25 believe it would have, if he had only been able to buy

1 **a magazine of less capacity.**

2 Q. Do you think the outcome would have been
3 different, had he had just four what you characterized
4 as standard capacity magazines?

5 MR. GRUESKIN: Objection, vague.

6 You can answer.

7 Q. (By Mr. Westfall) "He" the assailant on
8 January 8.

9 A. **I would hope so. There's no way of knowing**
10 **that, but I believe it would have.**

11 Q. What's the basis of your belief?

12 A. **That if he only had 10 or 15 rounds, that**
13 **Roger and Bill would have stopped him sooner.**

14 Q. We've covered what happened that day. What
15 specifically about what happened that day would give
16 you reason to believe that?

17 A. **If he had to stop and reload, Bill and Roger**
18 **would have had an opportunity to stop him after the 10**
19 **or 15 rounds, instead of him having an opportunity to**
20 **continue firing for another 18 rounds, if he had only**
21 **15 rounds.**

22 Q. He was on his second clip, though. You told
23 me that law enforcement told you that.

24 A. **That was never engaged. He used one 33-round**
25 **clip.**

1 Q. Why didn't the second clip engage?

2 A. I don't know that.

3 Q. Is it a fair summary of what you just said
4 that less is better?

5 A. I would say yes.

6 Q. Did you contact Mr. Grueskin about
7 representing you here today?

8 MR. GRUESKIN: Objection, privileged.
9 You don't have to answer.

10 MR. WESTFALL: You're saying she
11 doesn't have to answer?

12 MR. GRUESKIN: About the nature of any
13 conversations we've had.

14 MR. WESTFALL: I'm not asking about a
15 conversation. I just want to understand -- I don't
16 want any -- let me be real clear about my questions.

17 Q. (By Mr. Westfall) If I'm in any way asking
18 about the content of any communication between you and
19 Mr. Grueskin, I'm not inquiring about that.

20 MR. GRUESKIN: You just asked her
21 whether or not we had talked, or had she contacted me
22 about representation. That's a question about --

23 MR. WESTFALL: I don't want to know the
24 content. I want to know, did she pick up the phone
25 and call you?

1 MR. GRUESKIN: You can answer that
2 question.

3 MR. WESTFALL: You're instructing her
4 not to answer?

5 MR. GRUESKIN: No, I said she can
6 answer.

7 MR. WESTFALL: Oh, okay. I'm sorry.

8 A. No, I did not.

9 Q. (By Mr. Westfall) How did you and
10 Mr. Grueskin get in touch with one another?

11 A. I shared that I was going to be deposed, and
12 another person put me in touch with Mr. Grueskin.

13 Q. Who put you in touch with him?

14 A. Chris Cotcher.

15 Q. Chris?

16 A. Cotcher.

17 Q. Who is that person?

18 A. Chris Cotcher works for Mayors Against
19 Illegal Guns.

20 Q. Do you have a relationship with Ms. Cotcher?

21 A. I have done things with Mayors Against
22 Illegal Guns, and he's a contact person for me.

23 Q. Oh, Chris is a he?

24 A. Yes.

25 Q. And he suggested that you should get in

1 contact with Mr. Grueskin?

2 **A. He contacted Mr. Grueskin and Mr. Grueskin**
3 **contacted me.**

4 MR. WESTFALL: I don't have any further
5 questions.

6 MR. LEE: No questions.

7 MR. GRUESKIN: No questions.

8 (Deposition concluded at 12:44 p.m.)

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1 STATE OF ARIZONA }
2 } SS.
3 COUNTY OF PIMA }

4 BE IT KNOWN that the foregoing
5 deposition was taken before me, KIMBERLEY W. GAUTHIER,
6 Certified Court Reporter No. 50767 for the State of
7 Arizona, and by virtue thereof authorized to
8 administer an oath; that the witness, PATRICIA MAISCH,
9 before testifying was duly sworn by me; that the
10 questions propounded by counsel and the answers of the
11 witness thereto were taken down by me in shorthand and
12 thereafter transcribed under my direction; that a
13 review of the transcript by the witness was not
14 requested; that the foregoing pages contain a full,
15 true, and accurate transcript of all proceedings and
16 testimony had, all to the best of my skill and
17 ability.

18 I FURTHER CERTIFY that I am not related
19 to nor employed by any of the parties hereto and have
20 no interest in the outcome thereof.

21 DATED at Tucson, Arizona, this 24th day
22 of November, 2013.

23 _____
24 KIMBERLEY W. GAUTHIER
25 CERTIFIED COURT REPORTER NO. 50767

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