

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 13-cv-01300-MSK-MFW

JOHN B. COOKE, Sheriff of Weld County, Colorado
TERRY MAKETA, Sheriff of El Paso County, Colorado
JUSTIN SMITH, Sheriff of Larimer County, Colorado
DAVID A. WEAVER, Sheriff of Douglas County, Colorado
BRUCE W. HARTMAN, Sheriff of Gilpin County, Colorado
KEN PUTNAM, Sheriff of Cheyenne County, Colorado
DENNIS SFRUELL, Sheriff of Montezuma County, Colorado
TIM JANTZ, Sheriff of Moffat County, Colorado
JERRY MARTIN, Sheriff of Dolores County, Colorado
MIKE ENSMINGER, Sheriff of Teller County, Colorado
SHAYNE HEAP, Sheriff of Elbert County, Colorado
CHAD DAY, Sheriff of Yuma County, Colorado
FRED D. MCKEE, Sheriff of Delta County, Colorado
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FRED HOSSELKUS, Sheriff of Mineral County, Colorado
BRETT L. POWELL, Sheriff of Logan County, Colorado
JAMES FAULL, Sheriff of Provers County, Colorado
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DUKE SCHIRARD, Sheriff of La Plata County, Colorado
JIM BEICKER, Sheriff of Fremont County, Colorado
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TOM RIDENOUR, Sheriff of Kit Carson County, Colorado
TOM NESTOR, Sheriff of Lincoln County, Colorado
STAN HILKEY, Sheriff of Mesa County, Colorado
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RANDY PECK, Sheriff of Sedgwick County, Colorado
DOMINIC MATTIVI JR., Sheriff of Ouray County, Colorado
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SCOTT FISCHER, Sheriff of Jackson County, Colorado
PETER GONZALEZ, Sheriff of Archuleta County, Colorado
RICK BESECKER, Sheriff of Gunnison County, Colorado
CHARLES ROEBACH, Sheriff of Phillips County, Colorado
MID FENSKIE, Sheriff of Lake County, Colorado

1 APPEARANCE ON BEHALF OF THE PLAINTIFF

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8 APPEARANCE ON BEHALF OF THE DEFENDANT

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1 DAVID D. CAMPBELL, Sheriff of Baca County, Colorado
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5 DAVID ENCINAS, Sheriff of Bent County, Colorado
6 SUE KURTZ, Sheriff of San Juan County, Colorado
7 JAMES (JIM) CASIAS, Sheriff of Las Animas County,
8 Colorado, GABRIEL WIGGINS, Sheriff of Rout County,
9 Colorado, DOUGLAS N. DARR, Sheriff of Adams County,
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11 Colorado, COLORADO GUTTFITZERS ASSOCIATION
12 COLORADO FARM BUREAU NATIONAL SHOOTING SPORTS
13 FOUNDATION, MAGPLI INDUSTRIES, COLORADO YOUTH OUTDOORS,
14 USA LIBERTY ARMS, OUTDOOR BUDDIES, INC., WOMEN FOR
15 CONCEALED CARRY, COLORADO STATE SHOOTING ASSOCIATION
16 HAMILTON FAMILY ENTERPRISES, INC. d/b/a FAMILY SHOOTING
17 CENTER AT CHERRY CREEK STATE PARK, DAVID STRUNWILLO,
18 DAVID BAYNE, DYLAN HARRELL, ROCKY MOUNTAIN SHOOTERS
19 SUPPLY, 2ND AMENDMENT GUNSMITH & SHOOTER SUPPLY, LLC,
20 BURRUD ARMS INC. d/b/a JENSEN ARMS, GREEN MOUNTAIN
21 GUNS, JERRY'S SPECIALTY SPORTS & SUPPLY, GOODS FOR THE
22 WOODS:
23
24
25

Plaintiffs

v
JOHN W. HICKENLOOPER, Governor of the State of
Colorado,
Defendant,

VOLUME II
DEPOSITION OF
MASSAD AYOOB.

taken on behalf of the Defendant

DATE TAKEN: October 29, 2013
TIME: 9:00 a.m. - 12:16 p.m.
PLACE: Third Circuit Registrars & Video
150 White Avenue SE, Suite C
Live Oak, Florida 32060

Examination of the witness taken before:
Cassie Winick, FPR, Court Reporter
Notary Public, State of Florida License
136 SW Mission Street, Lake City, Florida 32025
THIRD CIRCUIT REGISTRARS & VIDEO
Toll-Free: 855-850-7938
www.AJRC.com/Registrars.com

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18 REPORTER'S KEY TO PUNCTUATION

- 19 -- an end of question or answer references
20 interruption.
21 () References a talk-off by the speaker
22 No testimony omitted.
23 "Uh-huh" References an affirmative sound.
24 "Huh-uh" References a negative sound
25 (sic) References a correction statement.

1 Thereupon,

2 MASSAD AYOOB,
3 having been first duly sworn, testified as follows:

4 DIRECT EXAMINATION

5 THE WITNESS: I do.

6 BY MS. MOATS:

7 Q Good morning, Mr. Ayoob.

8 A Good morning, Ms. Moats.

9 Q Would you please state your full name and spell
10 it for the record?

11 A Certainly. Massad F. Ayoob. First name spelled
12 M-a-s-s-a-d. Last name, A-y-o-o-b.

13 Q And we met off the record, but my name is Molly
14 Allen Moats, and I'm one of the assistant attorney
15 generals that represent the defendant in this case.

16 Today is my only opportunity to ask you
17 questions regarding the opinions you're going to
18 testify to at trial. So while some of the answers
19 to my questions for you may seem obvious, I may
20 require further explanation or clarification. Is
21 that fair?

22 A That certainly is.

23 Q And in turn, if there's a question I ask
24 that you don't understand, please ask me to clarify.

25 A I will.

1 Go ahead.

2 THE WITNESS: Well, I'm not sure I understand
3 the question. I'm here to give you the best answers
4 I can. If your questions go into some area that's
5 beyond my limited scope in this case, I'll advise.

6 BY MS. MOATS:

7 Q Okay.

8 A I'll do my very best to answer your questions.
9 That's why I'm here.

10 Q Okay. But you're willing to discuss all the
11 opinions you intend to testify to at trial today?

12 A Yes, of course.

13 Q Okay. When is the first time you heard about
14 this lawsuit?

15 A Late July of this year, I believe.

16 Q And how did you hear about it?

17 A I spoke to David Kopel, K-o-p-e-l. He had
18 reached out for people who had experience working
19 with handicapped or disabled shooters and was looking
20 for some input from that direction. And after we
21 spoke, he asked if I would be available as an expert
22 witness, and I replied that I would.

23 Q And have you worked with Mr. Kopel before?

24 A No, I have not.

25 Q Have you reviewed all the pleadings in this

1 Q In order to create a clear record for the
2 court reporter, I just ask that we avoid nodding our
3 heads or any type of non-verbal responses.

4 A Understood.

5 Q Okay. And I'm going to assume that you
6 understand the questions I ask you today unless you
7 tell me otherwise. Is that fair?

8 A That is fair.

9 Q Have you had your deposition taken before?

10 A I have.

11 Q Okay. So you understand that you're under
12 oath?

13 A I do.

14 Q Okay. Is there anything today that would
15 prevent you from thinking clearly and testifying
16 truthfully?

17 A I hope not.

18 Q Is there anything that would prevent you from
19 answering my questions?

20 A Not that I can think of.

21 Q Are you able to state all the opinions in this
22 deposition that you believe you're going to testify to
23 at trial?

24 A Well, I'm not sure --

25 MR. COLIN: Vague.

1 case?

2 A I've received limited discovery, touching
3 solely on my limited niche in the case of the
4 disparate impact on -- I'm sure the number of
5 pleadings, interrogatories, et cetera, that I have
6 not been privy to, because I'm coming on as a
7 specialist in that one corner of the matter.

8 Q In terms of what documents you have reviewed,
9 what have those been?

10 A The initial complaint, the reports of Chief
11 Fuchs, F-u-c-h-s, of Deputy Inspector Cerar, C-e-r-a-r,
12 Professor Zax, Z-a-x. I've seen the reports of the
13 plaintiff's experts; Mr. Shain, S-h-a-i-n, I believe,
14 or n-e, Professor Kleck, K-l-e-c-k, and also professor
15 Kleck's rebuttal to Professor Zax. I've seen the
16 report and deposition of Kevin Davis. There may have
17 been more, ma'am. Those are the ones that come to
18 mind right now.

19 Q What expertise were you asked to provide in
20 this case?

21 A I was asked to address the disparate impact
22 elements of the firearms' limitation and magazine
23 limitation as it would relate to self-defense use of
24 firearms with emphasis on handicapped, disabled people
25 who were impaired in any way in their ability to

1 handle a firearm or reload a firearm.
 2 MS. MOATS: If you could go ahead and mark that
 3 as a deposition exhibit, please.
 4 THE COURT REPORTER: Okay.
 5 (Defendant's Composite Exhibit No. 1 was marked
 6 for identification.)
 7 BY MS. MOATS:
 8 Q Mr. Ayoob, you've just been handed what's been
 9 marked as Deposition Exhibit I. This is the curriculum
 10 vitae that was attached to your initial report. Does
 11 this document look familiar?
 12 A Yes, ma'am. It appears to be my CV.
 13 Q And did you create this document?
 14 A Yes.
 15 Q And when did you create it?
 16 A Many years ago. I've kept it up to date every
 17 year or so if another book comes out or I write another
 18 forward for someone or something of that nature.
 19 Q When was it last updated?
 20 A Let me check the book list. Probably late last
 21 year or early this year.
 22 Q And is it up -- in looking at it, is it up to
 23 date with the most recent information?
 24 A It should be.
 25 Q I didn't see on here educational experience.

1 A They're towns located in New Hampshire.
 2 Q Okay. And what size population of a town is
 3 Hooksett?
 4 A Hooksett today is probably -- it's been 30
 5 years since I've there, 30 plus. At the time I want
 6 to say it would have been probably 15,000, but that's
 7 going on very old memory. It borders the largest city
 8 in the state, Manchester, and has grown significantly
 9 since that time.
 10 Q But when you worked there for the police
 11 department, the population was about 15,000?
 12 A That is going, again, by vague memory. I
 13 would have to go back almost and look. I would
 14 characterize all three as small towns, if that helps.
 15 Q Yes, that does help.
 16 A I should also probably add at this point that
 17 since I very often speak for police departments as an
 18 expert witness, this element is in the CV in the
 19 spirit of total disclosure. It is not something that
 20 I would really base any expertise on.
 21 Q Okay. Thank you for that. How many hours --
 22 let me ask you this, did you work full time while you
 23 were at Hooksett Police Department?
 24 A No, ma'am. It should be clear on there that
 25 each of those were part time. I have never been a

1 So I just want to talk to you a little bit about
 2 that.
 3 A Certainly.
 4 Q What is your educational background?
 5 A I graduated high school in 1966, Concord
 6 High School in Concord, New Hampshire. An
 7 Associate's degree in 1968 in accounting, New
 8 Hampshire College, Manchester, New Hampshire. A
 9 Bachelor's degree in business science, 1970, from
 10 the same institution.
 11 Q So you have an Associate's degree in
 12 accounting and a Bachelor's degree in business?
 13 A Correct.
 14 Q And turning to page -- or to the last page,
 15 I should say, or not the last page. Pardon me.
 16 Turning to page 15 of your CV.
 17 A Did I hear 15?
 18 Q Yes, 15.
 19 A Yes, ma'am.
 20 Q Your resume indicates that in terms in law
 21 enforcement experience that you've worked for the
 22 Hooksett Police Department, the Deerfield Police
 23 Department and the Grantham Police Department. Are
 24 Hooksett, Deerfield and Grantham all counties located
 25 in New Hampshire?

1 full-time police officer.
 2 Q Okay. Did you work patrol while working at
 3 any of these police departments?
 4 A Yes, I did.
 5 Q What types of guns did you carry on duty while
 6 you were working at these police departments?
 7 A That varied widely. I started with a .45
 8 caliber revolver in 1972. I went from that to a .45
 9 caliber semiautomatic within a year or two, probably
 10 within a year. In 1978 we had a new chief who
 11 required that we all carry 357 Magnum revolvers, and
 12 that was what I carried until I left in 1980.
 13 In Deerfield the issue gun was a 357 Magnum
 14 revolver, and I occasionally carried one of those; and
 15 particularly when I was teaching, because that was what
 16 most of the officers had. So that's what I taught
 17 with. When I was on patrol or working on my own, I
 18 generally carried the .45 caliber semiautomatic. And
 19 in 1988 we adopted the Smith & Wesson .45 caliber
 20 pistol as standard issue for all officers, and I
 21 carried that until my departure.
 22 In 1990 when I went from there to Grantham,
 23 New Hampshire, G-r-a-n-t-h-a-m. The issue weapon was
 24 the 357 Magnum with the .45 optional, and most of the
 25 time I carried one of the .45s. We adopted the Ruger

1 .45 caliber, R-u-g-e-r, Circa, in 1993. I normally
2 carried one of those. Again, the whole instructor was
3 a role model thing. You can't tell an officer you can
4 trust your life to this, but I wouldn't carry it, so I
5 have this cool \$3,000 custom pistol.

6 There was a period of two or three years when I
7 was testing new security pistols. They all came out
8 first with the most popular police pistol at that time,
9 the Glock. So I carried a .40 caliber Glock in that
10 testing role when I was working for the department.

11 Today I still have the department issue .45, but
12 usually will carry my own .45. We have a pretty broad
13 option as far as what's called privately-owned
14 department-approved weapons, which is -- I'm sure
15 you're familiar with that, because it's general policy
16 through most of Colorado.

17 As far as other weapons in Hooksett, we had the
18 12 gauge shotgun in every vehicle. And Deerfield, we
19 had the 12 gauge shotgun in each vehicle. We started
20 with the pump shotgun and I got them into
21 semiautomatics while I was there. And I also was able
22 to get an H.K. 9 millimeter Carbine, C-a-r-b-i-n-e,
23 into each patrol car during that period.

24 In 1993 in Grantham we adopted the Ruger
25 mini-14, .223 caliber semiautomatic rifle, and we've

1 driven the man off. He had broken in through the
2 hooked-screen door with the main door left open. It
3 was a warm night. He attacked the wife, who was on
4 the couch watching TV.

5 She screamed. Her screams attracted her
6 husband. The husband pointed his .32 caliber pistol
7 at the guy, and the guy backed out the door. The
8 wife ran to the bedroom and got his 12 gauge shotgun.
9 And as the man stood outside screaming threats, the
10 husband took the shotgun and fired a round into the
11 air, and the suspect fled. We spent the rest of the
12 night looking for him, but we never did catch him.

13 Q Okay. So in that -- in that incident
14 involving a home invasion, there was one round fired
15 by the homeowner?

16 A By the homeowner.

17 Q Okay. Were there any other incidents you
18 responded to a home invasion or robbery where
19 there were shots fired in self-defense by the
20 homeowner?

21 A Not that I responded to. They may have been
22 others, but not that I responded to.

23 Q Any instances that you responded to involving
24 a disabled individual acting in self-defense with the
25 use of a firearm?

1 had one of those in every patrol vehicle ever since
2 with several magazines. And also we have a Remington
3 878, 12 gauge shotgun in each patrol car.

4 Q What was -- during your time in any of those
5 towns working patrol, what was what the largest
6 capacity gun that you carried?

7 A That I carried?

8 Q Yes.

9 A Probably a 16, 16 rounds.

10 Q A 16-round gun?

11 A Yes, ma'am.

12 Q Okay. Did you ever have to fire a gun when
13 you worked at these police departments?

14 A Never in the line of duty, only in training.

15 Q When you worked in any of these police
16 departments, did you ever respond to any home
17 invasions or robberies?

18 A I did.

19 Q And what were the circumstances with those?

20 A Well, we had one when I was a young patrolman.
21 A gentleman forced his way into a home in the night
22 in a fairly remote part of Hooksett down by the
23 Merrimac, M-e, double r. i-m-a-c-k -- excuse me. no
24 "k" -- River.

25 By the time we got the call, they had already

1 A Not that I recall off the top of my head, no.

2 Q And when you were describing the various guns
3 that you carried while working in these different
4 police departments, you indicated that today you
5 carry a .45 --

6 A Correct.

7 Q -- duty-issue gun?

8 A It would depend if I carried the
9 department-issue gun. That would be a Ruger Model
10 P-345, 8 round magazine with the ninth in the
11 chamber. I personally carry three spare magazines,
12 occasionally four. The rifles in the car, we have
13 several 20 and 30 round magazines for those.

14 Q And so when you say you carried a duty-issued
15 firearm with you today, is that a duty-issued one
16 from one of the last police departments you worked
17 for? I'm just trying to understand what you mean by
18 duty-issued.

19 A That would be -- our department issues each
20 officer two handguns. We're issued the .45 caliber
21 semiautomatic that's worn on the duty belt in uniform.
22 We are issued a short-barrel Ruger 357 Magnum revolver
23 and an ankle holster as a backup gun.

24 Most officers use the ankle holster. Some
25 carry it in a pocket holster and some will carry that

1 in what's called a vest holster that straps to the
2 body armor underneath the uniform shirt. We also have
3 the option of carrying our own guns as backups or as
4 duty weapons if they're .45 caliber semiautomatics, so
5 long as we qualify with them.

6 Q Okay. So you as we sit here today, you carry
7 a .45 duty-issued weapon with 8 -- that holds 8 rounds,
8 one in the chamber?

9 A Nine total.

10 Q Nine total.

11 A The terminology would be 8 plus 1.

12 Q Eight plus one, okay. And then you also carry
13 a rifle or rifles in your car or your vehicle?

14 A Correct, each vehicle has a rifle and a
15 shotgun.

16 Q Okay. And when you drove to this deposition
17 today, do you carry a rifle or a shotgun in your car?

18 A No, ma'am, just a personal handgun.

19 Q And that's the 8 plus 1?

20 A No. Today I'm carrying a gun I've been
21 carrying a couple of months now, a Springfield XDM,
22 that's a 19 plus 1, 20 rounds in the gun, with one
23 spare magazine and a small backup handgun.

24 Q And what capacity is the backup handgun?

25 A The backup is a small five-shot .38 caliber

1 Massad Ayoob Group.

2 A Correct.

3 Q What is the Massad Ayoob Group?

4 A It's a training entity. We'll be hosted at
5 various ranges and venues around the country to offer
6 training primarily in use of deadly force, use of
7 firearms. We do the occasional teaching course, but
8 mainly it's geared to a practitioner level.

9 Q And you said it's located around the country.
10 What do you mean by that?

11 A Well, in a given year, I'll teach at the
12 Firearms' Academy in Seattle. I occasionally teach
13 in California. Next week I'll be flying to Phoenix.
14 Actually, late this week I'll be flying to Phoenix.
15 I'll teach a five-day class there and then it's
16 either a four-day or a two-day class in Tucson. In
17 the past couple of months, I've taught in Indiana
18 and Arkansas.

19 Q And when was the Massad Ayoob Group formed?

20 A 2009.

21 Q And do you personally conduct all of the
22 training?

23 A I conduct the 40-hour programs and many of
24 the 20-hour programs. We have several instructors
25 certified to teach a 20-hour shooting program and

1 revolver.

2 Q Now, do you still work part time for
3 Grantham Police Department?

4 A I do.

5 Q Well, do you live here in Live Oak?

6 A I do.

7 Q Okay. And Grantham is in New Hampshire?

8 A That's why it's part time.

9 Q Okay.

10 A It would be a heck of a commute, Ms. Moats.

11 Q Yes, it would. So how often and when do you
12 return to Grantham to work and how long do you --

13 A I try to get up in the summer. I moved to the
14 south to escape the five-month winters. I'll log
15 usually about 200 hours or more with the department,
16 counting -- my role today is primarily in training,
17 part of that will be teaching there and part of it
18 will be attending other seminars and channeling that
19 information back to the department, part of it will
20 be representing the department in pistol matches and
21 stuff throughout the country.

22 Q Thank you. Looking back at your resume that's
23 been marked -- or your CV that's been marked as Exhibit
24 1, on the first page under teaching experience, it
25 indicates that you are currently the Director of the

1 we have several instructors around the country doing
2 that.

3 Q Does Massad Ayoob Group offer any instruction
4 specifically targeted to people with disabilities?

5 A Not targeted with disabilities, per se. We do
6 pride ourselves on being able to work with people who
7 have disabilities. Given the wide range of
8 disabilities, it's hard to tailor one class to the guy
9 with one arm and the guy in the wheelchair and the guy
10 with Parkinson's Disease and the guy with only one eye.
11 So on a case-by-case basis, we simply integrate those
12 students with the regular class and give them whatever
13 special attention they need to get up and running with
14 that particular skill set.

15 Q Okay. And we'll talk about that in a little
16 bit in terms of how often that happens.

17 A Sure.

18 Q What types of guns are used for these training
19 sessions?

20 A Virtually all of our courses involve handguns.
21 The advanced ones will include shotguns, rifles. And
22 the very advanced ones may include fully automatic
23 weapons.

24 Q What is the most common size of magazine that's
25 used in the handguns?

1 A I would say the average would be the so-called
 2 high-capacity 9 millimeter or the .40 caliber. But we
 3 get a lot of what we call single-stack .45 caliber
 4 pistols and some single-stack compacts. When I say
 5 single stack, it means it's a compact design where the
 6 cartridges are stacked directly on top of one another.

7 The higher capacity guns will have what's
 8 called a staggered magazine or a double stack. That
 9 means the cartridges inside the box magazine are
 10 arrayed diagonally to allow more of them to fit into
 11 that space.

12 Q So how many rounds do the handguns typically
 13 hold?

14 A It will vary widely. It's like asking how much
 15 does a car weigh. We will have typically -- we're
 16 seeing a lot of the XDMs, like I'm carrying today.
 17 Those are 20-shot pistols and they're standard size.
 18 Possibly the single most popular in the country is the
 19 Glock 17 pistol. That's 17 and 1, 18 total cartridge
 20 capacity.

21 Q And when you say most popular in the county,
 22 what do you mean by that?

23 A The single gun that you are -- you know, if
 24 someone was to bet me on the morning before a class,
 25 if we count 20 or 30 students' guns, what will be the

1 brought by the students themselves?

2 A Yes, ma'am.

3 Q Does the student have to provide any type of
 4 background check before becoming involved or
 5 participating in this training?

6 A Yes, they do. We need something like a
 7 concealed-carry permit, which we'll take a photocopy.
 8 Some sort of proof that they've passed a criminal
 9 record character background check. If they're from a
 10 jurisdiction like New York City where it's very
 11 difficult to get the concealed-carry permit or let's
 12 say Illinois, which until this year, did not have
 13 concealed-carry permits, or Vermont where nobody needs
 14 a concealed-carry permit, so there's no provision or
 15 place to issue them. In those cases, we'll accept a
 16 letter from the sheriff's department that they've done
 17 a criminal record character background check on our
 18 applicant student.

19 Q Does any of this training offered by the Massad
 20 Ayoob Group focus on the use of guns with 15 rounds or
 21 less as a means of defending one self?

22 A Well, it doesn't focus on the guns so much as
 23 it focuses on the student's ability to defend
 24 themselves, their ability to safely handle the gun,
 25 safely store and carry the gun, safely and swiftly and

1 one gun that gets the most check marks next to it for
 2 people carrying it, I would probably bet a Glock 17.
 3 It's just a hugely popular pistol.

4 Q And that's a Glock that holds 17 rounds, plus
 5 one in the chamber?

6 A No, ma'am -- Yes, it does. I'm sorry. 17,
 7 plus one.

8 Q Okay. And as to the rifles that are used in
 9 the training that's conducted by the Massad Ayoob
 10 Group, what are the capacity of those?

11 A Overwhelmingly the most popular gun is the AR
 12 15 and all sizes of magazines are available for it,
 13 but by far the most common is the 30-round magazine.
 14 That's also pretty standard in law enforcement as
 15 well.

16 Q And how about the shotguns, what capacity
 17 shotguns are used for the training offered by the
 18 Massad Ayoob Group?

19 A The shotguns -- well, they, of course, bring
 20 their own guns. We will see everything from a
 21 four-shell capacity to, I've seen as much as, a
 22 ten-shot capacity.

23 Q And I think you might have just answered one
 24 of my questions. So all of the handguns, the rifles
 25 and the shotguns that are used in these trainings are

1 accurately draw and shoot the gun. Their choice of
 2 gun is up to them.

3 About the only time I'll interrupt is if we
 4 have someone with a gun that obviously does not fit
 5 their hand or it's extremely difficult for them to
 6 operate. We'll give them what I jokingly call an
 7 orthopedic gun. I'll lend something that will fit
 8 their hand better or their stature better. If
 9 they're having difficulty operating the slide on
 10 one type of semiautomatic, I'll see if I can put
 11 them into another model that's easier for them to
 12 operate.

13 With a long gun, you'll typically see a
 14 petite female, for example, with the shotgun that
 15 was given to her by her 6', 5" husband, who said,
 16 "Honey, this works great for me. It'll be fine for
 17 you," or maybe she inherited it from her dad. And
 18 with the long guns in particular, it forces the
 19 shoulder back away from the gun and it's extremely
 20 awkward to hold and very difficult to control its
 21 speed.

22 So we'll get them in something with a shorter
 23 stock, perhaps something with a lighter four round
 24 that fits them better, the forehand being the forward
 25 grasping point on the rifle or shotgun.

1 Q So as part of the training that's offered by
 2 the Massad Ayoob Group, does it involve -- is any of
 3 it specifically focused on self-defense?
 4 A It's pretty much all focused on self-defense.
 5 Q And does the Massad Ayoob Group recommend any
 6 type of specific gun for self-defense purposes?
 7 A It's sort of like the driving instructor
 8 recommending a car. Whether a given driver is better
 9 served by a Prius or Suburban is something that their
 10 needs and their life style will determine. The
 11 instructor's job is to teach them to basically run
 12 what they've got.
 13 We recommend that they not go below a certain
 14 power level. We recommend that they have a gun that
 15 fits their hands and we explain to them how to achieve
 16 that. We recommend certainly top quality firearms,
 17 because when you think about it, it's safety rescue
 18 equipment and reliability is the non-negotiable
 19 baseline for a selection of that equipment.
 20 Q Do you recommend a certain capacity magazine
 21 for a gun in terms of using one for self-defense?
 22 A No. We tend to leave that up to the individual.
 23 They know what their threat profile is. They know
 24 what they can carry. They know what their body and
 25 their wardrobe and their dress code will allow them to

1 Exhibit 2 under "who" --
 2 A Under "Who," okay.
 3 Q -- the third paragraph, second sentence, it
 4 says, "Ayoob founded the Lethal Force Institute in
 5 1981 and served as its director until 2009 and now
 6 trains through Massad Ayoob Group."
 7 A That's correct.
 8 Q Okay. So you were the director for the
 9 Lethal Force Institute prior to starting the Massad
 10 Ayoob Group?
 11 A Correct.
 12 Q Okay. And what was what the Lethal -- what was
 13 the Lethal Force Institute?
 14 A Very much like Massad Ayoob Group, providing
 15 the same type of training.
 16 Q Okay. And why -- were you the founder of the
 17 Lethal Force Institute?
 18 A I was.
 19 Q You were the -- you were the founder of the
 20 Massad Ayoob Group?
 21 A Correct.
 22 Q And why did you leave -- or why did you start
 23 the Massad Ayoob Group and leave the Lethal Force
 24 Institute?
 25 A Primarily a business decision. I had founded

1 discretely conceal without alarming others, and that
 2 essentially is their choice.
 3 And some of the articles in the gun magazines,
 4 certainly with our books, certainly I would discuss
 5 selection criteria. But in the end, the selection is
 6 always up to the individual.
 7 Q Thank you.
 8 MS. MOATS: Would you mark that as a deposition
 9 exhibit, please?
 10 THE COURT REPORTER: Yes.
 11 (Defendant's Composite Exhibit No. 2 was marked
 12 for identification.)
 13 BY MS. MOATS:
 14 Q Mr. Ayoob, you've just been handed -- or I'm
 15 going to hand you, I should say, what's been marked as
 16 Deposition Exhibit 2. And I'll represent to you that
 17 this is a copy of the -- copy of the website, the
 18 Massad Ayoob Group. I clicked on "about," and this is
 19 the page that came up. Does this look familiar?
 20 A Well, since I never go on my website, I'll take
 21 your word for it, Ms. Moats.
 22 Q I promise that that's what it is, and I just had
 23 a couple of questions.
 24 A Sure.
 25 Q On the second page of what's been marked as

1 it in 1981. And when we charted the corporation, my
 2 then wife and I basically were partners. She handled
 3 the management side and I handled the curriculum side.
 4 She and I divorced in 2002 and for a while we
 5 were able to, you know, co-manage from a long distance
 6 apart, probably 1,200 miles apart. In the end we both
 7 had different visions for where the company would go.
 8 And finally I just departed and start M.A.G., Massad
 9 Ayoob Group.
 10 Q Was the training offered at the Lethal Force
 11 Institute similar to that that's offered by the Massad
 12 Ayoob Group?
 13 A Yes, ma'am.
 14 Q And then looking at the third paragraph again,
 15 the next sentence says, "He has appeared on CLE-TV,
 16 delivering continuing legal education for attorneys
 17 through the American Law Institute and American Bar
 18 Association and has been retained to train attorneys
 19 to handle deadly-force cases through the Armed
 20 Citizens' Legal Defense Network."
 21 A Correct.
 22 Q When it says "deadly-force case," what do you
 23 mean -- or what does that mean?
 24 A That would be cases involving the use of
 25 lethal force. The attorneys who attend are a mix of

1 prosecution, defense, plaintiffs' lawyers and civil
2 defense lawyers. So it's taught generically. The
3 primary focus is on the self-defense shooting, the
4 officer-involved shooting, for example, or the
5 private citizen who has used deadly force in
6 self-defense.

7 Q And when you -- when you say you offer
8 instruction on how to defend cases where a private
9 citizen has used deadly force in self-defense, what
10 is the nature of that instruction?

11 A Sure. We explain some of the dynamics that
12 they will run into. For example, let's say you're
13 the -- you're back in private practice and you're
14 defending someone who says: I shot the intruder as
15 he battered down my door and came at me.

16 But the prosecution says: Yeah, great story,
17 but there is one bullet hole on the front and there's
18 two in the back. And, sorry, but we in our society
19 associate that with cowardly ambush murder. You could
20 not have been in danger. Manslaughter at best and
21 we'll try for murder.

22 And we explain to them how to show the jury
23 how rapidly human movements and reaction times will
24 intersect with one another. Let's say I was coming at
25 you and this pen was a knife. The pen in your hand is

1 a gun. You raise it and pull the trigger as fast as
2 you can. As I see that gun coming up, I'm going start
3 reflexively reacting to it. As I begin to turn, you're
4 already pulling the trigger. The first shot hits me
5 here (indicating).

6 You have to now react to an unanticipated
7 stimulus, which is me turning away from you. Your
8 reaction time to anticipated stimulus would be about a
9 quarter of a second. If I said, all right, as soon as
10 this buzzer goes off, tap it and that will stop the
11 time. I would expect you would go .23 or .25 seconds.

12 But for an unanticipated stimulus, the last
13 thing you would expect was the sudden turning away of
14 your assailant. It takes probably at least three times
15 that long, maybe longer, for the brain to cognitively
16 process things have changed and tell the finger to stop
17 pulling the trigger.

18 We intersect that with the fact that the average
19 person can fire a shot probably about every quarter
20 second. And in that time frame, probably two more
21 bullets will have been launched. I would have turned
22 my back into the trajectory and that explains why, even
23 though you fired in self-defense, two of the three
24 bullet holes you inflicted on me were literally
25 inflicted in self-defense.

1 Q Okay. And that's a good explanation of the
2 training you provide. Does any part of your
3 instruction to these attorneys include defending
4 cases -- include a situation where the attorneys are
5 defending cases where a certain capacity magazine,
6 being under state law, was used in self-defense?

7 A I know I've mentioned in the past that during
8 the so-called Clinton Assault Weapons' Ban in
9 approximately 1993 to 2003, where the private citizen,
10 under national law, was limited to 10 round
11 magazines unless they had been grandfathered in. We
12 did occasionally have that come up with the
13 grandfathered magazines.

14 And we explained when that issue came up, the
15 other side would say: Look, he was so filled with
16 blood lust, he used this evil prohibited 15-round
17 magazine, malice, malice, malice.

18 And we suggested bring in a subpoena and a
19 federal agent from the Bureau of Alcohol, Tobacco and
20 Firearms. They will explain that millions of these
21 magazines are perfectly legal, manufactured and
22 possessed prior to the 1993 ban and in the hands of
23 law-abiding citizens all over the country. And by
24 the way, while he's on the stand, ask that agent what
25 type of pistol the U.S. Government issues him to

1 protect us, and you'll find out it's a high-capacity,
2 so-called, 9 millimeter SIG-Sauer at that time, SIG,
3 end caps, hyphen, S-a-u-e-r.

4 Q So essentially the component of your
5 instruction may have involved defending cases where a
6 certain capacity magazine banned under, in
7 this case, you're saying national law, the Clinton
8 Assault Weapons' Ban, the nature of your instruction
9 in that regard was helping to establish that the
10 magazine used that may have exceeded the ten rounds
11 was, in fact, a grandfathered magazine under the law?

12 A Yeah. First, that it was perfectly legal. And
13 second, particularly if you've only fired three
14 shots out of the fifteen-shot magazine, they can hardly
15 say that it was blood lust. I thought it was a classic
16 example of mala prohibita versus mala en se.

17 Q How much of your time is devoted to teaching
18 attorneys how to handle deadly-force cases?

19 A A small percentage. I work mostly with
20 practitioners.

21 Q When you say small --

22 A Last year --

23 Q Go ahead.

24 A My last CLE was actually right at a month
25 ago this week. I was one of the speakers at the

1 Texas Firearms' Law Symposium in Fort Worth, which
2 was sponsored by the Texas Fire Association. Prior
3 to that, in the past, one or 2 CLE seminars a year
4 for Armed Citizens' Legal Defense Network.

5 Q So what percentage of your overall workload
6 is devoted to teaching attorneys how to defend
7 deadly-force cases?

8 A It would be very small. I've never quantified
9 it, but only a few times a year. That said, there are
10 often attorneys in the regular classes.

11 Q And so in looking at your resume, you
12 currently provide firearms instruction through the
13 Massad Ayoob Group, you work part time at the
14 Grantham Police Department. Have you -- what other
15 careers have you had or do you currently -- well,
16 what other careers have you had in the past besides
17 what we've talked about?

18 A Well, I've been a writer since 1971. I've
19 published in the Firearms Press primarily. Also in
20 years past in the Martial Arts Press. Today still
21 and over probably '72 to present, law enforcement
22 journals. Several books, as you see from the resume.

23 The eighth season of Personal Defense TV is
24 running now on the Sportmans Channel; I am a part of
25 that. The occasional training film. We have, I think,

1 A Littleton versus Belmont County, Florida
2 versus Hecksel. Favor versus Walgreen was an
3 accidental fatality. Texas versus Hubbard, Wemouth
4 versus Brunswick, Allen versus Leal, California versus
5 Karlson, Minick, M-i-n-i-c-k, versus the County of
6 Sacramento, Jones versus Norwalk, N-o-r-w-a-l-k.

7 Let's see. Maxim versus Livingstone, Missouri
8 versus Beeler, B-e-e-l-e-r, Nordlund, N-o-r-d-l-u-n-d,
9 versus American Armor. And House, common spelling,
10 versus Lawco, L-a-w-c-o, involved one death, as I
11 recall, and one wounding when bullets penetrated
12 police body armor.

13 Q And let me stop you right here.

14 A Sure.

15 Q Because perhaps my question -- I just want --
16 I'll rephrase that question. I mean in terms of all
17 of these cases, did any involve a situation where a
18 homeowner had used a gun in self-defense?

19 A On the street or in the home?

20 Q Both.

21 A Yeah, some of them did. It would include
22 California versus Karlson.

23 Q And we can start with that case. What was the
24 situation or circumstances of that case?

25 A That was that the abusive son-in-law stocking

1 two out now from Panteao Productions, P-a-n-t-e-a-o,
2 with a third coming out shortly.

3 Q That's quite a long list. Any other careers
4 that you've had or do have?

5 A When you get as old as I am, pretty girl, you'll
6 have a long list too.

7 Q Okay. I don't know. Do you currently hold
8 any licenses of any type?

9 A Well, instructorships in the various
10 disciplines, sworn police officer, concealed-carry
11 permits in various states. Those are the ones that
12 come to mind, ma'am.

13 Q And do you have a concealed-carry permit
14 through the State of Florida to carry the weapons
15 that you've identified you have today?

16 A I do.

17 Q Let's see. If we could look back at what's
18 been marked as Exhibit I and turn to page 16 of that.
19 And it looks as though you've provided a case list of
20 the different cases you've testified in.

21 A Correct.

22 Q Have any of these cases involved someone using
23 deadly force in self-defense?

24 A Many of them.

25 Q Which ones, if you can identify them?

1 his estranged wife and returned to the home of her
2 parents. Prior to the shooting, he had savagely
3 attacked her father, who had bitten off one of his
4 fingers to keep him from gouging the father's eye
5 out.

6 He wound up later coming to the house
7 claiming to have a gun hidden in his bandaged slang.
8 Mr. Karlson, to make a long story short, drew a gun
9 and shot and killed the son-in-law.

10 Q Okay. Do you how many shots were fired by
11 Mr. Karlson in that case?

12 A I would have to go back and look, ma'am. It
13 wasn't very many.

14 Q Okay. Any other cases that you've testified
15 in involving a homeowner's use of a firearm in
16 self-defense?

17 A Yes, ma'am. Hang on a moment.

18 Q Oh, no problem.

19 A Massachusetts versus Robert Tessitore,
20 T-e-s-s-i-t-o-r-e. He shot and killed a man
21 attacking him on the street with a knife.

22 Q Do you know how many shots were fired in
23 that case by --

24 A To the best of my recollection, a single shot.
25 Let's see. Mississippi versus Patrick Champagne,

1 common spelling. That, I believe, was one accidental
2 shot. He was pointing a gun at the subject, and the
3 subject hit his hand and the gun went off and killed
4 her.

5 Tennessee versus Robert Barns. He emptied a
6 five-shot gun into his attacker. Texas versus Perry
7 Graham. That was one shot from a single-shot shotgun.
8 Maryland versus Der, D-e-r, and Kifer, K-i-f-e-r.

9 Der and Kifer owned a woodworking shop. They
10 confronted a burglar who was armed with a heavy framing
11 hammer. He was holding it by the head and as he
12 turned toward them in the dark, they thought they
13 saw a long-barreled pistol. One open fire with
14 multiple rounds from a shotgun, the other with the
15 several rounds from his HK 45 caliber pistol
16 killing him. I do not recall -- I want to say two
17 shots with the shotgun, and there were several with
18 the HK .45. I do not remember the exact number.

19 Let's see. The Larry Lindsey Case in Colorado.
20 There were no shots fired. Chambers v. Graham was the
21 civil case that arose after the grand jury no-billed
22 Mr. Graham in Texas. We've discussed that.

23 William Wilkerson, he fired, I believe, three
24 shots from a five-shot .38 caliber. Ronald Robbins, I
25 would have to go back and check. His case was one or

1 these cases in which you've testified involve the
2 use of a gun by a person with a disability?

3 A Let's see.

4 MR. COLIN: In any of the cases he just talked
5 about or in any of the cases on his list?

6 MS. MOATS: In any of the cases on the list. I
7 apologize.

8 MR. COLIN: Thank you.

9 THE WITNESS: Well, on this list, oddly
10 enough I do not see Florida versus Hopkins,
11 which should have been on here. She was 63
12 years old, extreme arthritis and rheumatism
13 literally at a crippling level. She fired
14 three shots at the attacking common-law husband
15 and hit him, all three.

16 She was a classic example of what you and I
17 discussed, the turning effect; one in the front,
18 one in the side, and one in the back. It was
19 ultimately acquitted.

20 Let's see. Mr. Chambers had some serious
21 cardiac issues. He was on beta blockers and his
22 physical limitation was that he could not run.
23 If he was to run, we were told he might have
24 passed out trying to. So to some degree, he had
25 a physical limitation.

1 two. Larry Hickey, Arizona versus Larry Hickey,
2 H-i-c-k-e-y, there were multiple shots fired, but it
3 was a not a high-round caliber. The gun was a 16-shot
4 Glock 19, 9 millimeter.

5 And the final one of those involving a citizen,
6 West Virginia versus Jonathan Ferrell, F-e, double r,
7 -e, double l. He emptied a Ruger .45 caliber pistol.
8 It was loaded with seven rounds.

9 Q And in each of those cases, did you testify on
10 the part of the homeowner that was using the weapon in
11 self-defense?

12 A I would have to look. I believe I did. And
13 not all of these wound up going to trial. Some of
14 them may have only been the deposition. Yeah, I
15 don't see anywhere I spoke for the plaintiff in those
16 cases.

17 Q And is it fair to -- so am I correct in
18 understanding that in none of those cases more than
19 seven shots were fired on the part of the homeowner
20 using the firearm in self-defense?

21 A There may have been more than seven in the
22 Der and Kifer shooting in Maryland. I would have to
23 go back and check. It was certainly fewer than 15,
24 because the gun did not hold that many.

25 Q Okay. Thank you. Did any of -- did any of

1 Of the others, none of those are coming to
2 mind at the moment.

3 BY MS. MOATS:

4 Q Okay. And when you say Chambers, is that one
5 of the --

6 A That would be Texas versus Chambers and also
7 the civil side of that would have been Chambers
8 versus Graham, the family of the deceased suing over
9 the death of --

10 Q And then in that one -- and then in that you
11 said one or two shots were fired?

12 A Only one.

13 Q Only one, okay. And then looking back at
14 your CV that's been marked as Exhibit I, on page 10
15 you've listed various books that you've authored.

16 A Yes, ma'am, yep.

17 Q Are there any books on here that you've publish
18 that aren't listed?

19 MR. COLIN: Object to form.

20 THE WITNESS: Are there any books I have
21 published that are not listed?

22 MS. MOATS: I'm sorry.

23 BY MS. MOATS:

24 Q Are there any books that you've authored that
25 are not listed?

1 A Let me check. No, ma'am, I don't think so.
 2 Q Is using a gun in a safe manner a common theme
 3 addressed in your books?
 4 A Yes, it is.
 5 Q Do you believe precision and accuracy are the
 6 most important factor in shooting a gun?
 7 A I would say safety first. Subsequent to that,
 8 precision and accuracy need to come before speed.
 9 Trying to develop speed and then become more accurate
 10 is like trying to push a rope.
 11 Q When you say safety first, what do you mean by
 12 that?
 13 A I've seen people who are very good shots that
 14 I did not want to be near on a shooting range, because
 15 they handled their guns carelessly. Familiarity
 16 breeds contempt.
 17 Q Do you believe a person who shoots a gun has
 18 responsibility to be precise and accurate because of
 19 possible harm to innocent bystanders?
 20 A To the best --
 21 MR. COLIN: Foundation.
 22 Go ahead.
 23 THE WITNESS: To the best of their ability
 24 within the balance of competing harms and needs,
 25 depending on the circumstances.

1 12 --
 2 A Yes, ma'am.
 3 Q -- it lists various magazines in which you
 4 serve in some capacity as an editor.
 5 A Yes, ma'am.
 6 Q Do you currently serve in the editor capacity
 7 noted on all these magazines?
 8 A No. I'm currently a handgun editor for Guns
 9 Magazine, law enforcement editor for American
 10 Handgunner Magazine. I do regular columns for Guns
 11 and Weapons for Law Enforcement Magazine and for
 12 Combat Handguns Magazine. They used to list the
 13 column writers as contributing editors, and I
 14 believe they no longer do. So there would be no
 15 title associated with that.
 16 Let's see. Some of these, to my knowledge,
 17 such as Sentinel, Trooper, and Patrolman, and
 18 Guardian are no longer in publication. Police
 19 Marksmen was out of publication for a while; it's
 20 back. And while they've been kind enough to
 21 invite me to write for them, I have not had time to
 22 do so yet that I -- there are others. I'm the
 23 firearms' editor for Backwoods Home Magazine. I
 24 hope that's been responsive to your question.
 25 Q Yes. In writing these various articles or

1 BY MS. MOATS:
 2 Q And what do you mean by competing harms and
 3 needs?
 4 A Well, normally firing a gun in a public place
 5 would be considered an unsafe act. If you had, let's
 6 say, a mass murder underway, your firing your gun to
 7 stop the murderer, while taken in a vacuum, would be,
 8 "Oh, my God. Ms. Moats fired a gun in public."
 9 Here in the balance of competing harms, the
 10 whole concept of the doctrine of necessity, you would
 11 be held harmless for that since the much greater harm
 12 you were trying to stop outweighed the more vague,
 13 more amorphous danger that you were firing the gun in
 14 public might present to others.
 15 Q Have you written any books regarding the use of
 16 a gun by persons with disabilities?
 17 A No dedicated books on the topic. I believe
 18 it's probably been mentioned in some of the other books
 19 that I have written.
 20 Q And when you say it's probably been mentioned,
 21 has it been like a chapter in the book or just part of
 22 a chapter in the book?
 23 A I would have to go back and look to tell you the
 24 truth.
 25 Q And then looking back at your resume, on page

1 serving as an editor for these various periodicals,
 2 have you written any articles regarding the use of
 3 guns by people with disabilities?
 4 A I'm sure I have.
 5 Q Do you know about how many?
 6 A In recent years, a couple. I've done at least
 7 one article on the Wounded Warriors' Project and some
 8 of their shooting events.
 9 Q When you say you've done a couple, you think
 10 you've probably written -- how many do you think
 11 you've written in the last five years?
 12 A Certainly two or more and they might well have
 13 been mentioned parenthetically in other articles.
 14 Q Do you think you've written more than five in
 15 the last five years?
 16 A It's possible, but I'm not remembering that
 17 many.
 18 Q Okay. When you say you wrote an article
 19 about the Wounded Warrior Project, where was that
 20 article published?
 21 A That, I believe, was in Glock Annual.
 22 Q And do you know what year that was published?
 23 A It was probably within the past two years.
 24 Q What did the article address?
 25 A The article addressed the -- a shooting

1 program that had been put together for wounded
2 warriors and we interviewed some of the people who
3 were there, the people who ran a Glock, for example,
4 donated firearms for use in that.

5 I believe I had an article in the Shooting
6 Industry Magazine. I've been their columnist on
7 deadly force and personal-defense issues for many
8 years. I believe there was one on wheelchair-bound
9 shooters that I did for Guns Magazine within the last
10 probably two or three years. And while there may
11 have been others, those are the ones that come to
12 mind right now.

13 Q Okay. And with respect to the article you
14 wrote on the Wounded Warrior Project, did that just
15 address the wounded warriors use of guns or what was
16 specifically focused on?

17 A It talked about these men had come back
18 physically broken. It was important to many of them
19 to be able to show that they can still master what
20 had been a tool of their occupation and a tool of
21 their profession and a tool of their identity.

22 Q And when you say you wrote one for the
23 Shooting Industry, what did -- I'm sorry. I can't
24 remember the title of that one, but what did that
25 deal with in terms of --

1 capacity gun would be best suited for someone with a
2 disability?

3 A I may have discussed in those articles that
4 it's going to be more difficult for that shooter to
5 reload and therefore the higher-capacity gun would
6 make proportionally more sense for him than for an
7 able-bodied person, other than that, I do not recall.

8 Q And would it be possible to get copies of
9 those articles from you?

10 A I will try. Let me make a note of that.

11 MR. COLIN: And just so I'm clear, so we make
12 sure we get you what you want, the Wounded Warrior
13 Project article, the Shooting Industry article and
14 the Guns Magazine article?

15 MS. MOATS: Correct, yes. I was just going to
16 go over it.

17 THE WITNESS: Shall I get those to you, ma'am,
18 through Mr. Colin?

19 MS. MOATS: Yes.

20 MR. COLIN: Yes, please.

21 BY MS. MOATS:

22 Q And when you said -- you previously were just
23 stating that you may have addressed in those articles
24 the need -- or the issues surrounding the need for
25 higher-capacity magazines because of issues of the

1 A That was a -- the Shooting Industry is a
2 publication for firearms' retailers, gun shops, if
3 you will. And that was on outfitting and serving
4 the physically handicapped customer.

5 Q And by outfitting, you mean -- what do you
6 mean by that?

7 A What type of guns, what type of holsters, things
8 of that nature.

9 Q And then you've indicated that you can recall
10 writing also an article about wheelchair-bound shooters
11 for Guns Magazine?

12 A That's correct.

13 Q What did that article address?

14 A That again was on the topic of, you know, where
15 would the person who was bound in the wheelchair put
16 the gun as opposed to, you know, someone who was
17 ambulatory. Some folks in wheelchairs cannot put any
18 body weight forward. So they need specific
19 techniques that allow them to control the recoil of
20 the gun, even though their shoulders are leaning back,
21 they can't take a forward leaning posture and put their
22 body weight into it, the way I would train you or the
23 court reporter or for Mr. Colin to shoot.

24 Q Do you recall ever writing any articles about
25 the -- any articles addressing what type of -- what

1 disabled person's ability to reload. When you say
2 higher-capacity magazines, what are you referring
3 to, what size magazine?

4 A Well, essentially the more, the better. The
5 more cartridges you have, the longer you can sustain
6 shooting without running out of ammunition.

7 Q And other than those three articles, do you
8 recall any others that you've written in the last
9 five years regarding gun use by persons with
10 disabilities?

11 A Well, I may have, ma'am, but I do not recall
12 them as I sit here.

13 Q Okay. Thank you. I understand the charge for
14 today's deposition is \$2,500?

15 A I charge 2,500 a day and expenses. I try to
16 do it at whatever is the rate most favorable to the
17 client. So dividing that by eight hours, that comes
18 out to 312.50 an hour, which I think would be more
19 economical for the taxpayers of Colorado.

20 Q Is this your typical fee for a deposition?

21 A Yeah, it's the same. At a deposition, trial,
22 consulting or teaching, it's the same 2,500-a-day fee.

23 Q Okay. And when you say it breaks down into
24 \$312.50 --

25 A Well, 2,500 a day divided by eight --

1 Q Eight.
 2 A -- for eight hours in a typical business day.
 3 One-eighth of 2,500 is \$312.50 an hour.
 4 Q Okay. And what do you -- what are you
 5 charging your counsel in this case for conference
 6 calls or drafting of your reports?
 7 A Well, interestingly enough when I was
 8 retained by Mr. Kopel, he told me there would be no
 9 money for funding, and I agreed to take the case pro
 10 bono. He told me about a month ago that it looked
 11 like there would be money available for it and to go
 12 ahead and bill at my standard rate, that would be my
 13 usual rate. It takes on the average, one day to get
 14 a report together. So there's one report done, about
 15 four hours on consulting. And that would be it thus
 16 far.
 17 Q Okay. Have you changed counsel, your counsel,
 18 the plaintiff's counsel in this case anything to
 19 date?
 20 A Not yet. I just found out at the end of
 21 September that, you know, there would be money
 22 available. And I've been on the road teaching for
 23 most of that time. Quite frankly, I haven't gotten
 24 around to doing the billing yet.
 25 Q Okay.

1 A I'm not sure I understand that question.
 2 Q Have you ever testified in any capacity
 3 stating that guns should not have been used in a
 4 certain incident?
 5 A Well, I've had occasion to testify that a
 6 certain individual should not have been shot. Is
 7 that what you mean?
 8 Q I mean in any capacity where you stated this
 9 individual should not have used a gun to defend
 10 themselves or to protect themselves?
 11 A Well, by definition, no. If they are using
 12 it to defend or protect themselves within the
 13 perimeters of the accepted standard, I could not
 14 possibly testify against them, because they would
 15 have done no wrong. There has been the occasional
 16 case where someone fired when they should not have
 17 and my testimony was that their perception was not
 18 realistic, that they should not have fired when they
 19 did.
 20 Q Okay. And in those circumstances, why do you
 21 believe they should not have fired?
 22 A Well, let's see. In one case, it was after a
 23 hurricane in South Florida. The homeowner had called
 24 repairmen to fix damage to his house. In the dim light
 25 of dawn, he sees some people outside on his -- I'm

1 A My accountant is going to hit me on the
 2 knuckles with a ruler or something.
 3 Q If you were to charge the plaintiff's counsel
 4 for an hour conference call, how much would it be?
 5 A It would be 312.50.
 6 Q How much of your personal income is from
 7 providing expertise in legal cases?
 8 A Over the years I've tried to keep that under
 9 five percent. We had one recent year where I went
 10 over that due to one case I did for the U.S. attorneys
 11 that took an insane amount of time. I would have to
 12 check with the accountant to get a specific figure,
 13 but I can tell you it's a small part of my income.
 14 Q What is generally the scope of your
 15 expertise in legal cases you testify in?
 16 A Generally training standards both in the use
 17 of weapons and the use of force, dynamics of violent
 18 encounters, homicide investigation protocols, things
 19 of that nature, safety standards.
 20 Q Have you ever testified as an expert
 21 regarding problems with use of too much fire power?
 22 A Well, the allegation of too much fire power,
 23 yes.
 24 Q Okay. Have you ever testified as an expert
 25 against the use of guns?

1 trying to remember the term for it. It's sort of an
 2 area way approaching his house -- carrying metal
 3 objects.
 4 He decides that must be looters. He fires
 5 what is he says is a warning shot, which manages to
 6 strike and cripple for life one of the plumbers or
 7 electricians. I forget whether it was a plumber or
 8 an electrician, that he had hired to come out to his
 9 house. Needless to say, I did not take his side on
 10 that.
 11 We had another very sad case, a police officer,
 12 one of several, trying to subdue 15-, 16-year-old boy
 13 who was on LSD. The boy is down. One of them stands
 14 on the kid's back with both feet on his spine. The
 15 kids thrashes, and the officer falls off of him.
 16 And the other officer, for whatever reason,
 17 shot the boy in the back and killed him as he lay on
 18 the floor; and my testimony was that was not within
 19 accepted standards.
 20 Q Have you ever testified in a case where someone
 21 was firing -- or that the amount of shots someone
 22 fired in self-defense were excessive?
 23 A Well, firing one when it's not self-defense is
 24 excessive. Firing however many you need to fire when
 25 it is self-defense is not excessive. In research over

1 the years, I've seen at least one case where multiple
 2 officers had to shoot a man 33 times with 9 millimeter
 3 pistol bullets. He was still up trying to shoot back.
 4 And another officer with a 12 gauge shotgun needed to
 5 shoot him twice more to end the fight.

6 In what may have been the most thoroughly
 7 investigated gunfight of the 20th Century, the FBI
 8 shoot out with two-armed robbers in Miami in 1986.
 9 Two agents were killed by a man who was already
 10 mortally wounded, but still on his feet. Three were
 11 crippled for life by that man's gunfire and two more
 12 were wounded. And before he and his criminal partner
 13 succumbed, one of them had been shot six times, the
 14 other twelve.

15 So in essence, the dynamics of the situation
 16 will determine whether shots need to be fired at all.
 17 And once the time comes to shoot, depending on the
 18 infinite variety of circumstances within the
 19 totality of those circumstances, a high volume of
 20 gunfire may be necessary, most often it is not, but
 21 it is a predictable consequence and certainly a
 22 predictable possibility.

23 Q We'll probably get back to that in a little
 24 while.

25 A Sure.

1 for this report?

2 A I reviewed the complaint. I don't recall
 3 whether I had seen the other reports prior to this or
 4 not.

5 Q Did you consult with any other experts when
 6 writing this report?

7 A In writing this report, no, ma'am, I did not.

8 Q Okay. The first part -- or if you turn to page
 9 2 of your report, I should say the second section
 10 references the impact on persons with disabilities.

11 A Yes, ma'am.

12 Q Are you referring to the impact of House Bill
 13 -- or Colorado House Bill 1224, the magazine capacity
 14 limitation?

15 A Correct.

16 Q Okay. And let me ask you this, in your expert
 17 report, did you cite to any studies regarding a
 18 disabled -- the ability of a disabled person to use a
 19 gun?

20 A No, I don't believe so. This was geared
 21 primarily to experiential as opposed to data-based
 22 opinions.

23 Q And what do you mean by that?

24 A Basically what I've observed over more than 40
 25 years as a firearms' instructor of working with people

1 THE WITNESS: While we're at a pause, let me
 2 just check and make sure the court reporter is doing
 3 okay.

4 MS. MOATS: Yes. Are you doing okay?

5 THE COURT REPORTER: I'm fine. Thank you.
 6 (Defendant's Composite Exhibit No. 3 was marked
 7 for identification.)

8 BY MS. MOATS:

9 Q Okay. I'm going to hand you what's been
 10 marked, Mr. Ayoob, as Deposition Exhibit 3. Does
 11 this document look familiar?

12 A Why, yes, it does.

13 Q And is this a copy of the expert report you
 14 issued in this case?

15 A I believe it is.

16 Q Okay. Did anyone help you write this report?

17 A David Kopel, after I first sent it to him,
 18 sent it back with a couple of suggestions of links for
 19 detailed accounts of the shooting incidents that I had
 20 mentioned. And I thought that was an excellent idea
 21 and so I incorporated those.

22 Q And when did you prepare this report?

23 A This would have been August or September of this
 24 year.

25 Q And did you review any documents in preparation

1 who've suffered various disabilities.

2 Q Did you -- do you recall reviewing any studies
 3 regarding a disabled person's ability to use a gun in
 4 preparation for this report?

5 A No, I do not recall.

6 Q Okay. Do you know of any studies regarding a
 7 disabled person's ability to use a gun?

8 A Again, no, I do not recall.

9 Q And again, did you, in terms of -- in
 10 preparation for this report -- well, let me ask you
 11 this, did you cite any studies at all in your report
 12 to your knowledge?

13 A Let me go back and look.

14 MR. COLIN: The document speaks for itself.
 15 Go ahead.

16 THE WITNESS: Res ipsa loquitur. He's right.
 17 No, I did not.

18 BY MS. MOATS:

19 Q Do you recall reviewing any studies regarding
 20 the use of a gun in self-defense by a person with a
 21 disability?

22 A I'm not sure a study specifically dedicated
 23 to that topic even exists, but I can say, no, I did
 24 not.

25 Q Okay. Do you recall reviewing any studies

1 regarding the ability of a disabled person to reload
 2 a magazine?
 3 MR. COLIN: Foundation.
 4 THE WITNESS: No, no studies in particular.
 5 Again, just collective experience and over the years
 6 teaching, among other things, teaching police
 7 officers before they were injured how to draw the
 8 gun with a weak hand if their gun arm had been shot
 9 in the opening of the encounter, how to reload a
 10 revolver or a semiautomatic pistol or a carbine or
 11 shotgun for that matter with only their left hand or
 12 only their right hand if one limb had been taken out
 13 of the fight and they were still in deadly danger.
 14 BY MS. MOATS:
 15 Q So the opinions you -- excuse me. The opinions
 16 you've expressed in this report are all based on your
 17 personal experience; is that correct?
 18 A They're based on my experience, discussion over
 19 the years with other instructors who teach in similar
 20 veins. Like in your profession, you know, talk will
 21 turn to different job-related things. Basically my
 22 experience and the collective experience of other
 23 instructors that I've discussed it with over 40 some
 24 years.
 25 Q Okay. And when you say your discussions with

1 A No, ma'am.
 2 Q Okay. Have you ever in your career conducted
 3 any studies regarding the ability of a disabled person
 4 to reload a magazine?
 5 A When you say reload a magazine, do you mean put
 6 cartridges in the magazine, or reload the magazine into
 7 the pistol?
 8 Q That's a good question. Thank you. I meant --
 9 let's start with reload a magazine into the gun.
 10 A And the question was if I had conducted studies
 11 on that?
 12 Q That's okay. Yeah. Have you ever in your
 13 career conducted any studies regarding the ability of
 14 a disabled person to reload a magazine into the gun?
 15 A No studies, per se. Simply the observation
 16 that it becomes much more difficult, depending on the
 17 nature of the disability. It's a complex psychomotor
 18 skill and it requires more mobility than it would look
 19 like.
 20 Q And we're going to talk about that here in just
 21 a little bit.
 22 A Sure.
 23 Q But have you personally taken any training on
 24 how to teach people with disabilities how to use a gun?
 25 A I've probably given more of that training than

1 other instructors, did you -- over the years when
 2 you've had these discussions with other
 3 instructors, did you document these discussions or is
 4 it just based on memory?
 5 A No, ma'am, there was no need to.
 6 Q Okay. Did you review any literature regarding
 7 the use of a gun in self-defense by a person with a
 8 disability in preparation for this report?
 9 A No, ma'am, I did not.
 10 Q Sections II-A, B, C --
 11 A What page are we on, ma'am?
 12 Q I'm just looking at general headings on page 3.
 13 There is missing or shortened fingers, missing hand or
 14 arm. C is disabilities associated with aging, and
 15 Section II-D on page 4 is lower-body disabilities.
 16 A Yes, ma'am.
 17 Q Again, these -- the opinions expressed there
 18 aren't based on any studies regarding people with
 19 these disabilities or their ability to defend
 20 themselves, but rather your personal experience; is
 21 that correct?
 22 A Personal and collective experience and
 23 observation.
 24 Q Have you ever in your career conducted any
 25 studies regarding gun use by people with disabilities?

1 I've taken.
 2 Q Okay. Do you know if you've taken any?
 3 A Many of the courses I attend will teach some
 4 variation of what I teach of primarily geared toward
 5 if you, the practitioner, have lost the ability to run
 6 or if you have lost the ability to use your dominant
 7 hand in the course of the fight.
 8 And, of course, a lot of that applies to the
 9 person whose loss is not immediate and temporary in the
 10 course of a fight. Their loss may be permanent and
 11 took place long prior to the fight.
 12 Q Okay.
 13 A So there's a lot of crossover there.
 14 Q So what you're saying is that as an instructor
 15 of people with disabilities, you've learned how to
 16 train them by virtue of working with them?
 17 A Pretty much.
 18 Q Okay. Let's see. Looking at page 2 of your
 19 report, under section 2, you say, "Over the years I
 20 have trained thousands of police and citizen shooters
 21 of all levels of ability. I have had occasion to train
 22 many physically challenged shooters, these include
 23 paraplegic and partially quadriplegic firearm users, a
 24 broad range of amputees, many people suffering from
 25 birth defects as well as persons who have limited

1 physical abilities due to the effects of aging."

2 When you say physically challenged shooters,
3 are you referring to shooters with disabilities?

4 A Yes, ma'am.

5 Q I just want to make sure. Do you conduct the
6 training of these physically challenged shooters
7 one on one?

8 A Well, they will participate in the same
9 training that we're giving everyone during the class.
10 I or one of my staff will work with them one on one
11 to adapt them to the given technique based on what
12 they have to work with in terms of physical ability,
13 mobility, range of movement, et cetera.

14 Q And again, in terms of the classes that you're
15 talking about, those are the ones offered through the
16 Massad Ayoob Group?

17 A Yes, ma'am.

18 Q Okay. And none of those are specifically,
19 though, geared at teaching people with disabilities
20 how to use a gun?

21 A Yeah. As I said, I do not have a particular
22 come take our disabled-shooter class. We do it one on
23 one.

24 Q Okay. That was my next question. So the
25 disabled individuals, they come as part of the classes

1 Q -- to get an idea of the scope of the
2 training.

3 A Certainly.

4 Q How many times have you trained a
5 paraplegic?

6 A Several paraplegics, three quadriplegics --
7 three partial quadriplegics that I can recall.
8 Obviously if they were totally quadriplegic, they
9 would not have been able to operate a firearm.

10 Q And when you say several paraplegics, do you
11 mean one to five, five to ten?

12 A No. It would be way more than that. We've
13 got two or three people a year in wheelchairs and
14 I've been doing this for 30 some years, and often
15 more than two or three.

16 Q Okay. So of the total people that you've
17 trained over the last 30 years, what percentage
18 would you say are paraplegics?

19 A I have no idea. It would be a small
20 percentage.

21 Q Would you say five percent?

22 A No. Less than that.

23 Q Less than five percent.

24 A Well, that would be one out of every 20
25 students. No, we don't do that many.

1 that are offered generally?

2 A Correct. They're integrated under the regular
3 classes and we accommodate them and adapt the
4 techniques as best we can.

5 Q Okay. Do you ever at the Massad Ayoob Group,
6 do you advertise your training services ever as someone
7 who's experienced with working with people with
8 disabilities?

9 A I don't advertise it, per se, that I recall.
10 We don't actually, except for the website, really
11 advertise. If someone asks -- it's a frequent
12 question. I'm in a Wheelchair. Can you accommodate?
13 I've had a stroke and cannot use my left hand. Can
14 you teach me what to do?

15 And we'll deal with them on a one-on-one basis.

16 Q Okay. So have you only trained people with
17 disabilities when they've come to you in the normal
18 course of business?

19 A I don't know when else I would train them.

20 Q Okay. Just in terms of looking at your -- back
21 to your report, you say: It includes paraplegic,
22 partially quadriplegics and others.

23 So I wanted to go through those kind of one by
24 one --

25 A Sure.

1 Q When was the last time you've trained a
2 paraplegic?

3 A Two this year. Let's see. My last class last
4 week, one gentleman with Parkinson's, one gentleman
5 with some severe motor problems with the left arm, a
6 great deal of weakness and very poor coordination.

7 Q Were they paraplegic or --

8 A Neither of those were.

9 Q Okay.

10 A Let's see. In the past -- since this past
11 summer, I'm thinking of two who were. One man had
12 lost both legs, so he as a paraplegic. His legs had
13 been blown off in Afghanistan.

14 And one who was paraplegic. He had one leg
15 left, and also from an IED, and was paraplegic in the
16 other leg.

17 Q Okay. So in this last year you can recall
18 having trained two paraplegics?

19 A Two paraplegics this past year, yeah, and
20 others with various issues.

21 Q Okay. And we'll probably get to those.

22 A Sure.

23 Q I'm trying to break it down.

24 A Sure.

25 Q Could you say about how many paraplegics

1 you've trained in the last five years?
 2 A Probably figure at least two or three a year.
 3 Again, it's not something I keep track of. So
 4 that's almost more a guess than an estimate.
 5 Q Okay. But of the total people you've trained,
 6 you think it's been -- of the total people you've
 7 trained in the last 30 years, less than five percent
 8 of those have been paraplegics?
 9 A That's correct.
 10 Q Okay. And then in the terms of the partially
 11 quadriplegic, about -- of the total people you've
 12 trained in the last 30 years, about how many have
 13 been partially quadriplegic?
 14 A I'm thinking of three. Each had some use of at
 15 least one hand.
 16 Q So of all the people you've ever trained, only
 17 three have been partially --
 18 A Quadriplegic.
 19 Q -- quadriplegic. And have you trained any
 20 partially quadriplegics in the last year?
 21 A Not the last year, no.
 22 Q Have you trained any partially quadriplegics in
 23 the last five years?
 24 A I believe one.
 25 Q And then you talk about a broad range of

1 hip injuries, hip replacements, knee replacements,
 2 that greatly limit mobility. If they can stand and
 3 shoot, fine. But if you ask them to run to cover and
 4 get there quick, it's just not going to happen; or if
 5 you ask them to kneel down behind this thing and take
 6 cover, they'll look you in the face and say: My knee
 7 won't bend. I can't kneel down behind it.
 8 Q Okay. And with respect to people with that
 9 type of limited mobility, of all the people that
 10 you've trained in the last 30 years, what percentage
 11 would you say have that -- that you've trained that
 12 have limited mobility?
 13 A It would certainly be a minority, but I would
 14 be -- I would be throwing darts at the wall to try to
 15 assign a percentage. There was never a reason to keep
 16 track.
 17 Q Okay. Would it be fair to say it would be less
 18 than five percent?
 19 A Actually, it may -- no. If you count
 20 lower-body mobility challenges of any type, that would
 21 be at least five percent, maybe as much as ten in some
 22 classes. Where that will show up is when we're
 23 teaching them how to shoot behind low cover, which
 24 would be either a deep crouch position or a kneeling
 25 position, and we got several folks that simply can't

1 amputees. What types of amputations in those cases
 2 to the best of your recollection?
 3 A Lost leg, lost legs, shortened fingers,
 4 totally amputated fingers, one arm, one hand. As
 5 mentioned, one -- at least one that I'm recalling.
 6 There may have been more -- thalidomide babies in
 7 adulthood whose fingers were essentially in total
 8 length about the same as the first phalange of a
 9 normal hand.
 10 Q Okay. And about -- of all the people that
 11 you've trained, disabled or not, in the last 30
 12 years, about how many of them -- what percentage
 13 have been people with these types of amputations?
 14 A Guessing, it would be roughly the same
 15 percentage you'd see anywhere in every day life.
 16 I've never really done a percentage on that.
 17 Q Okay. Would you say less than five
 18 percent or --
 19 A Well, certainly less than five percent with
 20 totally missing limbs. More than that who've had
 21 something happen to a finger or an industrial
 22 accident, a farm accident, a table-saw accident or
 23 something. But it would be -- I'd say it would be
 24 under five percent for disabilities.
 25 Then you start getting into the back injuries,

1 get down in that position. We get several more that
 2 once they're down in that position, they can't get
 3 back up.
 4 Q Okay. So when you say limited movement, that
 5 pretty much runs the gamut. It could be anything
 6 from an age-related factor to some sort of condition
 7 that inhibits them from moving up and down easily and
 8 even something like obesity or something?
 9 A Or even a recent trauma, such as a sprained
 10 ankle.
 11 Q Okay. A temporary trauma?
 12 A A temporary trauma. Of course, I keep going
 13 back to what I mentioned earlier, the training of the
 14 wounded-fighter response. It might also be an injury
 15 that's taken place in the course of the instant
 16 assault.
 17 Q Okay. With respect to someone that would have
 18 a permanent limited movement in terms of the ability
 19 to go up and down or something like that, what
 20 percentage of all the people you've trained do you
 21 think have had limited permanent movement?
 22 A That could be as much as five or ten percent,
 23 depending on any given class. You'll see it certainly
 24 less in law enforcement, because by definition, law
 25 enforcement requires able-bodied personnel.

1 You'll see it more with older retired officers,
2 for example. You'll see it more with the older
3 members of society. And, of course, now, we have the
4 Wounded Warrior generation coming back from the War on
5 Terror.

6 Q Okay. And just so I don't forget to ask, in
7 the last 30 years, about how many people do you
8 believe you've trained in total?

9 A Wow. That would be like asking you how many
10 depositions have you taken. I can tell you that it's
11 in the thousands. I often did not keep track. I've
12 been teaching for --

13 Q Would you say more than 10,000?

14 A -- America Society of Law Enforcement Trainers,
15 for example, I'll have -- or at the National Law
16 Enforcement Educators and Trainers Association, there
17 might be 100 people in the room for the four
18 hours that I am conducting the panel of discussion. I
19 don't keep track of that.

20 I would have to go back through the records to
21 count class by class, how many attendees we had in our
22 dedicated programs. But that does not encompass --
23 they told me we had 180 attorneys at the Texas CLE
24 thing last month. But again, I was only one of the
25 speakers for like an hour or something. So you see

1 stiffness, the guy who cannot run or the guy who
2 cannot kneel, which normally would not impact your
3 ability to stand up and shoot, but could impact their
4 tactical ability in a fight, it would be many times
5 more than the people who are challenged just on the
6 shooting side.

7 Q Okay. If you were just to talk about the
8 people challenged on the shooting side, what
9 percentage of all the people you've trained in the
10 last 30 years have you trained who have challenges,
11 disabilities that impact their shooting?

12 A If it was severe disabilities, I would say a
13 very small percentage.

14 Q Okay. Would you say less than five percent?

15 A Yes. If we're talking, for example, a
16 paraplegic, missing a leg, missing a hand, yeah, way
17 below five percent.

18 Q Okay. So with respect to the categories
19 you've described in your initial report, people with
20 missing or shortened fingers, missing hand or arm,
21 and disabilities associated with aging and lower-body
22 disabilities, do those fall in the category of less
23 than -- of the people that you've trained that are
24 less than five percent of the total?

25 A I'm not sure I understand the question.

1 it's not easy to keep track of how many folks that
2 you've interacted with.

3 Q Okay. In terms of -- I mean, if you were to
4 quantify about how many people total you've trained
5 in the last 30 years, could you -- would it be above
6 20,000?

7 A I honestly don't know. I can tell you it's
8 in the thousands. And I can tell you by the end of
9 this year, we will have probably have trained over a
10 thousand people this year. It would vary. Some years
11 there are more classroom programs and those tend to be
12 larger, because they do not need the support staff of
13 safety officers on the range.

14 And we -- in a live fire class, we might be
15 limited to as few as 20 students, depending on the
16 size of shooting range available. In a classroom
17 deadly-force presentation, the only limit is the
18 size of the room. So we might have as many as 100.

19 Q Okay.

20 A Even going by class, you know, I couldn't
21 tell you how many.

22 Q Okay. But of all the people you've trained
23 in the last 30 years, about what percentage of those
24 people would you say had some sort of disability?

25 A Well, if you extend that to mobility,

1 Q Yeah, that was a bad question. Let me rephrase
2 that. Let me start again. We just discussed how over
3 the last 30 years of all the people that you have
4 trained, you've identified that less than five percent
5 of those people -- you've trained less than five
6 percent with the disabilities that impact their
7 shooting capability; is that correct?

8 A Maybe I can make it more clear if I say it
9 would be less than five percent that were profoundly
10 disabled. It might well be as many as ten percent
11 who had some disability that would effect range of
12 movement, speed of movement and the ability to
13 tactically take cover or exit a kill zone. Hopefully
14 that's more clear.

15 Q That is. Thank you. So in terms of the
16 categories of people you've addressed in your initial
17 report, which include, again, missing or shortened
18 fingers, missing hand or arm, disabilities associated
19 with aging and lower-body disabilities, would those
20 people fall within the category of profoundly disabled
21 that you've just identified?

22 A Repeat the question.

23 Q Of the different categories of disabled
24 people that you've identified in your report,
25 which includes people with missing or shortened

1 fingers, people with a missing hand or arm, people
2 with disabilities associated with aging or people
3 with lower-body disabilities, in your mind, did
4 those disabilities -- are they, in your mind, what
5 would be considered profoundly disabled as you've
6 identified in terms of --

7 A Speaking purely from a perspective of the
8 shooting instructor as it relates to my role in this
9 case, let's say the guy was missing his index finger
10 on his dominant hand. Most people would consider that
11 a handicap, not a profound handicap in everyday life.

12 In shooting a gun, however, that means he's
13 missing what is traditionally the trigger finger and
14 what virtually every gun is designed for that finger
15 to be applied to the trigger. So now we will have to
16 make some profound adjustments in his or her shooting
17 technique. So from the pure shooting side, while the
18 lay person might not see them as profoundly challenged,
19 in this particular skill with this particular machine,
20 they are.

21 Insofar as mobility challenged, in terms of pure
22 shooting, let's say as it relates to the high-capacity
23 magazine, the guy who takes a long time to get up from
24 this table and walk to that door, may be able to shoot
25 just fine; in fact, might be able to win a pistol

1 you that -- and again, you can clarify this.
2 That somebody with missing or shortened fingers,
3 somebody with a missing hand or arm, and somebody
4 with disabilities associated with aging or
5 lower-body disabilities is in your mind part of
6 that group of profoundly disabled people that you've
7 trained?

8 A Well, no. What I am saying --
9 MR. COLIN: Foundation.

10 Go ahead.

11 THE WITNESS: Sorry, Mr. Colin.

12 MR. COLIN: It's all right.

13 THE WITNESS: Okay. Let me try to clarify
14 again. From the shooting instructor's side of it,
15 the ability to manipulate -- an injury that effects
16 their ability to manipulate the firearm, the
17 magazine or the ammunition, for this particular
18 skill set, to me, would constitute a profound
19 handicap.

20 The lower-body mobility and the speed of
21 movement limitations, I would see as a handicap to
22 their tactical ability to take cover, to escape the
23 situation, or to take other alternative means than
24 shooting in self-defense.

25 So I would see that as, from my role as an

1 match. I've had one of my guys in a wheelchair this
2 year come in top shot in his class.

3 But if you ask him now to run to cover or flee
4 from the mass murderer, they're going to be physically
5 unable to do it. To put it in a vernacular, if they
6 have no option to scoot, their only option is to shoot.
7 And those people will -- if that's their only option
8 to survive, will need more ammunition in the gun,
9 because they're not going to be able to get to a
10 position of safety temporarily where they can reload.

11 So that is a -- there are different dynamics
12 that would affect the need for the higher-capacity
13 magazine for the person with lower-body limitations,
14 vis-a-vis, the person with, let's say, hand and arm
15 limitations as they affected the actual shooting and
16 the actual mechanical process of reloading the gun by
17 hand.

18 Q Okay. And we'll get to that in just a minute.

19 A Sure.

20 Q I guess I'm just trying to figure out, you've
21 indicated that out of all the people you've
22 trained in the last 30 years, less than five percent
23 have been profoundly disabled.

24 A As I would use the term, yes.

25 Q Right. And I just wanted to confirm with

1 instructor, teaching them to qualify with a pistol,
2 the dexterity challenges and manipulation
3 challenges, I would see as profound.

4 The guy in the wheelchair whose upper body is
5 still in fine shape, I can teach to shoot very well,
6 but he has a tremendous tactical disadvantage that
7 may not show up in my first level class. But if
8 he ever needs the gun, if he is ever in a shooting
9 situation, would require -- would limit his options
10 and would require him basically to shoot from where
11 he is and he would have no safe lull in the action
12 in which he could reload his gun if he had limited
13 magazine capacity.

14 BY MS. MOATS:

15 Q Okay. And that helps answer my question.

16 A Okay.

17 Q So I'm just trying to determine -- so with
18 respect to all the people you've trained in the last
19 30 years, is it fair to say that less than five
20 percent of those people have had a handicap that
21 hinders their dexterity and their manipulation of a
22 firearm?

23 A I would say less than five percent would be
24 what I would call profoundly handicapped, as many as
25 five to ten percent in the civilian, as opposed to

1 police classes --
 2 Q Correct.
 3 A -- would have some degree of mobility
 4 challenge that would affect them insofar as the case
 5 at bar.
 6 Q Okay. And by that you mean tactical ability?
 7 A Correct. There are two sides of the argument
 8 of the value of the higher-capacity magazine to the
 9 private citizen.
 10 Q Okay. And then looking at the part of your
 11 report indicating you've trained people suffering
 12 from birth defects. What do you refer to -- what do
 13 you mean by birth defects?
 14 A We had one fellow who was -- no. Excuse me.
 15 I can think of two who were born with only one arm.
 16 We've had the adult thalidomide babies. I'm trying
 17 to remember if we've had any actual dwarfs. I forget
 18 what the exact height definition is with that.
 19 But we have had some people with very, very
 20 short fingers. The Sig Academy, S-i-g, in Exeter, New
 21 Hampshire, famously were able to teach a police officer
 22 to qualify who had been born with the defect that I
 23 cannot remember the medical term for.
 24 But the hand basically is shaped like a lobster
 25 claw. Where you would have four fingers, there is one

1 scientific certainty that there are a great many
 2 people in this situation whose ability to defend
 3 themselves and other innocent persons will be
 4 severely and negatively impacted by a magazine
 5 capacity limitation."
 6 A Yes, ma'am.
 7 Q When you say "people in this situation," what
 8 situation are you referring to?
 9 A The situation in toto of physical disability,
 10 that would encompass those with limited mobility and
 11 limited speed who would not have the option of
 12 reloading behind cover or running to flee the danger
 13 zone entirely.
 14 Q Okay.
 15 A Add to that the ones who would have the
 16 physical challenges, whether due to their placement
 17 in a wheelchair or injuries or shortcomings in
 18 upper-body strength and dexterity, that would make it
 19 much more difficult for them to reload a low-capacity
 20 gun.
 21 Q And what do you consider a low-capacity
 22 firearm?
 23 A Well, that's kind of like what's pretty and
 24 what's enough money? It's a very subjective judgment.
 25 Obviously, the person who's going to have trouble

1 large digit and one large thumb. In the old carnivals,
 2 people with that deformity were unfortunately titled
 3 Lobster Boy.
 4 And they were actually able to get a fellow who
 5 was hired on to the police department on the condition
 6 that he could learn to shoot, were actually able to get
 7 him to qualify with the pistol.
 8 Q Have you trained -- I know in your report, you
 9 talk about the dwarfs -- or I'm sorry -- the
 10 thalidomide babies. I that --
 11 A Thalidomide.
 12 Q Okay. I'm sorry. I apologize.
 13 A A generation before you. It's okay.
 14 Q Yes. I just wondered of all of the -- so do you
 15 recall of all the people you've trained in the last 30
 16 years how many may have been dwarves or thalidomide
 17 babies?
 18 A At least one thalidomide, several with very
 19 short fingers.
 20 Q Okay. And we'll go over that here in a second.
 21 A Sure.
 22 Q But keeping on page 2, the last paragraph of
 23 page 2 in your report.
 24 A Sure.
 25 Q You say, "I can say to a definite degree of

1 reloading would get proportionally more value from
 2 the higher-capacity gun than let's say someone like
 3 Kevin Davis, who is highly skilled, regularly
 4 practiced and can reload and empty a semiautomatic
 5 pistol in about two seconds.
 6 Q Okay. Would you consider a firearm that
 7 held 15 rounds or less to be a low-capacity
 8 firearm?
 9 A Well, there was a time when 14 shots was
 10 considered high capacity, but that was 1935. In
 11 today's state of the art, that would be more toward
 12 average than high. What is high capacity is almost
 13 an exercise in semantics 10).
 14 Historically in the firearms' industry, if
 15 someone came up with a magazine that could hold
 16 significantly more cartridges than that particular
 17 firearm had held before, that certainly would be for
 18 that gun a high-capacity magazine. If a gun designer
 19 or manufacturer came out with a new pistol that held
 20 more cartridges than any gun of its type before, that
 21 certainly would be high capacity.
 22 If you start going beyond that, and you start
 23 getting awfully subjective. An old retired cop with
 24 a .38 caliber six-shooter might say to, you know, his
 25 son or grandson that just graduated from the police

1 academy, "Why do you kids need those high-capacity
2 assault pistols with the 15 round magazine? That's
3 more than two and a half times what I had in the old
4 days, by crackie."

5 And someone who carried a 30-shot FN 5.7
6 millimeter pistol might look at the 20-shot pistol
7 on my hip and say, "Old guy, old man, why are you
8 handicapping yourself with that old technology?"

9 Q So what you're saying is viewing a firearm
10 that may hold 15 rounds or less as a low capacity
11 firearm is subjective?

12 A I would say so.

13 Q Okay. And in terms of your opinion that you
14 can say to a definite degree of scientific certainty
15 that there are a great many people in this situation
16 whose ability to defend themselves and other innocent
17 persons will be severely and negatively impacted, just
18 to confirm, you don't -- you didn't cite any studies
19 in your report, correct?

20 A That's correct.

21 Q Okay. And you didn't review any studies in your
22 report?

23 MR. COLIN: Asked and answered.

24 Go ahead.

25 THE WITNESS: Do I get to say asked and answered

1 physical limitations, do you know how many people
2 have such physical limitations?

3 A I'm not sure anyone has the complete count of
4 that. I think certainly that element is within the
5 common knowledge. The only expertise that I bring to
6 that particular table is my knowledge of the
7 manipulations that will be involved and the degree to
8 which that would impact those individuals.

9 Q And when you say manipulations that will be
10 involved, what are you referring to?

11 A In reloading a lower-capacity firearm compared
12 to sustaining fire and simply continuing to pull the
13 trigger with a higher-capacity firearm.

14 Q Okay. So in essence what you're saying,
15 though, it's your opinion -- or your opinion which
16 states that you can say to a definite degree of
17 scientific certainty, that's based on your personal
18 experience, correct?

19 A Personal experience and also the collective
20 experience of the many other instructors that I've
21 interacted with over the years.

22 Q Okay. When you say personal experience,
23 are you basing it on the times that you've worked
24 with disabled individuals?

25 A Yes, ma'am, I am.

1 too?

2 MS. MOATS: No.

3 THE WITNESS: Dam.

4 BY MS. MOATS:

5 Q You didn't review any studies in your report
6 regarding the ability of a disabled person to use a
7 gun?

8 A That's correct.

9 MR. COLIN: Same objection.

10 BY MS. MOATS:

11 Q So if no studies, how did you reach your
12 conclusion to a definite degree of scientific
13 certainty?

14 A Well, ma'am, if you look at the number of
15 people in American society who have difficulty
16 getting around, we know there's a significant
17 number. I can tell you from 40 years in firearms'
18 training, that certain disabilities will
19 profoundly impact the ability to reload a pistol
20 or revolver. I believe I can demonstrate that
21 with time-and-motion studies. I believe, if counsel
22 wishes, we can produce demonstrative evidence for
23 that at trial.

24 Q When you say you know that there's a great
25 many people in the country that have limited -- or

1 Q Okay. And when you've worked with these
2 disabled individuals, did you -- did you interview
3 them about the scope of their disability?

4 A Yes. You have to if you're going to help them
5 work within that scope. In addition to that, we have
6 all the training that we've done over of the decades
7 in anticipation of the person we're training being
8 wounded and what they would have to do if they only
9 had one hand, let's say, with which to reload the
10 firearm.

11 Q Okay. When you worked with these disabled
12 individuals, did you ask every one of them whether
13 or not it was better for them to work with the
14 lower-capacity magazine weapon versus a
15 higher-capacity magazine weapon?

16 A No, probably not every one of them. We would
17 have given many of them options. My job primarily
18 is to teach them how to operate what they have.
19 Certainly I would have recommended, if they had
20 difficulty reloading, that they go to something with
21 a larger capacity.

22 Q Okay. When you worked with these disabled
23 individuals, did you ask every one of them whether
24 they had -- about their self-defense experiences?

25 A No. That's actually kind of an intrusive

1 question. Now, in the early days, my questionnaires
2 for the students included, "Have you had a
3 precipitating incident that brought you here?" And
4 an amazing number were offended by the question,
5 because so many had had something bad happen to them
6 or to a family member and they kind of took that
7 personally.

8 So I stopped asking them. Now, that said, I
9 do know many have had either an experience or a near
10 miss, but I don't do an entry interview, if you will,
11 with every student. There simply isn't time.

12 Q Okay. So if they -- if they don't volunteer
13 that information, you don't necessarily gather it
14 from them?

15 A Yeah, or unless there was some reason for me
16 to ask them, but usually there's not.

17 Q Okay. Do you ever know if any of the disabled
18 individuals with whom you've trained over the last 30
19 years, did they ever mention to you that they were in
20 a self-defense situation where they ran out of
21 ammunition and couldn't reload?

22 A In actual situations, I'm not recalling any
23 right now. However, there are numerous situations in
24 the literature where someone was killed, whether a
25 police officer or civilian, with an empty gun because

1 and he was murdered there.

2 Q Okay. And --

3 A So there in just one gunfight, you have
4 basically three men who died because they ran out of
5 ammunition.

6 Q Okay. And in that gunfight, that involved
7 law enforcement?

8 A It did, ma'am, the Federal Bureau of
9 Investigations.

10 Q Did that gunfight involved any disabled
11 persons?

12 A No. They were all, but one exception. One
13 of the agents had lost an eye in a prior fire fight,
14 but had been allowed to remain on. Other than that,
15 all their disabilities took place in the course of
16 the fight itself.

17 Q And going back to when you train disabled
18 individuals, do you ask them on a regular basis
19 about their ability to reload a magazine into a
20 firearm?

21 A Well, it becomes apparent on the first day.

22 Q Okay. So you just --

23 A I'll ask beforehand if, you know, what --
24 basically what their background is with guns. It's
25 mainly an observation that you find out exactly

1 they had run out of ammunition and they were helpless.

2 Q And when you say the literature, what are you
3 referring to?

4 A The police reports, for example, in the FBI
5 shooting in Miami that I mentioned. In that one
6 incident, Supervisory Special Agent McNeill, M-c.
7 capital N-e-i-l-l, had emptied his 6-shot revolver.
8 He had been shot in the gun hand with a rifle bullet.

9 When he attempted to reload, chunks of flesh
10 and bone from his hand were falling into the gun and
11 it jammed. And he was trying to make his way back to
12 the car for a shotgun when the man who had shot him
13 surfaced from behind cover, grinned at him and shot
14 him in the neck.

15 In the same gunfight, John Hanlon,
16 H-a-n-l-o-n, had emptied his revolver and was
17 reloading when the same man shot him in the wrist
18 and forearm area. He had never been taught how to
19 reload the gun one handed, tried to get to cover.
20 The man ran up to him and shot him again between
21 the legs.

22 Moments later Agent Jerry Dove, D-o-v-e, was
23 shot and killed by the same man. He had run out of
24 ammunition and his pistol had been hit by a bullet
25 and damaged; and he was helpless as well to continue,

1 what their level of capability and dexterity might
2 be.

3 Q And when you've worked with these disabled
4 individuals over the years, did you log what the
5 issues were, did you take notes, did you document it
6 in any type of --

7 A No, ma'am. As I've said, at the time I was
8 not doing research. I was doing training and there
9 was no need to document.

10 Q Okay. So what you're relying on is just your
11 memory in terms of your personal -- your experiences,
12 you're relying on your memory of training these
13 people?

14 A Memory, experience and, once again, the
15 collective experience of the many other instructors
16 that I've interacted with in 19 years as Chair of
17 the Firearms' Committee for the American Society of
18 Law Enforcement Trainers, and 10 years now on the
19 Advisory Board of the International Law Enforcement,
20 Educators and Trainers' Association.

21 Q Okay. And when you say collective experience
22 of the other instructors, what you're saying is
23 you've just -- you're using -- you have knowledge of
24 their experience?

25 A Correct.

1 Q Okay. So your opinions that -- the opinions
2 in your report about people with disabilities are
3 based on your own personal experiences and what
4 they've told you?

5 A That and I believe any other instructor who
6 has looked at this and has experience in teaching
7 the handicapped would tell you pretty much the
8 same.

9 Q Okay. Did you speak with any instructors
10 when you -- prior to preparing this report?

11 A In regard to --

12 Q I'm sorry. In regard to the opinions you were
13 going to issue in this report?

14 A No, ma'am, I did not.

15 MS. MOATS: Okay. If you want to take a quick
16 break, we can go ahead and do that and then we'll
17 get back into substance of it when everyone's
18 ready.

19 (Brief recess taken.)

20 MS. MOATS: Okay. I think we're back on the
21 record after taking a short break.

22 BY MS. MOATS:

23 Q And, Mr. Ayoob, I want to ask you some
24 questions now about your opinions that are on page 3
25 of your report that's marked as Deposition Exhibit 3.

1 A Yes, ma'am.

2 Q Starting with Section A, entitled: Missing or
3 Shortened Fingers. Are you aware of any plaintiffs
4 in this lawsuit with shorter than average fingers?

5 A I do not know if there are or not.

6 Q Okay. And how about any plaintiffs -- are you
7 aware of any plaintiffs in this lawsuit who are
8 missing fingers?

9 A Well, ma'am, I have not asked what any
10 specific disabilities might be of any of the
11 plaintiffs. I was asked to speak in general to how
12 this would impact the -- number one, the disabled
13 population; and number two, anyone who might suffer
14 that disability temporarily or permanently down the
15 road.

16 While I don't think there's any such thing as
17 a temporarily shortened finger, there are any number
18 of injuries that could, for a period of months, put
19 a normally able-bodied person out of action with that
20 particular hand and for that period of time they would
21 in effect be so afflicted.

22 Q Do you happen to know what percentage of
23 gun owners have permanently missing fingers?

24 A I'm not aware that that has ever been studied
25 empirically.

1 Q Okay. How about any -- do you know what
2 percentage of gun owners have permanently shortened
3 fingers?

4 A Again, I'm not aware of any empirical data
5 base on that.

6 Q Okay. And I know we talked a little bit about
7 how many times you've worked with people with various
8 disabilities, but just in terms of narrowing that down
9 a little more, of all the people you've trained in the
10 last thirty years, both disabled and non-disabled,
11 about how many of them have had permanent missing or
12 shortened fingers?

13 A I've never kept a count. You run across it
14 occasionally. I would imagine it would be the same
15 percentage that you would encounter in any
16 cross-section of society, and it would tend to run
17 higher in people who work with farm equipment,
18 machinery, the type of machinery that could, you
19 know, really easily take off a finger.

20 That said, I've worked with a great many
21 petite females and short-statured males whose
22 fingers are shorter than the so-called average
23 adult male hand around which most firearms are
24 designed.

25 Q Okay. As to permanently missing or

1 shortened fingers because of a disability,
2 you've said you've had occasion to work with
3 those type of people, correct?

4 A I have.

5 Q And when you say "occasion," what do you
6 mean? Like, would you say once a year?

7 A You'll see -- you'll see a few a year.

8 Q A few a year. One or two a year?

9 A Probably more than that.

10 Q Okay. How many do you think maximum would
11 you see a year?

12 A I do not know, ma'am. I've never had a
13 reason to keep count.

14 Q Okay. Would you say less than five?

15 A Less than five percent?

16 Q Or less than five total of people a year
17 that have permanent missing or shortened fingers?

18 A It might actually be more than that.

19 Q Okay. Would you say less than -- that you've
20 worked with less than ten people a year that have
21 permanent missing or shortened fingers?

22 A Again, I could not keep count on that. Never
23 having kept count, I would simply be guessing. I can
24 tell you that it comes up. We see it occasionally.
25 It's, frankly, no big deal to the copra.

1 Q Okay. And when you say occasionally, can you
2 quantify that at all?

3 A Well, again, it's just something we tend to
4 see. I've never kept count. The year will not go by
5 when I don't see any. You might have a class with a
6 couple of people who are a digit short here or a whole
7 finger short there.

8 Q Okay. But you can't -- as we sit here today,
9 you can't say about how many people in the last year
10 you've trained that have had permanent or missing
11 shortened fingers?

12 A No, ma'am. It would be a guess.

13 Q Would you be able to say that it's less than
14 five?

15 A No. I think it would probably be more than
16 five a year that would have some degree of a missing
17 finger even if it's only, let's say, the distal
18 joint.

19 Q Okay. And if you say more than five, would
20 you be able to say you've trained less than 20 that
21 have permanently or shortened or missing fingers?

22 A Oh, it's probably more than that over the
23 years.

24 Q Well, just in the last year?

25 A Not having kept count, I could not answer the

1 with two fingers grasp it, but it's going to be
2 awkward and slow. As you see, it's going to
3 wobble top to bottom.

4 BY MS. MOATS:

5 Q Uh-huh.

6 A And it's going to take them longer to insert
7 it into the pistol than it would if they had all
8 their fingers. If they're missing a little finger,
9 it's probably not going to matter, because in the
10 grasp that we teach, the little finger is not really
11 in contact anyway. So it would vary individual to
12 individual.

13 Q Okay. So what you've just described is
14 essentially you held up -- was that a magazine you
15 just held up?

16 A Yes, ma'am. That was a pistol magazine for
17 a Springfield 9 millimeter.

18 Q Okay. And so what you're saying is if they
19 had a missing or shortened ring finger, middle finger,
20 or index finger or thumb, that could impact their
21 ability to be able to reload the magazine?

22 A Well, I didn't keep exact track of what --
23 what I said, I think, was the little finger would be
24 the least important. The thumb and the forefinger,
25 the most important. The middle finger, certainly

1 question.

2 Q Okay. If someone has a missing or shortened
3 finger, would they have problems gripping -- wouldn't
4 they have problems gripping a firearm?

5 A It would depend which finger was shortened.
6 Let's say it's the little finger, known colloquially
7 as the pinky finger, that would be fairly minor. If
8 it was the index finger, which is the natural trigger
9 finger in terms of gun design, that would be a pretty
10 serious disability.

11 Q And if they had a disability -- you know, if
12 they had -- if the grip on the firearm was affected
13 because of their missing or shortened finger, wouldn't
14 someone then have an issue with aiming a firearm?

15 MR. COLIN: Foundation.

16 THE WITNESS: Not necessarily. The aiming
17 would be separate from the manipulations here. In
18 the case at bar, the primary manipulation we're
19 talking about is reloading. So that would involve,
20 on most pistols, the thumb pressing a button to drop
21 the depleted magazine.

22 On the other hand, if they have no fingers at
23 all, they're simply not going to be able to grasp
24 the fresh magazine. If they've got two fingers,
25 they can -- demonstrating here safely, they can

1 very helpful. And the whole hand would be ideal.
2 The more they're missing, the more profoundly they're
3 impacted.

4 Q Okay. And in your report, you state in the
5 second paragraph under Section A, Missing or
6 Shortened Fingers, you say "Those who have suffered
7 traumatic amputation of thumbs or fingers are
8 particularly affected by reduced cartridge capacity.
9 The thumb of the firing hand normally presses the
10 magazine release button to eject the spent magazine
11 from an empty semiautomatic pistol to begin the
12 loading process and the index of the right-handed
13 shooter does the same on the popular AR-15. When these
14 digits are shorter than average or indeed not present,
15 it becomes extremely slow, awkward and sometimes even
16 impossible for such legitimate user to perform this
17 operation."

18 What do you mean by legitimate user?

19 A Basically the law-abiding citizen, the
20 police officer, anyone who legally owns the firearm.

21 Q And again, the operation --

22 A Nothing that I am speaking of here is
23 addressed toward criminals, obviously.

24 Q And the operation you're referring to in that
25 part of your opinion is reloading the new magazine

1 into the gun?
 2 A That's correct, reloading the gun as opposed
 3 to putting the cartridges into the magazine prior.
 4 Q Now, is your opinion based on the assumption
 5 that a person with missing or shortened fingers will
 6 need to reload?
 7 A Well, if they don't need to reload, it's not
 8 going to be a problem for them.
 9 Q Okay.
 10 A At the same time, reloading has always
 11 traditionally been a part of self-defense training
 12 with the firearm, because there are many situations
 13 that can crop up that require sustained gun fire.
 14 Q Okay. And then you refer to semiautomatic
 15 pistols in here. Do semiautomatic pistols that are
 16 high capacity typically have double stacked
 17 magazines?
 18 A Yes, ma'am.
 19 Q Okay. If there was a double-stacked magazine
 20 on the semiautomatic, wouldn't it be wider and more
 21 difficult for someone with missing or shortened
 22 fingers to hold?
 23 A That depends on the design of the pistol.
 24 Many of the modern pistols are also slim enough that
 25 they can contain a double-stacked magazine and still

1 Q Yeah, maybe we'll do that a little later once
 2 we get through some of the questions.
 3 A Sure. To answer your question, it would be
 4 -- it's just not a double-stack magazine. It's the
 5 shape of the gun, design features of the gun, the
 6 type of the trigger, and how far forward inside the
 7 frame on the trigger guard that the trigger sits.
 8 So it is quite possible to get high-capacity guns
 9 that will fit small hands and be adaptable to
 10 shortened fingers.
 11 Q Okay. And is it also quite possible to get
 12 low-capacity guns that are adaptable to shortened
 13 hands and shortened fingers?
 14 A Yes, of course.
 15 Q Okay. Would you agree that the -- and
 16 again, maybe we just addressed this, but the size
 17 of the gun then can be adjusted to fit smaller
 18 hands?
 19 A It can, yes.
 20 Q Okay. Can a gunsmith modify a gun with
 21 something like an extended magazine release that
 22 would make it easier for someone with missing or
 23 shortened fingers to release a magazine?
 24 A They could. The problem with that is if you
 25 extend it far enough that a very shortened finger

1 allow the dimension I would describe as trigger
 2 reach.
 3 When we determine the fit of the firearm to
 4 the hand with a pistol, the key element is trigger
 5 reach, the ability to hold the gun, as I demonstrate
 6 here with my empty hand. On my hand, it would be
 7 measured from the center of the web of the hand in
 8 line with the long bones of the forearm to whatever
 9 part of the trigger finger that was going to contact
 10 the trigger.
 11 If my finger only goes this far, let's say,
 12 to the distal -- to the distal joint, and the trigger
 13 on the pistol is set for to here, I'm going to have
 14 great difficulty firing. If I have a pistol with a
 15 fairly easy trigger reach, the gun we mentioned
 16 earlier, the 20-shot XDM, that gun is engineered
 17 with a very short reach or relatively short reach to
 18 the trigger.
 19 It has turned out to be very well adapted to
 20 the hands of petite females, which typically are one
 21 digit shorter than that of the prototypical average
 22 male. If you'd like, I do have some unloaded guns in
 23 the car that I could bring in and demonstrate for you
 24 if you wanted to see what I was talking about. We
 25 could do that with total safety if you wish.

1 can reach it, it's so far extended, that it can bump
 2 against the body or on the opposite side of the gun,
 3 it can bump against a door frame when you're walking
 4 through a door and accidentally release the magazine.
 5 Q Would that be dependent on the type of gun the
 6 extended magazine release was used on?
 7 A It would depend partly on the type of gun and
 8 it would depend partly on whether the shooter was
 9 right-handed or left-handed. For example, the most
 10 popular pistol in this country today is the Glock.
 11 Q Uh-huh.
 12 A The Glock is, in terms of magazine release,
 13 a right-handed pistol. The button is on the left
 14 behind the trigger --
 15 Q Okay.
 16 A -- set for the right thumb. A left-handed
 17 shooter can use it. They simply use the index finger
 18 of the firing hand, the trigger finger, or the middle
 19 finger, if they're dominant left hand, to do it. But
 20 if you extend that magazine release, the -- if I'm
 21 standing here, because now they're wearing it on the
 22 left hip, instead of being protected by the body over
 23 here, it's out here protruding.
 24 So anything from the hip up can theoretically
 25 press the button enough to inadvertently release the

1 magazine, which means if they ever have to draw and
2 fire, either the magazine will fall right out of the
3 gun or after the first shot, it will not cycle until
4 the magazine's been re-inserted.

5 For a right-handed shooter, that button,
6 still protruding to the left is now protruding toward
7 the body and something that bumped the gun and pushed
8 the gun inward toward the body could have the same
9 affect of accidental release.

10 Q Okay. So the problems that could occur with
11 respect to the use of an extended magazine release
12 depends on the type of gun and also if the shooter
13 is right-handed or left-handed?

14 MR. COLIN: Compound.

15 THE WITNESS: Both of those could be factors.

16 I wouldn't say totally dependent on either of them,
17 but each could be factors.

18 BY MS. MOATS:

19 Q Okay. But it is possible to modify the
20 release button on a gun to extend it if somebody has
21 a shortened or missing finger?

22 A It is.

23 Q Okay. Are you aware of any data indicating
24 that people with missing or shortened fingers require
25 something more than 15 rounds for self-defense?

1 Q Okay. Let's assume that the able-bodied
2 shooter and the handicapped person both have guns
3 with a 15 round capacity.

4 A Right.

5 Q And the handicapped shooter has an extended
6 magazine release that's sufficient for his type of
7 gun and his use, would the -- under that scenario,
8 would the handicapped shooter be able to reload just
9 as fast as the non-handicapped person?

10 A It would --

11 MR. COLIN: Foundation.

12 Go ahead.

13 THE WITNESS: It would depend on, again, on
14 the nature of the disability. If they were able
15 to reach it with, let's say, a shortened thumb,
16 we'd be talking a very significant change in the
17 gun design. Normally an extended magazine just
18 sticks out a little bit, roughly the same size and
19 diameter as the standard release button.

20 For a shortened finger, you'd have to make it
21 almost in the form of a lever that extended back
22 across; that is, back across the grip panel. And
23 now almost anything that bumped the gun in a
24 left-hand holster or bumped the gun against the
25 body in a right-hand holster could inadvertently

1 A That's a rather broad question. Whether they
2 require more than 15 rounds is going to depend on the
3 situation, not the length of their fingers. If it
4 comes down to a situation where they need more than
5 15 rounds, or actually 16 if you count the chamber
6 round, they and the able-bodied person are both
7 going to have to reload as fast as they can. The
8 able-bodied person will be able to do it much
9 faster than the handicapped person.

10 Q And would that be assuming that the
11 handicapped person in that scenario you just
12 described didn't have something like an extended
13 magazine release?

14 A Well, again, it would depend whether the
15 extended magazine release was sufficient for them
16 to be able to reach it. We're also looking at many
17 other handicaps in which the other hand may not be
18 there to assist at all.

19 Even for the able-bodied shooter, they will
20 be able to get their 17th shot, if you will, fired
21 much more rapidly if it's already in the gun than if
22 they have to eject the spent magazine, access and
23 insert the fresh magazine, close the slide to chamber
24 the round so the gun can start shooting again, and
25 finally return to the trigger.

1 release the magazine.

2 BY MS. MOATS:

3 Q Okay. Are you aware of any incidents of
4 self-defense where a person with missing or shortened
5 fingers had a firearm with the capacity of 15 rounds
6 or less and was harmed because they fired all their
7 ammunition and were unable to reload?

8 A Well, we had Agent Dove who was in that
9 situation in the case I mentioned earlier and --

10 Q Are you talking about the FBI case?

11 A Yes, ma'am.

12 Q Okay.

13 A And he was not handicapped, ran out of
14 ammunition after one reload, and was still helpless
15 when he was murdered. It doesn't take an expert to
16 explain that a handicapped person would be slower,
17 would be in the same situation and worse, but that
18 either man, if they still had bullets in the gun when
19 the guy came around the corner with a rifle to kill
20 them, would have had a fighting chance to survive.

21 Q Do you think a person with missing or shortened
22 fingers could successfully defend themselves with 15
23 rounds or less?

24 A That would depend --

25 MR. COLIN: Foundation.

1 Go ahead.

2 THE WITNESS: That would depend entirely on the
3 situation, ma'am. Many people have defended
4 themselves -- probably the majority have defended
5 themselves without firing a shot at all. The
6 history of it is the majority of bad guys, when
7 they see they're in danger of being shot, either
8 submit or flee.

9 And then we go up the scale of probabilities
10 and in the end none of us knows until the fight
11 happens how many rounds we're going to need.
12 That's why many experts today place great emphasis
13 on high-cartridge capacity, the highest that's
14 practically available.

15 BY MS. MOATS:

16 Q Okay. And when you say many experts today,
17 who are you referring to?

18 A Oh, let's see. Gabe Suarez, S-u-a-r-e-z, has
19 made that point in his training. Rob Pincus,
20 P-i-n-c-u-s, the same. The great majority of police
21 departments now are using pistols with double-stack
22 magazines for the same reason. The theory is that
23 more is better if you need them. And it's like the
24 gun itself, it's better to have it and not need it,
25 than to need it and not have it.

1 part that was taken completely off his. Let's see.

2 You were asking about missing hands. Was that the
3 only question?

4 Q Yes.

5 A Okay. Those are the ones I recall.

6 Q So you can recall -- of all the people you've
7 ever trained, you can recall three that has missing
8 hands?

9 A At least those three, yes.

10 Q Okay. And how about of all the people you've
11 trained over the last 30 years, both disabled and
12 non-disabled, about how many people -- how many of
13 those people have had missing arms?

14 A Two that I can recall with missing arms, one
15 with essentially a dead arm. He had no use of it
16 whatsoever. The arm was atrophied and hung limply
17 at his side and he had zero use of it.

18 Q So of all the people you've trained, you can
19 remember about three that have had missing arms?

20 A That's correct.

21 Q Okay. When in the last five years have you
22 trained someone with a missing hand or arm?

23 A It was either last year or the year before.

24 That was a young lady who was born with -- I want to
25 say it was the right arm -- truncated just below the

1 Q Looking back on page 2 of your report, Section
2 B addresses people with missing hands or arms.

3 MR. COLIN: Page 3?

4 MS. MOATS: Page 3, Section B.

5 THE WITNESS: Ma'am, could you repeat that?

6 BY MS. MOATS:

7 Q Sure.

8 A Page 2 or page 3?

9 Q I'm on page 3.

10 A I'm sorry. I thought you said page 2.

11 Q That's okay.

12 A Can you repeat that?

13 Q Yes. I just said Section B of your report
14 addresses people with missing hand or arms.

15 A Okay. I'm with you.

16 Q And again, I know we talked a little bit
17 about the number of people you've trained and how
18 many have had disabilities, but just to break it
19 down further, over the last 30 years that you've
20 trained people, both disabled and non-disabled,
21 about how many of those people have had missing
22 hands?

23 A I can think of three, another with about half
24 a hand basically. His hand had -- if you look at my
25 right hand, my left hand is blocking off the lower

1 elbow.

2 Q So in the last year or year before, you've
3 trained one person that has had part of a missing
4 arm?

5 A Essentially a one-armed person for all
6 practical purposes.

7 Q Have you trained anyone in the last year
8 that's had a missing hand?

9 A I recall one with partial hands earlier this
10 year, but I think he may have been in a classroom
11 setting, not a range setting. I discussed his
12 shooting with him, but I do not -- I do not recall
13 training him live fire on the range.

14 Q Okay. Do you know what percentage of gun
15 owners are missing a hand?

16 A Again, I am not aware of any empirical
17 data base.

18 Q Okay. And the same with gun owners missing
19 an arm?

20 A Correct.

21 Q Okay. Looking at your report under Section B
22 on page 3, the third full sentence begins, "For them
23 to reload one handed -- "

24 A Okay. Ma'am, I'm sorry. Could you tell me
25 again where you are?

1 Q Sure. Section B.
 2 A Yep, okay.
 3 Q The third full sentence in that paragraph.
 4 A Okay.
 5 Q "For them to reload one handed, they have to
 6 eject the magazine one-handed and then secure the
 7 pistol in a holster, waistband, between the knees,
 8 et cetera.
 9 A Correct.
 10 Q So again, the concern here you're addressing
 11 is the ability of someone with a missing hand or arm
 12 to reload?
 13 A Or any person whose hand or arm has become
 14 inoperable either due to an already existing injury
 15 at the time of the fight or an injury inflicted
 16 during the fight, yes.
 17 Q Okay. And is your opinion assuming that
 18 someone with a missing hand or arm or whose hand or
 19 arm has become inoperable will need to reload if
 20 involved in an altercation with a perpetrator?
 21 A If they run out of ammunition and the fight
 22 is still on, they would certainly need to reload.
 23 Q Okay. Do you believe there are any
 24 circumstances -- well, let me rephrase that.
 25 Strike that.

1 Go ahead.
 2 THE WITNESS: "May" would be the operative
 3 term. The more highly trained and proficient they
 4 are, the more likely they are to hit accurately
 5 early in the fight and end the fight.
 6 That said, there's an almost infinite
 7 variety of circumstances that could require
 8 multiple shots. The opponent could be behind heavy
 9 cover, the opponent could be moving very rapidly,
 10 the gunfight could be taking place in the dark
 11 where it's more difficult to aim, the shooter
 12 themselves might have dirt or blood in their eyes
 13 from the course of the fight. So any number of
 14 things will affect what we call hit potential.
 15 Assuming all other things are equal, if things
 16 go down hill and you do not, at the beginning of
 17 the fight, achieve the hits that you need, the
 18 more cartridges you have, the more chances you have
 19 for a do-over and to stay in the fight and to stop
 20 the opponent before the opponent murders you.
 21 BY MS. MOATS:
 22 Q Okay. So what you're saying is there's no way
 23 of knowing whether or not 15 rounds of ammunition in a
 24 firearm is sufficient?
 25 A I would have to say that's correct. How many

1 Do you believe that there's any capacity of
 2 firearm that someone with a missing hand or arm
 3 could have that would not necessitate the need to
 4 reload?
 5 A Okay. If I understand your question
 6 correctly, my answer would be the more cartridges
 7 there are in the gun to start with, the less --
 8 proportionally less likely that they will need to
 9 reload.
 10 Q Okay. You did my understand question. I'm
 11 just trying to get an idea of how many cartridges do
 12 you believe would be necessary for someone with a
 13 missing hand or arm to lessen the potential for
 14 their need to reload?
 15 A I can't really quantify, this is enough and
 16 that's more than enough. You can always say more is
 17 the better.
 18 Q And what's that opinion based on, that more
 19 is better?
 20 A Logic.
 21 Q Okay. Would you agree that if a person with
 22 a missing hand or arm had a handgun with a 15-round
 23 capacity and was a highly trained proficient shooter,
 24 that there may be no need to reload?
 25 MR. COLIN: Foundation.

1 rounds you need, the answer is, it depends. It
 2 depends on the situation and there is almost infinite
 3 conditional branching; the number of opponents,
 4 opponents with body armor.
 5 It's well established that opponents on drugs
 6 can absorb more trauma and keep fighting than the
 7 average person with a clean toxicology screen who's
 8 caught unawares. The opponent in the grip of rage or
 9 a fight-or-flight response, the adrenalin running and
 10 the norepinephrines coming with it, can sustain a
 11 great deal of pain and a great deal of damage and
 12 keep fighting, and none of that is predictable before
 13 the encounter.
 14 Q What do you believe is more important, being a
 15 highly trained proficient shooter or having more than
 16 15 rounds of ammunition in your firearm?
 17 A I don't see them --
 18 MR. COLIN: Form and foundation.
 19 Go ahead.
 20 THE WITNESS: I don't see them as mutually
 21 exclusive. A great many of the highly trained
 22 shooters have gone from lower-capacity guns to
 23 higher-capacity guns because their training
 24 and their experience in training scenarios, which
 25 essentially is, as best as we can make it, a

1 synthetic experience in the field, has taught
2 them, you know what, more is better.

3 If I need one more shot right now to save my
4 life and my gun is empty -- and maybe I'm good
5 enough that I can reload the firearm in two
6 seconds, but it would still be about eight times
7 better if I could just pull the trigger and fire
8 that shot in the next quarter second and save my
9 life. And that is simple math and simple logic.

10 BY MS. MOATS:

11 Q Are you aware of any data or studies where a
12 person with a missing hand required more than 15
13 rounds for self-defense?

14 A No, but I'm aware of several situations where
15 an able-bodied person needed more than 15 rounds, and
16 had they been less than able-bodied, they would have
17 been even more handicapped in the fight.

18 Q And how do you know that?

19 A Again, logic and common sense. If Kevin
20 Davis or I can reload the pistol with both hands in
21 two seconds when we are standing on a firing line
22 and prepared to do it, and you have only one hand
23 and/or you are in a wheelchair where a magazine is
24 much less accessible, it's going to take you much
25 longer.

1 THE WITNESS: It would depend on the situation
2 again, ma'am. As I said earlier, many people defend
3 themselves without firing a shot. Many self-defense
4 shootings are one-shot events. And from there on,
5 it's a crapshoot; depending on the number of
6 opponents, the resilience of the opponent, the
7 distance of the opponent. As they are farther
8 away shooting at you, they become progressively
9 harder for you to hit effectively.

10 Is the shooter wearing body armor? As in the
11 Aurora Theater, he's going to be able to soak up
12 more bullets and it's going to take you more gun
13 fire to get a bullet into a vulnerable spot that
14 stops him.

15 So whether you have one hands or two, those
16 variables will always be in place. The person with
17 one hand or one arm has 50 percent less flesh and
18 bone to stabilize that gun with and is more likely
19 to need more shots to get the center hit that shuts
20 off the opponent's attack.

21 BY MS. MOATS:

22 Q Okay. And when you say that someone with a
23 missing hand or arm has -- it's harder for them, if
24 will you, to stabilize the gun, does that also mean
25 that it's harder for them to aim the gun safely?

1 Q Are you aware of any data to studies
2 indicating that someone with a missing arm would
3 require more than 15 rounds to defend themselves?

4 A Again, that would be much more dependent upon
5 the situation than it would -- the person with one
6 arm is not necessarily more likely to require 15
7 rounds than the person with two.

8 What we have to look at, though, is the
9 person with two hands can put both hands on the gun
10 and stabilize it. It is universally accepted that a
11 two-handed hold will be more accurate than a
12 one-handed hold. So the two-handed shooter being
13 more accurate, it is much more likely that he or she
14 will end the fight in relatively few rounds.

15 The loss of accuracy to the one-handed shooter
16 means they're more likely to need more rounds to get
17 the center hit that stops the fight. So in that
18 sense, logic would tell us that the one-arm shooter
19 is more likely to need more ammunition than the
20 two-handed shooter.

21 Q Okay. Do you think that someone with a
22 missing hand or arm could successfully defend
23 themselves with 15 rounds or less?

24 MR. COLIN: Foundation, speculation.
25 Go ahead.

1 A It's not so much aiming it safely as it is
2 aiming it precisely. With basically three fingers
3 and a thumb to stabilize the gun, because the index
4 finger is separating running the trigger, versus nine
5 digits and a complete 360 degree encircle into the
6 weapon to stabilize against the weight of the trigger
7 pull and the force of the recoil, I think any shooter
8 would tell you that, you know, shooting two-handed in
9 a one-handed match is considered cheating because it
10 gives you so much of an advantage.

11 And conversely, if the world champion shooter
12 had to go into a practical match where two-handed
13 shooting is allowed, but with one hand tied behind
14 his back, none of us would bet on him to win. To
15 quantify by percentage points, you'd have to take
16 the individual, presumably for study purposes, an
17 able-bodied individual, and put them through the
18 same course of fire on an electronic timer, scoring
19 the hits and have him do the exact things once
20 two-handed and once one-handed.

21 Any of us can predict the one-handed
22 shooter's score will be less than, all other things
23 being equal, the two-handed shooter's score.

24 Q Uh-huh.

25 A The degree of that, can be measured on the

1 shooting range. But with the infinite variables of
2 a human-to-human encounter, it can never be exactly
3 prognosticated.

4 Q So someone that -- someone can practice
5 shooting one-handed and become fairly proficient at
6 it? I'm just trying to kind of understand -- my
7 understanding of what you're saying is that someone
8 can practice one-handed shooting and become fairly
9 proficient at it, but at the same time you'll never
10 know what variables you're going to encounter in a
11 real life self-defense situation?

12 A Both of those are true. And to clarify, you
13 mentioned that you don't have much experience with
14 firearms?

15 Q Correct.

16 A But let's say we took you as a new student
17 and dedicated you for, let's say, six to eight weeks
18 of constant shooting practice. You could very easily
19 get to where you, with one hand, might out shoot me
20 if I'm using both. But you would never get to where
21 you, with one hand, could shoot better, faster and
22 straighter than you could shooting with both.

23 So essentially the person who's unable to
24 shoot two-handed is significantly handicapped in
25 controlling the recoil and bringing the gun down

1 you just described, did you -- did you have to use
2 your firearm at all?

3 A When he attempted to force his way through the
4 door, I did draw my firearm. It turned out he was
5 much more impressed by the 210 pound Great Dane than
6 by the 357 Magnum, and he decided to leave.

7 Q So you didn't have to fire your firearm in that
8 incident?

9 A I did not.

10 Q Do you know of any data that suggests that the
11 average armed victim during a home invasion requires
12 more than 15 rounds to defend themselves?

13 A Well, the average, no. But again, as I said in
14 the report, or at least in the rebuttal to Professor
15 Zax's report, it's less about averages than it's about
16 an unacceptably catastrophic outcome that has to be
17 avoided.

18 The example I use with my students is fire
19 insurance. I'll ask the class how many of you have
20 fire insurance on your home, and virtually every hand
21 will come up. And if I've got a class of 20 or 30
22 people, I'll ask, "How many of you have ever had
23 your house burn down?" And sometimes no one raises
24 their hands. I don't think I've ever had more than
25 two raise their hands.

1 from the last shot to re-aim for the next shot
2 compared to two-handed shooter. They're handicapped
3 in holding the gun dead steady against a trigger pull
4 that weighs more than the gun -- it has to be safe
5 -- than if they had both hands to stabilize the gun.

6 Q Okay. And then looking under Section B on
7 page 3 of your report.

8 A Certainly.

9 Q The second to last sentence says, "Moreover,
10 a homeowner awaked from sleep by a home invasion in
11 the night is unlikely to have time to put on pants,
12 let alone a holster prior to grabbing the defensive
13 firearm."

14 A Correct.

15 Q "Nor are they likely to have time to grab
16 spare magazines, even if they had a place to carry
17 such on their person."

18 A Correct.

19 Q Have you ever been awoken by a perpetrator
20 in the middle of the night?

21 A I've been awoken in the middle of night, not
22 by a perpetrator. The only -- the only one of those
23 I ever had was a guy trying to get through the front
24 door on a subterfuge, and I was awake at the time.

25 Q Okay. And with respect to that incident that

1 Then I ask them, "Okay. Does that mean you
2 wasted the fire insurance premiums?" In either case
3 what you were paying for was, number one, the peace
4 of mind of knowing that contingency was taken care of.
5 And number two, being able to survive the absolutely
6 catastrophic loss, if it did happen.

7 And I explain to them the defensive firearm
8 is very much the same thing, yet for most people the
9 statistics say, they'll never be attacked and the gun
10 will have -- it doesn't mean that they wasted their
11 time learning the skills. It means that what they got
12 for that was peace of mind for the period that they
13 have that protection available.

14 But for X number, when that rare crisis does
15 strike them, that the loss of not -- the loss that
16 will come from not having it is so catastrophic, it
17 is simply not acceptable.

18 Q And let me ask --

19 A To answer your question, I don't know how
20 many have ever needed more than 15 in home defense.
21 In my report, I believe I mentioned two cases where
22 it was needed in a store offense against armed
23 robbers. Those are not -- those are seen as
24 statistical black swans events, yet they did occur.

25 Q Are you of -- when you describe these types

1 of rare crises that could potentially result in
2 catastrophic events, are you aware of any of those
3 types of rare crises occurring in a home defense
4 situation?

5 A Well, any home invasion that you cannot stop
6 is that degree of catastrophic crisis.

7 Q And in your 30 years of training various
8 individuals, has any individual ever described to
9 you having been in a circumstance where there was
10 that type of rare crisis in which they had to fire
11 more than 15 rounds of ammunition?

12 A The ones who were in that -- to the best of
13 recollection, in home invasions as opposed to store
14 invasions, all survived with fewer than 15.

15 Q And we're going to talk about those store
16 invasions in a little bit.

17 A Certainly.

18 Q And looking back at page 3 of your report,
19 Section C --

20 A Yes, ma'am.

21 Q -- you address, Disabilities Associated with
22 Aging.

23 A Yes, ma'am.

24 Q And you start out, "It is common for senior
25 citizens to suffer from arthritis and related

1 hands, wrists or fingers?

2 A No, ma'am, overall I do not. I do know having
3 some of that myself, I am 100 percent afflicted with
4 it and it goes on kind of a case-by-case basis.

5 Q Okay, fair enough. And again, in terms of all
6 the people that you've trained in the last 30 years,
7 both disabled and non-disabled, about how many of
8 those -- what percentage of those people have been
9 elderly people that have limited movement in their
10 hands, wrists and fingers?

11 A A significant percentage of senior citizens.
12 I have never -- again, as I said earlier, I've never
13 done a medical survey or kept track. I can tell you
14 that is fairly common and it would certainly be more
15 than five percent.

16 Q Okay. Would you say that the number of
17 elderly people with limited movement in their hands,
18 wrists and fingers that you've trained over the last
19 30 years has been more than five percent, but less
20 than ten percent?

21 A More than five percent, might even have been
22 ten percent. There might have been some that were
23 bothered by it, but got through and simply didn't
24 snibble about it and I never knew.

25 Q Okay. Would you agree that there's

1 ailments. These weaken the hands, making a reload
2 even more difficult. Range of movement of hands,
3 wrists and fingers are deleteriously affected."

4 When you say related ailments, what are you
5 referring to?

6 A Let me find that again.

7 Q Oh, that's back on page 3. I'm sorry.

8 A Yeah. That would be basically anything
9 rheumatic, gout, for example. Anything that caused
10 swelling, pain, reduction in range of motion.

11 Carpal tunnel syndrome might have an affect,
12 particularly the turning of the wrist that's
13 required in a magazine release --

14 Q Would you agree that --

15 A -- and things of that nature.

16 Q Oh, excuse me.

17 A I was just saying, things of that nature.

18 Q Okay. Thank you. Would you agree that not
19 all elderly gun owners are not affected by a movement
20 in their hands -- or, I guess, by a range of movement
21 in their hands, wrists or fingers?

22 A Certainly. I'm speaking only to those who
23 are so affected.

24 Q Okay. Do you know what percentage of elderly
25 gun owners have limited range of movement in their

1 medications to help ease these types of conditions
2 like arthritis or carpal tunnel?

3 A I don't know about carpal tunnel. I know
4 there's surgery for that. There is medication for
5 arthritis.

6 Q Okay. And then looking back at your report
7 on the page 4, it says, "Another age-related issue
8 can be hand tremors."

9 A Yes, ma'am.

10 Q Do you know what percentage of elderly
11 people that are gun owners suffer from hand
12 tremors?

13 A The same answer as prior. I'm unaware of
14 any empirical data base.

15 Q If someone suffers from hand tremors
16 significant enough to affect their ability to reload
17 a magazine into a gun, then isn't it true that they
18 would have difficulty holding the gun still when
19 shooting?

20 A Yes, of course. Actually everyone has
21 difficulty holding the gun still while shooting.
22 It's just a matter of degree.

23 Q Would it be more pronounced, though, in
24 someone that has hand tremors?

25 A It certainly would.

1 Q Okay. If someone suffers from hand tremors
2 significant enough to affect their ability to reload
3 a magazine into a gun, then wouldn't their aim be
4 affected?

5 A It would be, but not necessarily to the point
6 where they'd be hitting innocent bystanders or
7 anything. For many years I taught with a World War
8 II veteran, Jim Andrews. He's dead now, God rest his
9 soul. And toward the end of his days, he was
10 afflicted almost with a palsy. And the hand was
11 constantly -- as I'm demonstrating here, I would
12 guess about a quarter, as much as a quarter inch of
13 movement.

14 He was able to, when we did what we call the
15 pace-setter drill -- right before the students
16 shoot their police type qualifications, the staff
17 shoots to demonstrate what's expected of them. Jim
18 would consistently turn in a 300 out 300.

19 And the point I made to the students is the
20 gun is quivering, but it's quivering in the center of
21 the target. And look at the simple geometry. If you
22 just hold hard and hold the same picture, if the
23 tremor's in the center, it can't tremor out of the
24 tube of that movement pattern.

25 So you may not get a one-hole group anymore.

1 the gun is run completely empty, closing the slide to
2 chamber the next round to be fired; that is, to carry
3 that round into firing chamber so the gun can fire
4 again.

5 Q And you note that it would be extremely
6 difficult for them to reload under those
7 circumstances. Wouldn't an elderly person's ability
8 to conduct that type of reloading depend on the scope
9 -- depend on the limitations in their hands, their
10 wrists or their fingers?

11 A Yes, ma'am, of course.

12 Q Okay. Would some elderly with arthritis have
13 an easier time than others depending on their level
14 of experience and the times that they've practiced?

15 A It would depend on experience, natural talent,
16 perhaps even the dimensions of their hand size and
17 range of movement, irrespective of the inflammation
18 of the joints, and largely the degree to which the
19 affliction was bothering them.

20 Q Okay.

21 A Were they experiencing pain? They can fight
22 through pain. Were they experiencing swelling? You
23 can't fight through something that blocks your range
24 of movement.

25 Q Okay. Would you agree that there is a

1 You may get a group this big (indicating). But it's
2 going to be close enough for government work, and
3 he'll get the job done. And the target will neither
4 know nor care whether the launcher was quivering
5 before the assailant took flight.

6 Q Okay. Your report goes on to state, though,
7 that the conditions we've just been talking about,
8 the limited hand -- the movement in the hands, the
9 wrists and the fingers that elderly people might run
10 into because of arthritis and/or things like hand
11 tremors that are age-related make it extremely
12 difficult for the user to press the small magazine --
13 you say in your report, the small magazine release
14 button, to grasp the fresh magazine and insert the
15 next magazine into the small receptacle within the
16 firearm.

17 So you're -- in there you're referring, right,
18 to the -- you're referring to the ability of someone
19 that's elderly that has this limited movement to
20 reload the magazine into the firearm?

21 A Yes, ma'am.

22 Q Okay.

23 A Well, to complete the entire reloading process,
24 which will include ejecting the spent magazine,
25 accessing and inserting the fresh magazine, and if

1 possibility that an elderly person with limited
2 movement in their hands, wrists or fingers could hit
3 their target if they were firing at something within
4 15 rounds or less?

5 MR. COLIN: Form and foundation.

6 Go ahead.

7 THE WITNESS: That sounded a little vague.

8 Could you repeat the question?

9 MS. MOATS: Sure.

10 BY MS. MOATS:

11 Q Would you agree that there's a possibility
12 that an elderly person with limited movement in their
13 hands, wrists and fingers would still be able to hit
14 a target within 15 rounds or less?

15 MR. COLIN: Same objection.

16 THE WITNESS: Well, certainly it would be
17 possible. As we said, it depends on a great number
18 of variables.

19 BY MS. MOATS:

20 Q Your report references -- the second part of
21 -- or I'm sorry. The second paragraph on page 4
22 under Section C, references, "This past winter I had
23 occasion -- "

24 A Yes, ma'am.

25 Q Got that, okay. " -- I had occasion to do

1 refresher training with a student from decades before,
2 now in his mid 80's."

3 A Yeah.

4 Q "While mentally sharp as ever, the student was
5 affected by weakened and palsied hands. He was no
6 longer able to qualify in the police-type course with
7 his preferred semiautomatic pistol, because while he
8 was able to hit the target, he was unable to perform
9 the required reloads within the standard time
10 constraints. By simply replacing the lower-capacity
11 magazine with higher-capacity ones, he was able to
12 get his shots on target within the required time
13 limit."

14 A That's correct.

15 Q How many rounds did it take for this gentleman
16 to hit his target?

17 A Well, the speed reloads at our training start
18 at seven yards, and I don't think he ever missed at
19 seven yards at all.

20 Q So within one round he was able to hit the
21 target?

22 A Yes, ma'am.

23 Q Okay. And you indicate that he was unable to
24 perform the required reloads with the standard time
25 constraints.

1 what are you referring to there?

2 A I gave him a -- I want to say it was a Glock
3 with an extended magazine. He preferred the 1911
4 .45. I tried an extended mag with that.

5 Q So what capacity was the Glock you gave him
6 once you --

7 A The Glock would have been a Glock 17 with an
8 18 round capacity.

9 Q And that was with the extended magazine?

10 A Oh, no, ma'am. The extended magazine was for
11 his 1911 type single-stack pistol.

12 Q Okay. And what size was -- what capacity was
13 that extended --

14 A That would have been ten rounds and one more
15 in the chamber.

16 Q And that was with the pistol that he had?

17 A Yeah, yeah, and that would still leave him
18 down one round from the 12 round count for the
19 particular stage.

20 Q Okay. So once you gave him the Glock with 17
21 rounds, plus one in the chamber --

22 A Well, actually we just loaded it with 12.

23 Q I'm sorry. You what?

24 A We just loaded it with 12, because it was a
25 12-shot course.

1 A Correct.

2 Q Okay. How many reloads were required to
3 qualify?

4 A On the seven yard line, one reload. But
5 they're shooting six shots, reload and six shots for
6 a total of twelve within fairly tight time frames.
7 We give them 25 second to start, then as the training
8 continues, we get them into 20 seconds, then 15
9 seconds, then twelve and a half, double speed if you
10 will. For him having to -- if I may stand to
11 demonstrate?

12 Q Uh-huh.

13 A It took a good deal of time to get the button
14 out, the hands back here, coming up like this
15 (indicating). He's getting into the bottom of the
16 gun and by then, he had simply run out of time. We
17 gave him a pistol similar to this one and it went
18 bang, bang, bang, bang, bang, bang, bang, bang, bang,
19 bang, bang, bang, and he was done.

20 Q Okay. And when you say -- and just for the
21 record, you were demonstrating with the magazine
22 that you had --

23 A I was demonstrating with my empty hand and
24 a magazine, correct.

25 Q When you say, "when we gave him the pistol,"

1 Q Okay.

2 A The term we use is revolver neutral, because
3 some students still come in with the old 6-shot
4 revolvers. Each course of fire is six, so then reload
5 or not reload, whatever, depending on the course of
6 fire.

7 Q So was this a police-type course that this
8 gentleman was training at?

9 A It was a civilian course, but we use a
10 police-type qualification simply because in this
11 society, the police are seen as the role model for
12 disciplined gun fire, if you will.

13 Q Okay.

14 A So I want each of them to be able to qualify
15 to a police standard before I sign a diploma for
16 them.

17 Q And so he was able to -- once you gave him --
18 and correct me if I'm wrong. Once you gave him a
19 firearm with the 12 round capacity, he was able to
20 make it through the course --

21 A Correct.

22 Q -- within the time constraints?

23 A He was able to meet the required time limits.

24 Q Okay. Let's see. In this section on page 4,
25 the section that's Disabilities Associated with

1 Aging, you --

2 A I'm sorry. I didn't hear you, miss. There
3 was a motor running on the street.

4 Q Oh, that's okay. On page 4 -- Section C
5 continues on to page 4, I should say, and Section C is
6 entitled, Disabilities Associated with Aging. You
7 conclude in that section, "Therefore, we see that the
8 magazine capacity limit also has a particularly
9 harmful impact on the elderly."

10 A Yes, ma'am.

11 Q Are you referring to all elderly in that or
12 just --

13 A No, ma'am. I'm referring to the fact that
14 the elderly are more likely to suffer from the
15 various elements attending to old age, whether it's
16 arthritis, osteoporosis, loss of or a diminution of
17 muscle mass, et cetera.

18 Q Okay. So you're referring to elderly -- the
19 magazine capacity limit having particularly harmful
20 impact on elderly with some sort of limited --
21 physical limitation due to aging?

22 A Correct, the elderly with the ailments that
23 we associate with age.

24 Q Okay. With respect to people with the -- that
25 we just discussed, those with missing or shortened

1 how many shots they need.

2 The ammunition is kind of like money. You may
3 have more than you expect to spend, but it's
4 comforting and reassuring to know that if there's
5 an emergency, you have enough to cover the bill.

6 MS. MOATS: Okay. Fair enough.

7 (Defendant's Composite Exhibit No. 4 was
8 marked for identification.)

9 BY MS. MOATS:

10 Q Mr. Ayoob, I'm going to hand you what's
11 been marked as Deposition Exhibit 4. I printed
12 this off of the internet. It's an article, I
13 believe that you authored, on August 10th, 2011,
14 entitled, Concealed Carry: Should you Carry a
15 Back-Up Gun?

16 A Yes, ma'am.

17 Q Does this -- and it looks like as though it
18 was published in Gun Digest. Does this document
19 look familiar?

20 A If memory serves, it's a chapter from one of
21 my books.

22 Q Okay. Do you know which book?

23 A It might have Gun Digest Book of Concealed
24 Carry. Did I see a copy of that in your pile?

25 Q I do -- I have the sixth edition copy -- I

1 fingers, missing hands or arms or elderly with
2 physical limitations, your opinion is that they may
3 have more difficulty reloading and therefore need a
4 higher-capacity firearm; is that correct?

5 A Well, the person who will have difficulty
6 reloading would obviously benefit from having the
7 higher-capacity firearm. As we've discussed with
8 other disabilities, the person whose options of
9 flight or running to cover are foreclosed by their
10 limited range of movement or mobility, would also
11 benefit proportionally more than an able-bodied
12 person from being able to simply keep pulling the
13 trigger to sustain fire.

14 Q Okay. And when you say these type of people
15 will benefit from having a higher-capacity
16 magazine, or would you agree -- I'm sorry. Would
17 you agree that while they may benefit -- that those
18 type of people may benefit from having a
19 higher-capacity magazine, it's not necessarily
20 necessary to have a high-capacity -- for those people
21 to have a high-capacity magazine?

22 MR. COLIN: Foundation.

23 THE WITNESS: No, I don't think that's what I
24 said. I may -- as far as I'm concerned, that's the
25 individual's choice. The situation will determine

1 have the Sixth Edition Gun Digest Book of Combat
2 Handgunnery.

3 A Handgunnery. It might be in there. Do you
4 have the Concealed Carry?

5 Q I do not have that one. I do at the office,
6 but not today.

7 A Okay. Well, it doesn't much matter.

8 Q No.

9 A Yeah, it looks like I wrote it.

10 Q Okay. I just had a quick question.

11 A Yes.

12 Q If you turn to page 2 of that document.

13 A Yes, ma'am. Okay, I have it.

14 Q Okay. The very last paragraph on that page,
15 you write, "The primary gun may be empty. Drawing
16 a second loaded weapon is often faster than
17 reloading the first when it runs dry."

18 A Right.

19 Q Is that something you recall writing?

20 A Yes, ma'am.

21 Q So if a person with a disability had multiple
22 firearms with a magazine capacity of 15 rounds or
23 less, do you believe they would be able to
24 sufficiently defend themselves?

25 MR. COLIN: Foundation.

1 THE WITNESS: Well, as I've said, ma'am, most
2 of the time -- you know it's a fact, most of the
3 time if you could run a really good bluff and have
4 no cartridges in your gun when you point it at the
5 bad guy, and he fled.

6 Now, what we're looking at here again is the
7 person who has determined they want to be prepared
8 for the worse and have more. I can -- depending on
9 the circumstances, you might be able to draw the
10 second gun faster than reloading and you might not.

11 And if you prefer a revolver, if the second gun
12 is at all accessible, you will generally be faster
13 going to it; the reason being with a revolver, you
14 have to open the cylinder, eject the spent casings,
15 get six more cartridges into the gun and close the
16 cylinder and go back to work. With a semiautomatic
17 pistol, which is easier to reload, simply eject the
18 empty magazine and slap in the fresh magazine and
19 close the slide and go.

20 Even then if, let's say, I was, when I ran out
21 of ammunition, I was wounded and down on my back or
22 maybe laying on my left side.

23 BY MS. MOATS:

24 Q Uh-huh.

25 A My body weight would now be trapping the spare

1 A I'm losing track. Exhibit 3, page 4, got it.

2 Q Okay. There's a Section D on the page 4, it's
3 entitled, Lower-Body Disabilities.

4 A Yes, ma'am.

5 Q And I just wanted to ask you about some of your
6 opinions there.

7 A Sure.

8 Q You state, "Legitimate firearm users with
9 lower-body movement limitations are also impacted in
10 this regard."

11 A Yes, ma'am.

12 Q As to lower-body movement limitations, what
13 areas of the lower body are you presuming are
14 disabled when you issued this opinion?

15 A Anything that would involve mobility. Let's
16 say the missing foot with no prothesis, the missing
17 limb, the paralyzed limb, a fused knee or a fused
18 ankle that would make them walk very slowly or
19 stiffly.

20 Q Okay.

21 A Basically the longer it takes you to get to
22 cover, the more vulnerable you are. The theory is
23 you only load when you are safely behind cover. The
24 trick is getting safely to cover. The theory is that
25 it's better.

1 magazine under me and it would be very difficult to
2 reach. But if I had a second gun in an ankle holster,
3 like many police carry a backup gun, my hand would be
4 able to get to that ankle instantly now that I'm down
5 and the leg is no longer supporting my body weight.
6 And even with a semiautomatic, it would be faster.

7 If I was standing up and the gun was on my
8 ankle with the spare magazine on my belt, the spare
9 magazine and the reload would be faster. So which,
10 while as I said here, may be faster, whether or not the
11 second gun will be faster, depends on situation, on
12 posture, on position, on circumstances.

13 Secondly, requiring them to carry a second gun,
14 if they want to have enough ammunition, would strike
15 many people as unduly burdensome, particularly the
16 person who's new to the gun. Let's say the stocking
17 victim who's just gotten her first gun. It's going
18 to be difficult enough for her to adapt to carrying
19 a pound or two of awkward metal on her belt without
20 asking her to put one on either side.

21 Q Okay. Thank you. Going back to your initial
22 report, which I believe has been marked as Exhibit 3,
23 on page 4 of that report --

24 A Where in my report?

25 Q Exhibit 3, and page 4 of your report.

1 Q Okay. So in terms of lower-body movement
2 -- lower-body movement limitations, you're
3 referring to anything that's limiting mobility,
4 whether it be a missing foot or the inability of
5 the legs to work?

6 A Yeah. Essentially anything from the waist
7 down that effects movement.

8 Q Okay. When you refer to people with
9 lower-body disabilities, are you -- are these
10 people that still have use of their hands and
11 arms?

12 A Well, for hypothetical purposes now, I
13 guess, yes.

14 Q Okay. The report talks about how you have
15 trained Wounded Warriors who returned from current
16 conflict unable to walk. Of all the -- or how many
17 Wounded Warriors have you trained in the last year?

18 A In the last year, two, I think, that I can
19 think of. Assisted, it was either late last year or
20 early this year at a Wounded Warriors' shooting
21 event. But I was not the primary instructor. I was
22 just one the folks helping out.

23 Q Okay.

24 A Virtually everybody there was impaired,
25 physically impaired to some degree.

1 Q And where -- when was that? I'm sorry.
2 A That would have been -- it was last winter,
3 but I can't remember whether it was late 2012 or early
4 2013. It would have been at the Gateway Rifle and
5 Pistol Club in Jacksonville, Florida.

6 Q And was that a training that was specifically
7 offered to people with lower-body disabilities?

8 A Well, it was offered to Wounded Warriors.

9 Q And did the Massad Ayoob Group host that
10 training?

11 A No, ma'am. That was hosted at Gateway. I
12 was just one of the folks that showed up to help.

13 Q Okay. And of all the people you've trained
14 in the last 30 years, both disabled and non-disabled,
15 how many of those -- or what percentage of those
16 people have had lower -- these types of lower-body
17 movement limitations?

18 A Would you repeat the question?

19 Q Yeah. Of all the people you've trained in
20 the last 30 years, both disabled and non-disabled, what
21 percentage of those trainees have had lower-body
22 movement limitations?

23 A I've never kept track.

24 MR. COLIN: Foundation objection.

25 THE WITNESS: I've never kept track. For every

1 having anticipated being retained here, there was
2 never any need for me to keep track or to keep the
3 records.

4 Q Are people that may be confined to a wheelchair
5 because of a limited body movement or a lower-body
6 movement limitation, are they regularly in the classes
7 that are offered by the Massad Ayoob Group?

8 A Yeah, for whenever they want to come, sure.

9 Virtually all our venues now are handicapped
10 accessible in terms of wheelchairs. And I believe
11 all of our classroom lecture programs are handicapped
12 accessible.

13 Q Okay. Would you be able to quantify how often
14 someone who's confined to a wheelchair because of a
15 lower-body limitation comes to your trainings?

16 A Again, ma'am, not having kept track, I couldn't
17 give you a number. I can tell you that I've worked
18 with them. I can tell you what I've observed, but
19 there was never any reason to keep an empirical track.

20 Q Okay. So your observations of them are just
21 based on memory?

22 A Oh, yes, ma'am.

23 Q Okay. And so the last time you trained
24 Wounded Warriors was at the Gateway Rifle and Pistol
25 event?

1 one in a wheelchair, there will be several that move
2 slowly because they've got the bad back, the bad
3 hips, the bad knees, et cetera.

4 BY MS. MOATS:

5 Q Would you say you've --

6 A But many of them, the -- I didn't mean to
7 interrupt.

8 Q Oh, go ahead.

9 A Many of them, the disability won't manifest
10 itself until you ask them to do something strenuous.

11 Q In terms of trainees in wheelchairs, how many
12 do you believe you've trained in the last five years?

13 A I have no idea. It would be a few.

14 Q Would you say more than five?

15 A It might be.

16 Q Okay. But less than -- would you say more than
17 ten?

18 A Unlikely more than ten in just the last two
19 years.

20 Q Okay. In the last five years?

21 A Five years, yeah, it might be more than ten.

22 Q Would you say you've trained more than 20
23 people that are confined to a wheelchair in the last
24 five years?

25 A I might have. It's hard to tell. Again, never

1 A No. That was -- that was the last time I was
2 asked to expressly assist in a, capital W, Wounded,
3 Capital W, Warriors' sponsored project. The last
4 Wounded Warrior I trained was this past summer. He
5 was missing -- he came back missing one leg just
6 above the knee, and the other leg is still there, but
7 not working. He was the one who, God bless him, was
8 top shot in his class.

9 Q That's awesome. How many Wounded Warriors
10 would you say you've trained in the last five years?

11 A I don't know. I don't know. I don't ask them
12 always where they got the disability. Some -- some
13 will mention it and some won't. If they're in the
14 chair, I'll say, okay, here's what I suggest for
15 shooting from there. Again, that's not something I
16 kept track of.

17 Q Would you say that you trained someone that's
18 confined to a wheelchair at least once a month?

19 A No, I don't think it's once a month. I think
20 it's less frequent than that.

21 Q Okay. Would you say once every six months?

22 A Well, I don't think there's ever been a year
23 that went by without training someone in a chair. It
24 will vary. I honestly couldn't estimate.

25 Q Okay. Would you say that it's frequent or not

1 very frequent?
 2 MR. COLIN: Object to form.
 3 THE WITNESS: I would say occasional.
 4 BY MS. MOATS:
 5 Q And I'm just trying to understand occasional.
 6 Maybe like five time a years you've trained someone
 7 that's confined to a wheelchair?
 8 A It might be that many. It might be more some
 9 years.
 10 Q Okay. In your report you indicate in terms of
 11 the Wounded Warriors that you've trained, one had lost
 12 both legs above the knee and part of one hand in an IED
 13 explosion.
 14 A Right.
 15 Q And the other had lost one leg and lost the use
 16 of the other?
 17 A Correct.
 18 Q Both were able to shoot and even reload
 19 effectively --
 20 A Yes.
 21 Q -- and the latter was actually top shot in his
 22 class --
 23 A Yes.
 24 Q -- competing from the wheelchair against
 25 able-bodied classmates. Was the reason both were able

1 A Not many.
 2 Q Would you say one to five times or --
 3 A It might be.
 4 Q I'm sorry?
 5 A It might be. Many fewer than I've observed
 6 on the range.
 7 Q Okay. And in your opinion are all
 8 wheelchair-bound -- is your opinion that all
 9 wheelchair-bound defenders are stuck in the same
 10 spot if confronted by an armed perpetrator?
 11 A Well, they could try to roll themselves away,
 12 but while they're doing it, they'll be unable to be
 13 shooting back to defend themselves and they will
 14 never -- unless somebody's come up with a jet powered
 15 wheelchair, they'll never be able to exit the kill
 16 zone faster than anybody competent with a gun could
 17 shoot them.
 18 Q Do you agree that a wheelchair-bound defender
 19 may be able to position themselves behind something as
 20 a means of seeking cover?
 21 MR. COLIN: Foundation.
 22 THE WITNESS: And the question was?
 23 BY MS. MOATS:
 24 Q Do you agree that a wheelchair-bound defender
 25 may be able to position themselves behind something as

1 to shoot and reload effectively because of the training
 2 they had received?
 3 A I would say partly that, partly their own
 4 determination, et cetera, et cetera.
 5 Q Would you agree that it's important for any
 6 disabled gun owner to receive training and learn how
 7 to be the most proficient that they can be when they
 8 use a gun?
 9 A I would say that's important to anyone with
 10 any sort of power equipment that has any dangerous
 11 potential --
 12 Q Okay.
 13 A -- whether it's driving a car, running a chain
 14 saw or shooting a gun.
 15 Q And the last sentence of that paragraph under
 16 D. the first paragraph under D, says, "However, in a
 17 real-world situation, neither would have been able to
 18 maneuver his wheelchair in a position of cover safely
 19 the way an able-bodied shooter could firing while
 20 moving."
 21 A Correct.
 22 Q Have you ever personally observed a
 23 wheelchair-bound person in their home?
 24 A Yes, I believe I have.
 25 Q Okay. About how many times?

1 a means of seeking cover?
 2 MR. COLIN: Same objection.
 3 THE WITNESS: They may be and that would be
 4 dependent of circumstances, as we've said. But
 5 they would never have the flexibility as to height
 6 of cover that an able-bodied person would have. And
 7 if caught in the open at the beginning, would never
 8 be able to get to that cover as rapidly as the
 9 able-bodied person.
 10 The same, to a degree, would be true of the
 11 vastly greater number of people who are
 12 non-wheelchair bound, but still have some degree of
 13 challenge in lower-body mobility.
 14 BY MS. MOATS:
 15 Q Would you agree that it's possible for a person
 16 in a wheelchair with a lower-body disability who may
 17 have, let's just say, a 15 round capacity firearm to
 18 move to a position of safety?
 19 MR. COLIN: Speculation, foundation.
 20 BY MS. MOATS:
 21 Q In other words, while they're firing their
 22 firearm, they could move to a position of safety?
 23 MR. COLIN: Same objection.
 24 THE WITNESS: Tell me how they're operating
 25 the wheelchair while firing the firearm.

1 BY MS. MOATS:
 2 Q Have you ever encountered someone in a
 3 wheelchair that's able to shoot one handed?
 4 A Yes.
 5 MR. COLIN: Make a little circle with the
 6 wheelchair?
 7 MS. MOATS: Okay.
 8 THE WITNESS: All of our wheelchair people
 9 will shoot one handed --
 10 BY MS. MOATS:
 11 Q Okay.
 12 A -- and two handed. It's part of the course.
 13 Q Just to clarify, so what you're saying is they
 14 wouldn't be able to move to a position of safety while
 15 shooting if they were in a wheelchair?
 16 A Not effectively. As Mr. Colin has just noted,
 17 with one wheel rolling, you would go in circles.
 18 Quite a part from not escaping, you would eventually
 19 end up turning -- in a moment turning your back to the
 20 threat and making -- just making it more difficult for
 21 you to shoot.
 22 It's hard enough to run and shoot using two
 23 different parts of the body. Here we're trying to
 24 use upper body to do two things at once and it's not
 25 going to end well.

1 it is for us. If now I feel this spare magazine
 2 digging into my hip, I can just simply shift
 3 positions. There are many people in wheelchairs
 4 that cannot. Some of them who are paralyzed from
 5 the chest down literally have to be strapped in so
 6 they won't fall out.
 7 To ask them now to have two guns, I think
 8 would be the very definition of unduly burdensome.
 9 And so I -- nothing personal, but it's almost
 10 like Marie Antoinette saying "Let them eat
 11 cake."
 12 BY MS. MOATS:
 13 Q Okay.
 14 A It's not the winning argument for your side.
 15 Q Are you aware of any data that indicates that
 16 someone in a wheelchair with a lower-body disability
 17 requires more than 15 rounds to defend themselves?
 18 A As I've said before, that's going to be
 19 dependent on the circumstance. That said, they are
 20 more likely to be trapped in the open with no other
 21 alternative than to continue fire than the ambulatory
 22 person who at least might have had the option to flee
 23 or to sprint to cover.
 24 Q Okay. Have you ever spoken with someone in a
 25 wheelchair who couldn't get into a position of safety

1 Q Okay. If a person in a wheelchair with a
 2 lower-body disability had two guns that each had 15
 3 rounds, do you think that would be sufficient for
 4 them to be able to defend themselves?
 5 MR. COLIN: Speculation, foundation.
 6 THE WITNESS: Well, it would be almost as
 7 efficient as having, let's say, one gun with 30
 8 rounds. I say almost, because the one gun with
 9 30 rounds, there would be no break in the string
 10 of fire and they would have to get that empty gun
 11 15 first, 15 shotgun down empty, and then get the
 12 other.
 13 But then you're going to look at the fact
 14 that when you're in that chair -- as you're sitting
 15 in an armed-chair now, I believe, and I am -- we
 16 have a very -- picture this was our living space
 17 instead of the chair that we're addressing each
 18 other from in deposition.
 19 You've got to have your wallet there. You've
 20 got to have your phone there. There might be
 21 medications that you need to have handy. Now
 22 we've introduced a firearm in that very cramped
 23 environment. Maybe we've had to introduce spare
 24 ammunition.
 25 That's going to be more awkward for them than

1 in a home invasion situation?
 2 A Have I ever spoken to one?
 3 Q Yes.
 4 A Not off the top of my head. I do recall one
 5 lady in Chicago who was unable to escape, but she
 6 had her husband's Colt Detective Special that she
 7 always carried in her apron and she solved her attack
 8 problem with a couple of shots from the wheelchair.
 9 One that could not escape, no. But again,
 10 what we're looking at is reasonable predictability.
 11 We're looking at, given in the same situation, how
 12 fast can you move versus, let's say, your twin sister
 13 in a wheelchair. How fast can you keep pulling the
 14 trigger versus your twin sister who may take much
 15 longer than two seconds to reload if you're in a very
 16 dangerous situation.
 17 Q And my next question --
 18 MS. MOATS: Well, let's see. I'm looking at
 19 the time. It's 12:20. Did you guys want to break
 20 for a lunch, or what would you like to do?
 21 MR. COLIN: It kind of depends. It looks like
 22 you've got big piles here still.
 23 MS. MOATS: I do.
 24 MR. COLIN: So if we're going to be going much
 25 longer, then I would say, yeah, we probably ought

1 to do that.
2 MS. MOATS: Okay. All right.
3 (Lunch recess taken at 12:21 p.m.)
4 (Proceedings continued in Volume II.)
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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 13-cv-01380-MSK-MJW

JOHN B. COOKE, Sheriff of Weld County, Colorado
TERRY MAKETA, Sheriff of El Paso County, Colorado
JUSTIN SMITH, Sheriff of Larimer County, Colorado
DAVID A. WEAVER, Sheriff of Douglas County, Colorado
BRUCE W. HARTMAN, Sheriff of Gilpin County, Colorado
KEN PUTNAM, Sheriff of Cheyenne County, Colorado
DENNIS SPRUELL, Sheriff of Montezuma County, Colorado
TIM JANTZ, Sheriff of Moffat County, Colorado
JERRY MARTIN, Sheriff of Dolores County, Colorado
MIKE ENSMINGER, Sheriff of Teller County, Colorado
SHAYNE HEAP, Sheriff of Elbert County, Colorado
CHAD BAY, Sheriff of Yuma County, Colorado
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RICK BESECKER, Sheriff of Gunnison County, Colorado
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DAVID ENCINAS, Sheriff of Bent County, Colorado
SUE KURTZ, Sheriff of San Juan County, Colorado
JAMES (JIM) CASIAS, Sheriff of Las Animas County,
Colorado. GARRETT WIGGINS, Sheriff of Routt County,
Colorado. DOUGLAS N. DARR, Sheriff of Adams County,
Colorado. RODNEY JOHNSON, Sheriff of Grand County,
Colorado. COLORADO OUTFITTERS ASSOCIATION;
COLORADO FARM BUREAU; NATIONAL SHOOTING SPORTS
FOUNDATION; MAGPUL INDUSTRIES; COLORADO YOUTH OUTDOORS;
USA LIBERTY ARMS; OUTDOOR BUDDIES, INC.; WOMEN FOR
CONCEALED CARRY; COLORADO STATE SHOOTING ASSOCIATION;
HAMILTON FAMILY ENTERPRISES, INC. d/b/a FAMILY SHOOTING
CENTER AT CHERRY CREEK STATE PARK; DAVID STRUMILLO;
DAVID BAYNE; DYLAN HARRELL; ROCKY MOUNTAIN SHOOTERS
SUPPLY 2ND AMENDMENT GUNSMITH & SHOOTER SUPPLY, LLC;
BURRUD ARMS INC. d/b/a JENSEN ARMS; GREEN MOUNTAIN
GUNS; JERRY; SPECIALTY SPORTS & SUPPLY; GOODS FOR THE
WOODS.
Plaintiffs.
v.
JOHN W. HICKENLOOPER, Governor of the State of
Colorado.
Defendant.
VOLUME II
DEPOSITION OF
MASSAD AYOOB,
taken on behalf of the Defendant
DATE TAKEN: October 29, 2013
TIME: 1:00 p.m. - 3:17 p.m.
PLACE: Third Circuit Reporters & Video
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Examination of the witness taken before
Cassie Mizuch, FPR, Court Reporter
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REPORTER'S KEY TO PUNCTUATION

- at end of question or answer references interruption.
- (.) References a trail-off by the speaker
No testimony omitted.
- "Uh-huh" References an affirmative sound
- "Huh-uh" References a negative sound
- (sic) References a misstatement.

1 Thereupon,
2 MASSAD AYOOB,
3 having been first previously duly sworn, testified
4 as follows:

5 DIRECT EXAMINATION (Continued)

6 BY MS. MOATS:

7 Q Mr. Ayoob, we're back from taking a short
8 lunch break and I wanted to ask you some more
9 questions real quick about the first -- or I should
10 say the second section of your report.

11 A What page would that be, ma'am?

12 Q Well, I don't have a specific page right
13 now.

14 A Okay.

15 Q I'll just go ahead and ask you the question.

16 A I'm sorry.

17 Q With respect to people that may have a
18 lower-body disability and be confined to a
19 wheelchair, do you believe their ability to reload a
20 magazine into a gun is hindered in any way?

21 A Well, if they're in the chair, yes. The
22 reason being if I'm standing, it's fairly easy for
23 me. Let's say the spare magazine is where it's usually
24 carried, vertically on the hip opposite where the gun
25 is. For me to get it out, if I have limited range of

1 carrying concealed, it would be much more difficult
2 to conceal. They would need a closed front garment
3 and then they would have to either lift the hem of
4 that garment or unbutton or unzip and open the
5 garment to get at it.

6 Q Okay. Looking back at your report, I had a
7 couple follow-up questions on page 4 above the
8 section entitled, Lower-Body Disabilities. You
9 talked again about elderly who had limited -- who
10 had limited movement in their hands, wrists and
11 fingers.

12 And as you note in your opinion: That makes
13 it extremely difficult for the user to press the
14 small magazine release button, to grasp the fresh
15 magazine, and insert the next magazine into the
16 small receptacle within the firearm.

17 I just wanted to get an idea from you about
18 how -- why it is extremely difficult for a user
19 who's elderly with limited movement of their hands,
20 wrists and fingers to press the magazine release
21 button.

22 A Sure. Without a pistol here to demonstrate
23 with, the button is fairly small. It's about the
24 size of the open part of my curled finger that I'm
25 indicating here. That's a small target that has to

1 movement, getting up like this, notice how my elbow has
2 to come back (indicating). You saw how I had to lean
3 forward in this chair to do it.

4 If I was not able to put my body weight
5 forward, there was no feeling in my legs, it would be
6 much more awkward and I would have to lean my upper
7 body over to the side. The hand that's occupied with
8 the gun, that arm would have to push me back upright.
9 So, yes, it would slow them down.

10 Q Okay. Would that be assuming, though, that
11 they kept their spare magazine in the back part of
12 -- back by their hip?

13 A Yes, it would.

14 Q Okay. Is there any other way that they
15 would be hindered in having to reload if they had a
16 lower-body disability?

17 A Do you mean with the magazine in other
18 positions? I'm not sure I follow you.

19 Q Right. Is there any other way that they
20 would be hindered in being able to reload the magazine
21 into the gun if the magazine was anywhere else on
22 their body?

23 A Well, it would depend where it was. If it
24 was toward the center line of the body, they would
25 be able to access it. But if they were in public

1 be hit with the thumb that will have less dexterity
2 than when they were young, may well have less range
3 of movement than when they were young. So that will
4 be harder for them to hit.

5 Q Okay. Would something -- I know we
6 previously discussed the use of an extended
7 magazine release button for someone with shortened
8 or missing fingers. What if someone that was
9 elderly that had limited movement in their hands,
10 wrists or fingers had an extended magazine release
11 button on their gun, would that help them in terms
12 of being able to release it?

13 A It would depend. Most extended magazine
14 buttons are the same diameter, but will extend
15 farther outward from the pistol. If the thumb no
16 longer has range of movement to reach it, it's
17 academic how far it extends out because it would
18 need to be extending back toward the thumb.

19 If it does -- as I said earlier, if you get
20 one custom made that extends back toward the thumb,
21 now it's much more likely to inadvertently release
22 in normal everyday carry and turn your pistol into a
23 single shot. Some of the pistols have what's called
24 the magazine disconnect safety, which means if the
25 magazine dislodges, the round in the chamber cannot

1 be fired.
 2 So it would at best, if the magazine is
 3 inadvertent -- if the magazine release button has
 4 been inadvertently pressed, at best it would turn
 5 your 16-shot pistol into a one-shot pistol, and
 6 at worst, it might render the gun completely
 7 unshootable.
 8 Q Okay. But there could be circumstances where
 9 a gun could be modified such that the release button
 10 extended back towards the thumb and that might help
 11 someone who has limited movement in their hands,
 12 wrists or fingers to then more easily release the
 13 magazine?
 14 A It could. But to put it into perspective,
 15 it's still going to be much more difficult and much
 16 slower than simply continuing to fire because you
 17 have enough cartridges in the gun that you could.
 18 Q How much slower would it be to have -- if you
 19 had the extended magazine release button to -- and
 20 you had a limited movement in your hands, wrists or
 21 fingers, to be able to press that button versus
 22 refiring?
 23 MR. COLIN: Speculation.
 24 THE WITNESS: Yeah. As counsel says, that
 25 would be dependent on, you know, the degree of

1 like Kevin Davis, the two seconds it takes him to
 2 go from shot number 16 to shot number 17 is still
 3 eight times longer than if he could have simply
 4 pulled the trigger and fired because the 17th
 5 round was already in the gun.
 6 BY MS. MOATS:
 7 Q Okay. And with respect to your opinions
 8 that you've rendered regarding people with missing
 9 or shortened fingers, missing hands or arms and the
 10 elderly with some sort of limited range of motion,
 11 in all of those opinions you're assuming that they
 12 would need to reload the magazine into the gun,
 13 correct?
 14 A Yes, of course.
 15 Q Okay. Is there a capacity of firearm that
 16 you believe is sufficient for a person with a
 17 disability?
 18 A It depends on the situation. My feeling is
 19 the person in the situation is the one who gets to
 20 choose. It's their life. It's their confidence.
 21 It's their peace of mind that's at stake. None of
 22 us can predict what the encounter will be or if the
 23 encounter will ever even come. It's an element of
 24 confidence. It's an element of peace of mind.
 25 And there is the recognition that, as you see

1 the handicap and how long it took them to get
 2 their hand there.
 3 We also have to factor in whatever dexterity
 4 problems there might be, accessing the fresh
 5 magazine and bringing it to the gun and completing
 6 the insertion.
 7 We would then have to look at another part of
 8 the gun, the slide release mechanism, which is
 9 usually on the left side of the frame above the
 10 trigger guard. That would have to be pressed down
 11 to close slide and chamber the next round.
 12 Alternatively, they would have to grasp the
 13 slide, which on most semiautomatic pistols, locks
 14 back when the gun is empty, and given a tug to the
 15 rear to release it. So that would make it
 16 relatively slower.
 17 Let's say we had an expert shooter like Kevin
 18 Davis who could normally reload in two seconds.
 19 That is certainly faster than anybody with
 20 debilitated hands is likely to be able to do it.
 21 Contrast that to, as we discussed earlier, in rapid
 22 fire, as little as a quarter of a second, perhaps
 23 even less, to simply fire the next shot if you
 24 haven't run out of ammunition.
 25 So for a highly skilled firearms' instructor

1 in some of the materials you have printed over
 2 there, some self-defense situations with private
 3 citizens do escalate into high fire power; and quite
 4 simply, if you don't have enough fire power to
 5 prevail, you will die.
 6 You may be able to prevail by -- if your gun
 7 runs empty, grabbing another gun, by reloading, if
 8 you can do it in time. You are much more likely to
 9 be able to prevail if you can simply continue firing.
 10 Q Okay. And when you say some incidents are
 11 like that, do you know approximately how many -- how
 12 many incidents a year are like that where you would
 13 need a lot of fire power?
 14 A I'm not aware of any empirical data base
 15 that tracks the number of shots fired in incidents
 16 nationwide. If you look at some of the other
 17 research that's come to your attention in other
 18 discovery in this case, in even some of the mass
 19 murderers where the scene was secured thereafter
 20 and became an evidence scene and was gone over by
 21 many professional evidence technicians, there still
 22 remains a question of exactly how many shots were
 23 fired.
 24 In a situation that was obviously a
 25 justifiable homicide, there's probably going to be

1 fewer people counting the shots, if you will, than
2 someone who is reporting on, you know, some very
3 high-profile incident like the Aurora Movie
4 Theater.

5 So to give a long-winded answer to your short
6 question, there is no data base. We know that it
7 happens. We cannot quantify how many times it has
8 happened and none of us can predict when it will
9 happen again.

10 Q And is it fair to say if that type of
11 incident does happen, it's unknown whether or not,
12 in fact, 15 shots or more would be necessary?

13 A No one ever knows until it's over how many
14 is enough.

15 Q And in turning to some of these incidents
16 you've alluded in your testimony today, on page 5
17 of your report marked as Exhibit 3, Section III is
18 entitled, Perspective on Shootouts.

19 A Yes, ma'am.

20 Q And your report indicates that Captain
21 Richard Wemmer, the famed officer survival expert
22 from LAPD, documented multiple gun fights in which
23 police officers emptied their service pistols and
24 other spare magazines customarily worn of police
25 uniform duty belts, and had not yet won the

1 capacity. In one of Captain Wemmer's films -- I'm
2 trying to remember the name of the officer, because I
3 met him later and talked about it with him myself. He
4 had an 8 plus one shot SIG .45 caliber pistol and when
5 he ended the fight with two men who had opened fire on
6 him, one with a sawed-off shotgun and one with a sub
7 machine gun, he was down into his last of three
8 magazines.

9 The Illinois incident can be documented
10 through retired Chief Jeff Chudwin, C-h-u-d-w-i-n,
11 who I believe is still the president of the
12 Illinois Tactical Officers Association.

13 Q Okay. Going back to the -- let's see -- the
14 document in multiple gunfights in LA, again, how
15 many of those did you say you reviewed?

16 A Well, I'm thinking right now of three, two
17 where they ran out completely, one where he was
18 almost depleted. We had the Illinois incident.
19 That officer was only alive because of the timely
20 arrival of backup officers with patrol rifles.

21 There was one in Skokie, Illinois, just a
22 couple of years ago. The officer fired 20 some
23 rounds before he finally neutralized his attacker,
24 who I believe may have had two guns. And the
25 officer was wounded in that situation as well.

1 gunfights.

2 A That's correct.

3 Q Where are these multiple gun fights you
4 referred to documented?

5 A Those, I think if you go to the Los Angeles
6 County Sheriff's Department Firearms Training Unit,
7 several of those were reenacted and studied as
8 training films. And I'm sure they would make them
9 available to the Colorado Attorney General's
10 Office.

11 Q And have you reviewed these training films or
12 any of the documents?

13 A I've reviewed at least one of them. I've
14 attended Captain Wemmer's lectures.

15 Q How many are there in terms of training
16 films? When you saw you've reviewed at least
17 one --

18 A There is at least one where the officer ran
19 completely dry through every magazine that he had
20 on his person. He was shooting a Baretta 9
21 millimeter with 15-shot magazines. So that would
22 have been three magazines, the chambered round, 46
23 shots.

24 There was another that it was a semiautomatic
25 pistol, but I do not recall the model or the cartridge

1 Q And were they all incidents between law
2 enforcement and a perpetrator?

3 A These were. But as I said, the
4 perpetrators those cops shot it out with are the
5 exact same perpetrators that the armed citizens
6 fear and hope to protect themselves from.

7 Q And with respect to the incidents you did
8 review, what were the events that led up to those
9 gunfights?

10 MR. COLIN: Over broad.

11 THE WITNESS: Okay. The incident with the
12 officer with the SIG .45, he was responding to
13 an armed robbery in progress. The other two in
14 Los Angeles, I do not recall.

15 The one in Illinois began when the officer
16 pulled the vehicle over and the subject was
17 ensconced in, what I recall at this time, to be
18 a pickup truck and he opened fire; and his cover
19 basically absorbed most of the shots the officer
20 fired at him.

21 I do not recall the predicate incident that
22 led to that pull over. The Skokie incident, I
23 believe that officer also was responding to armed
24 robbery and saw a vehicle that fit the description
25 of the fleeing robber's vehicle.

1 BY MS. MOATS:
 2 Q Okay. So in that same paragraph under -- the
 3 first paragraph under Perspective on Shootouts on
 4 page five, when you say: A similar incident was
 5 documented not long ago in Illinois involving a
 6 lone officer with 3 15-shot pistol magazines against
 7 a well --
 8 A Ensnoced.
 9 Q -- ensnoced and heavily (as spoken) offender.
 10 Is that the one you were just referring to?
 11 A That was the one I referred you to Chief
 12 Chudwin for the details.
 13 Q Okay.
 14 A The Skokie Officer, I do not recall his
 15 name. He was armed with a .45 caliber Glock with
 16 a 13-round magazine.
 17 Q And you think that involved some sort of a
 18 -- basically the police office was pulling this
 19 perpetrator over and a fight ensued, a gunfight
 20 ensued?
 21 A Basically the man came out of the car
 22 shooting.
 23 Q Okay. And you don't know what precipitated
 24 the traffic stop?
 25 A I don't recall what did in the incident that

1 tip of the iceberg of those incidents. And those
 2 also are only the ones that make the newspaper.
 3 Q And when you refer to this NRA website, what
 4 -- when you say 60 to 80, what types of incidents
 5 are you referring to?
 6 A Those would be citizen incidents where the
 7 citizen was attacked on the street it may have been
 8 just a dangerous animal like a bear or a wild dog,
 9 or had to fight off burglars and home invaders
 10 inside their homes.
 11 Q Okay. And this is on the NRA Website under
 12 The Armed Citizen?
 13 A I believe that's what it's under, ma'am.
 14 If you can't find it, you can shoot me an email or
 15 give me a request through Mr. Colin and I will get
 16 the link to you.
 17 Q Okay. And when you say 60 to 80 incidents,
 18 this was in the State of Colorado, correct?
 19 A Correct.
 20 Q And over what period of time were these
 21 incidents tracked?
 22 A That I believe that goes back from 1959 to
 23 recently.
 24 Q So between 1959 and recently, 60 to 80
 25 incidents in the State of Colorado involving some

1 I mentioned here. But in the Skokey incident, I
 2 believe the vehicle fit the description of one that
 3 had been involved in a crime and that's why the
 4 officer was pursuing him when he pulled him over.
 5 Q Okay. At the end of that paragraph, you
 6 note: While these were law enforcement incidents,
 7 it must always be remembered that many private
 8 citizens own their guns to protect themselves from
 9 the very same criminals that society arms our police
 10 to deal with.
 11 Do you know of any statistics on how often
 12 private citizens in the State of Colorado have had
 13 to defend themselves against heavily armed
 14 perpetrators?
 15 A Well, I'm not sure what your cutoff line is
 16 for heavily armed and lightly armed, dangerous
 17 life-threatening perpetrators. If you go to the
 18 National Rifle Association website, which tracks
 19 their column called Armed Citizens -- The Armed
 20 Citizen.
 21 There are 60 to 80 some that track back
 22 to Colorado. Each of those comes from a news
 23 clipping from the local paper that's sent to the
 24 association by a member. And they certainly do not
 25 reflect the totality and they may well be just the

1 sort of attack on a citizen?
 2 A Some sort of situation when an armed citizen
 3 saved themselves or others from potential death or
 4 a crippling injury.
 5 Q And did you include this reference in your
 6 report, this website?
 7 A No, ma'am, I did not.
 8 Q Okay. And with respect to these incidents,
 9 is there any information that you're aware of that
 10 says how many shots were fired by the citizen in
 11 their self-defense?
 12 A No. Those are -- those are occasionally
 13 reported, but usually you don't see a round count.
 14 Q Okay.
 15 A And in many of the situations, as I've said,
 16 the presence of the gun is enough to break off the
 17 attack, and the opponent either surrenders or flees.
 18 Q And in these incidents that you've described
 19 that are on the NRA Website, the 60 to 80 incidents
 20 in the State of Colorado between 1959 and the
 21 present, did they involve a situation where the
 22 citizen was attacked by someone with a gun or was it
 23 -- could it have just been someone attacked them with
 24 a knife?
 25 A There's a wide variety; gun, knife, female

1 attacked by male, or other disparity-of-force
2 element, wild animals, dangerous animals, that
3 sort of thing.

4 Q But other than those statistics, do you
5 know of any others that indicate how many private
6 citizens in the State of Colorado have had to
7 defend themselves against a perpetrator armed with
8 a firearm?

9 A Again, I'm not sure there is an empirical
10 data base. X number of people, if the guy runs
11 away, don't even report it. So that's why I used
12 the term "tip of the iceberg." The NRA figures are
13 at least that many, but certainly not limited to that
14 number of 60 to 80 plus.

15 Q Do you believe all encounters between law
16 enforcement and offenders are the same as
17 encounters between private citizens and -- I don't
18 know if offenders is the correct word, but a
19 perpetrator?

20 A Well, they will never be exactly the same,
21 simply because it's generally different
22 circumstances. The civilian has no duty to be
23 chasing the guy that they put out the BOLO on,
24 B-O-L-O, Be On The Lookout. The citizen will not
25 be making routine traffic stops. The citizen does

1 another gun when the first ran dry."

2 A I believe he won one with a single gun. If
3 memory serves, all the rest, he wound up needing
4 more than that.

5 Q Okay.

6 A We have it there if you want to refer to it.

7 Q Okay. Well, let me just ask you this, just
8 to clarify my understanding, though, is it your
9 opinion that Mr. Thomas won the gun fights because
10 he had access to multiple guns?

11 A It's my opinion he would have died in four of
12 them if he didn't.

13 Q Okay. So it was the multiple guns that helped
14 him to win?

15 A In four out of five, absolutely.

16 Q Okay. Are you aware of any provision in
17 House -- Colorado House Bill 1224 that prevents --
18 or prohibits a person from having more than one gun?

19 MR. COLIN: Foundation.

20 THE WITNESS: No, ma'am. But to put that in
21 context, Mr. Thomas owned a small shop that was
22 primarily a Rolex dealership and repair center.
23 Inside his work place, which was secured against
24 outsiders, his side of the bench as it were, the
25 authorized-personnel-only section, if you will, he

1 not respond to armed robbery that occurred to a
2 third party.

3 The criminals are the criminals. Whether
4 they attack you or a Live Oak Police Officer, it's
5 the same guy with the same weapons and the same
6 veracity and the same malice. So that's why I say
7 the criminal -- the armed citizens are concerned
8 about the very same criminals the police exist to
9 protect us all from.

10 Q On that page five of your report under
11 Section III, you refer to -- starting with, "Over
12 the years, high-volume gunfights have indeed been
13 known to occur in which it was imperative for armed
14 citizens to sustain fire to contain or neutralize
15 the threat." And you go on to describe incidents
16 with a watch repairman owner in Los Angeles named
17 Lance Thomas. Do you see that?

18 A Yes, ma'am, and I believe you have the
19 copies of my more-detailed write ups there.

20 Q I do. And you say, "For example, Lance
21 Thomas, a watch repairman in Los Angeles, was over
22 the course of years forced to shot it out multiple
23 times with multiple armed robbers. Thomas won the
24 gunfights only because he kept several loaded guns
25 in his work area and was able to transition to

1 had the guns staged in holsters mounted to the
2 side of the desk or in drawers where they could
3 quickly be reached.

4 He said later he had one about three feet. It
5 would be impossible, impractical, and in many
6 respects unsafe, for the private citizen to store a
7 loaded gun every three feet in their home.

8 I recently did a concealed-carry training film
9 where, just to make a point, I carried 52 concealed
10 handguns at once. That is not the way normal way
11 people walk around. The great majority of private
12 citizens who carry guns only carry the one; a great
13 many of those do not carry spare ammunition.

14 Most police officers when they're off duty,
15 carry only one gun and often no spare ammunition.
16 So to say that I'm sure you can protect yourself
17 to the same level you could last year, but you have
18 to buy another gun, you have to conceal another
19 gun, be responsible for the safe storage of another
20 gun, strikes me as simply over the top. It's unfair
21 to the citizen. It an unrealistic expectation and
22 also the very definition of arbitrary and
23 capricious.

24 BY MS. MOATS:

25 Q But in this case, he was a store owner and he

1 was able to have multiple guns for the --
2 A Because of that unique scenario and a very
3 similar scenario in the Richmond Jewelry Store that
4 I cited --

5 Q Which we'll get to.

6 A -- that was possible.

7 Q Okay. Did all the guns that Mr. Thomas had
8 during these incidents, did they all hold 15 rounds
9 or less?

10 A I do not recall. Let me take a look at that.

11 MS. MOATS: Okay. Let's go ahead and take a
12 look at this, and we'll mark it as our next
13 exhibit.

14 (Defendant's Composite Exhibit No. 5 was
15 marked for identification.)

16 BY MS. MOATS:

17 Q Mr. Ayoob, I'm going to hand you what's been
18 marked as Deposition Exhibit 5. Does this document
19 look familiar?

20 A It does.

21 Q And can you tell me what it is?

22 A This is the Lance Thomas story as I wrote
23 it in a continuing series called Ayoob Files,
24 F-i-l-e-s, that I've done for many years for
25 American Handgunner Magazine. This one appeared

1 Chief Special and he comes up shooting. The little
2 revolver barks three times, two of his bullets miss,
3 but one smashes into the gunman's face, putting him
4 out of the fight.

5 So with respect to this gunfight -- or with
6 respect to this gunfight, Thomas had -- Mr. Thomas
7 had in August, 1989, am I correct in understanding
8 that the gun he used there was a five-round
9 capacity?

10 A You are.

11 Q Okay. And then turning to the next page of
12 this article, page 77.

13 A Yeah, that is the page where we put it in
14 perspective.

15 Q Okay.

16 A And the quote, column one, paragraph one, I
17 quote, "It is not lost on him that he has expended
18 60 percent of his ammunition to neutralize 50 percent
19 of his antagonists. It occurs to him that a single
20 five-shot revolver might not be enough if there's a
21 next time and that there won't be much opportunity
22 to reload."

23 Q Correct. And you go on there to say right
24 after that: What if he had been caught out of reach
25 of his Smith? Thomas expands his defensive strategy.

1 in the March/April 2002 Edition.

2 Q Okay. So I'm going to try to take you
3 through the different incidents.

4 A Sure.

5 Q Because I've read this a couple times and I
6 just want to understand, you know, what types of
7 guns were used and the capacity of each. It looks
8 like, if you look on the first page of this document
9 in the fourth paragraph down, it starts, "August
10 10th, 1989, like so many storekeepers, Thomas feels
11 his watch shop would be a safer place if he had a
12 gun with which to fend off armed robbers. He has
13 acquired a Model .36, a five-shot Smith & Wesson .38
14 Chief Special. He keeps the snubnose revolver where
15 he can reach it easily."

16 And then you go on to say in the next
17 paragraph: Two men enter. One appears to have
18 some sort of weapon and the other pulls what Thomas
19 recognizes as a 9 millimeter semiautomatic pistol.
20 Thomas knows he can just give the man his money and
21 goods, but he also knows that to do so is to trust
22 his life to the whim of a violent man unlawfully
23 wielding a deadly weapon. Instead Thomas chooses to
24 flight -- to fight.

25 And then you say: His hand flashes to the

1 The .38 is joined by a trio of .357 Magnum revolvers,
2 a Colt Python, a Smith & Wesson Model 19, a Combat
3 Magnum and a Ruger Security 6. He arrays them a few
4 feet apart within the small perimeter of his work
5 space so there will always be one within reach no
6 matter where he's standing."

7 Then on that same page under Professional Hit,
8 it says: November 27th, 1989. This time it's the
9 kind of professional hit that the NYPD Stakeout
10 Squad warned you about.

11 And then if you go down to the next paragraph,
12 it says: It opens hot, fast and ugly. One of the
13 perpetrators opens up on Lance Thomas without warning,
14 firing a semiautomatic pistol, hitting him four times
15 with eight rounds fired. Three of the .25 ACP bullets
16 bite into Thomas' right shoulder, a fourth into his
17 neck. The watchmaker grabs the nearest revolver, the
18 Ruger .357, missing with the first shot, but scoring
19 with the next five.

20 So was Mr. Thomas able to hit one of the
21 suspects in this November, 1989, incident with five
22 shots?

23 A Yes, ma'am, he was. And it follows, "The
24 gunman falls to the floor and so does the Security
25 Six: it has clicked empty."

1 Q Okay. And let me ask you this real quick,
2 is the Security Six you described the same as the
3 Ruger .357?

4 A The Ruger Security Six is most commonly found
5 in the .357 Magnum caliber.

6 Q Okay. And what capacity magazine does the
7 Ruger 357 have?

8 A It doesn't have a magazine. That's a
9 revolver, so it has a cylinder.

10 Q Okay.

11 A And that's a six-shot revolver, hence the
12 name Security Six.

13 Q Okay. So it goes on to say, "The gunman falls
14 to the floor and so does the Security Six; it is
15 clicked empty. Thomas drops it, lunging for the next
16 nearest weapon, the snubnose .38 that had saved him
17 the last time."

18 And what capacity is the snubnose .38?

19 A It doesn't say whether that is a five-shot or
20 a six-shot, which are the two most common formats for
21 that type of gun.

22 Q Okay.

23 A It goes on to say, "Now he engages the second
24 suspect who is shooting at him. Thomas shoots back.
25 That gun, too, runs dry. He hasn't hit his antagonist,

1 A So 15 rounds would not have been enough.

2 Q Right. But each of the guns he used in this
3 case had less than 15 rounds?

4 A That is correct, but it took him three guns
5 to do it and the time in between to drop the first
6 and the second to access the second and the third.

7 Q Okay. On that same page under Charmed Life,
8 it goes on to describe in the second paragraph under
9 Charmed Life, the second full sentence -- or I guess
10 the second full paragraph under Charmed Life,
11 "However, it occurs to the storekeeper that his
12 survival armory might need another firepower
13 upgrade. This time he decides to try semiautomatic
14 pistols. He buys four, all SIGs, that operate the
15 same way. One is the Compact nine-shot P-225 9
16 millimeter. The other three are assorted versions
17 of the P-220 8-shot .45 auto."

18 And then if you turn the page there, under Two
19 Year Break, it looks like December 4th, 1991, "It has
20 been more than two years since the last incident."
21 And then in the third paragraph under Two Year Break,
22 it says, "The perpetrator fires first, pumping a 9
23 millimeter bullet through Thomas' neck, drilling a
24 wound channel that is just a fraction of an inch from
25 being fatal. But now Thomas has reached his nearest

1 but he hasn't been hit either, and the second robber
2 is in no mood to continue the fight. The third inside
3 suspect opens fire on Thomas."

4 And it goes on to say Thomas grabbed a third
5 gun, another .357 Magnum, emptied it into third
6 gunman, and the offender fell. So essentially he has
7 neutralized two of them with gunfire and the third of
8 them, the second in sequence, has fled.

9 Q Okay.

10 A And it has taken him three guns to do that
11 with.

12 Q And is it my -- is my understanding correct
13 that each of these guns had a five- to six-round
14 capacity?

15 A The .357s that were described earlier, the
16 Colt Python, the Smith & Wesson Model 19, and the
17 Ruger Security Six, are all six-shot guns. He has
18 emptied two of those, so that's twelve shots gone.

19 If he used the Five-Shot Chief Special from
20 the previous gunfight for the snubnose .38 -- which
21 it's not mentioned here how many shots. Only that
22 it's emptied dry -- that would be a total of 17
23 shots fired to stop the fight. Had it be another
24 six-shot revolver, it would have been a total of 18.

25 Q Okay. So --

1 pistol, the little P-225, and he is firing back.

2 The watch shop proprietor has been forced into
3 an awkward hold on the gun and he can only fire three
4 rounds, all straight into the chest of his opponent,
5 before his imperfect grasp causes the usually
6 reliable SIG 9 millimeter to jam. Without missing a
7 beat, he drops it and grabs one of its big brothers,
8 which he fires into the opponent five more times until
9 the armed robber falls and stops trying to commit
10 murder."

11 So is it -- and is it fair to say in this
12 incident, Mr. Thomas fired a total of eight shots --

13 A Yes, ma'am.

14 Q -- and was to take the offender down?

15 A That would be my count as well.

16 Q Okay. And both of the guns he used in that
17 particular incident had less than 15 rounds?

18 A Yes. Both of them were single-stack magazine
19 pistols. As I recall, each has a capacity of eight
20 in the magazine, plus one in the chamber.

21 Q Okay. On that same page, there's a section
22 entitled, Ever Vigilant.

23 A Vigilant, yeah.

24 Q Vigilant. I'm sorry.

25 A That's okay.

1 Q I've been reading too much. The incident is
2 February 20th, 1992, and the second full paragraph
3 begins, "Two armed perpetrators enter the store. As
4 soon as Thomas sees the automatic pistol in one of
5 their hands, he reflexes to his nearest pistol, one
6 of the P-220s. This perpetrator goes down fast, hit
7 with what Author Kirchner describes as most of a
8 gunload of .45 ACP ammunition.

9 Grabbing another P-220, Thomas engages the
10 second armed robbery suspect and shoots him four
11 times. The suspect falls. The danger is over."

12 So in that incident, he was also able take
13 the suspects down with, it looks like, four shots?

14 MR. COLIN: Foundation.

15 THE WITNESS: Well, that's -- that's not quite
16 correct, ma'am.

17 BY MS. MOATS:

18 Q Okay.

19 A There's two perpetrators.

20 Q Right.

21 A One of them goes down after being shot four
22 times. The other goes down hit with most of a
23 gunload, which would mean more than -- certainly
24 more than four shots in a nine-shot pistol.

25 Q Okay. With respect to this February 1992

1 ammunition.

2 Q Okay. Now, looking back at your expert
3 report, which I believe is marked as Exhibit 3.

4 A Can you repeat that please, miss?

5 Q Oh, sure. Looking back at your expert
6 report marked Exhibit 3 --

7 A Yes, ma'am.

8 Q -- on page 5.

9 A Yes, ma'am.

10 Q The last paragraph under Section III,
11 Perspective on Shootouts.

12 A Yes, ma'am.

13 Q You say: In another well-known case, the
14 Beverly Hills Jewelry Store robbery in Richmond,
15 Virginia, the store owners shot it out with
16 multiple armed members of the Dixie Mafia. They
17 prevailed only because -- or, yeah -- they
18 prevailed only because over a dozen loaded guns
19 had been staged every three feet behind the
20 counters, and one owner was able to move between
21 guns, transitioning to a fresh weapon when the
22 last went dry.

23 A Yes, ma'am.

24 (Defendant's Composite Exhibit No. 6 was
25 marked for identification.)

1 incident, were both of the -- or was the firearm
2 he used -- were the firearms he used in that
3 incident, though, firearms with 15 rounds or
4 less?

5 A No, ma'am. They are both SIG P-220s with
6 single-stack magazines, either seven plus one or
7 eight plus one, depending of the generation of
8 manufacturer.

9 Q So they were firearms with eight shots
10 total?

11 A Eight to nine, depending on which type of
12 magazine he had in the guns.

13 Q Okay. So in all four of the incidents
14 discussed where Mr. Thomas was robbed, he used guns
15 with a capacity of 15 rounds or less?

16 A That is correct.

17 Q Okay. And in all four of the incidents
18 discussed where Mr. Thomas was robbed, he was able
19 to change guns and fire back?

20 A There was one where he was able to stop the
21 whole thing with just the one gun, the very first
22 one. All the others, the flip side of your comment,
23 which is correct, is that if he had not had another
24 gun staged, loaded, every three feet, he almost
25 certainly would have been killed when he ran out of

1 BY MS. MOATS:

2 Q Mr. Ayoob, I'm just going to hand you what's
3 been marked as Deposition Exhibit 6. And I've handed
4 you what I found online called or entitled, Lead and
5 Diamonds, the Richmond Jewelry Store shoot out, Blast
6 from the Past. It looks like it's published in the
7 American Handgunner Magazine. It's authored by you.
8 It says -- and it's dated May to June 2003. Does
9 this document look familiar?

10 A Yes, ma'am. It's the article I wrote at that
11 time referencing the point we've just discussed in my
12 report.

13 Q Okay. So it references the Beverly Hills
14 Jewelry Store robbery?

15 A It does.

16 Q And this incident occurred in 1994,
17 correct?

18 A Let me check, December 2nd, 1994.

19 Q Okay. And was this incident a mafia hit?

20 A It was Dixie Mafia. It's essentially a
21 loose connection of, as I described it here,
22 "... a loose-knit gang of all white robbers,
23 killers and dope-runners known in the south as
24 the Dixie Mafia."

25 Q Okay. And then looking on this first page

1 of what's been marked as Deposition Exhibit 6, under
2 Preparation, in the second full paragraph, I think
3 it's about the third sentence in, it says, "Baker had
4 purchased eleven Rossi .38 Specials -- " Do you see
5 where that is?

6 A I do.

7 Q Okay. "-- five-shot snubbies and laid
8 them out at ten foot intervals behind the
9 counters, invisible to the public, but readily
10 accessible to staff." And who is Baker again?

11 A The Baker brothers were the owners of the
12 jewelry store.

13 Q And the Rossi --

14 A Gary Baker, I think, was the primary owner.
15 His brother, who took part in the shootout, I
16 believe, was a part owner.

17 Q Okay. And the Rossi .38 Specials that you
18 described Baker using to defend himself, what
19 capacity of guns are those?

20 A Those are -- in this case they were five-shot
21 .38 Special Revolvers.

22 Q And your article goes on to state that -- I
23 think it's in the second to last sentence, "In
24 addition, he secreted his own Remington 870 12 gauge
25 pump gun where he could reach it near the door to his

1 You state in the -- I think it's the second
2 paragraph there, "However, a higher capacity
3 firearm, a Springfield XDM 9 millimeter with 19
4 rounds in the magazine and a 20th in the firing
5 chamber, or some of the 30-shot rifles available
6 today would give such a citizen, especially one
7 with a disability, more of a fighting chance to
8 survive such violent, armed criminal assaults."

9 Are the two guns you describe here, the
10 Springfield XDM 9 millimeter or the 30-shot rifles,
11 do you consider those high-capacity firearms?

12 A In the Vietnam years, the 30-shot magazine
13 for the AR 15 was considered a high-capacity
14 magazine, the reason being it had originally been
15 designed around a 20-shot magazine.

16 Q Uh-huh.

17 A Over the years the 30-shot magazine became
18 pretty much the standard and today would be
19 considered standard capacity for that type of
20 firearm. The 19-shot XDM, certainly it's a higher
21 capacity than most 9 millimeter semiautomatic
22 pistols.

23 As I said, the most popular today is the
24 18-shot Glock 17, but that gun is part of a current
25 generation of high-capacity pistols. Currently the

1 office."

2 A Yes, ma'am.

3 Q And what capacity was this pump gun?

4 A I would have to check and see if it was
5 mentioned here. The standard capacity is four in
6 the magazine and one in the chamber. Depending on
7 how much you want to customize the gun, you can get
8 that up to about ten rounds.

9 But it's a tubular magazine, so it's -- the
10 magazine is running parallel to the barrel
11 underneath it and it makes the gun somewhat more
12 unyielding.

13 Q Okay. So in reading this -- in reading the
14 types of guns that Mr. Baker had, am I correct in
15 that in this case the owner was able to defend
16 himself without the use of any high-capacity
17 firearms?

18 A They had to resort to eleven low-capacity
19 firearms.

20 Q Okay. Fair enough. I think turning --
21 looking back again at your expert report.

22 A Yes, ma'am. What page?

23 Q The very last page, page 6.

24 A Okay. Yes, ma'am.

25 Q You state -- well, wait. Let me -- okay.

1 modern -- the most modern police-type pistols, the
2 Glock, the Smith & Wesson military and police, the
3 Ruger SR 9, would all have at least 18 rounds
4 capacity. The XDM comes standard with 20 in a
5 standard-sized gun.

6 Q Okay. So do you believe that any citizen,
7 whether disabled or not, requires a firearm that
8 holds greater than 15 rounds for the purposes of
9 self-defense?

10 A I never said they require it. I said there
11 are certain circumstances in which it can make a
12 critical difference. And I believe it should be
13 their choice, and I see no good reason why that
14 choice should be taken away from them.

15 Q And when you say that they're high-capacity
16 firearms that are 18 rounds, do you believe there's
17 a critical difference between a firearm with 15 --
18 that's limited to 15 rounds versus a firearm like
19 you've described with 18 rounds in terms of
20 defending yourself?

21 A Well, for Lance Thomas, who ended one of
22 his gunfights on the 19th shot and would have died
23 if he had ran out of ammunition earlier, it
24 certainly would have been a critical difference.
25 He was able to do what the person in the wheelchair

1 cannot, what the able-bodied or handicapped person
2 could not, and that was have an array of guns laying
3 around within easy reach.

4 Now, that's simply not an option for the
5 Colorado citizen, or any citizen, who is licensed
6 to carry concealed. It's not an option for, let's
7 say, a retired police officer. And when you're in
8 the home, as opposed to a secured employees-only
9 area of the workplace, anytime someone comes
10 unexpectedly with children, what are you going to
11 do if you have a loaded handgun every three to ten
12 feet staged for immediate quick access; and if the
13 owner is in a wheelchair, for him or her to reach
14 it, that means they're literally staged at the
15 children's level.

16 It would strike me as monumentally unsafe to
17 do that. To say that's the answer because someone
18 in the legislature decided we don't think you're
19 responsible enough to have the 18 rounds, or you're
20 not anymore. We're going to take it down to 15 and
21 we're going to do this because once in 2011 -- or
22 once in 2012 and once in 1999, three evil people
23 murdered innocent people. It kind of says to your
24 whole citizenry: Gee, we're not too sure about your
25 integrity, so we'll neuter you too.

1 court, is my definition of tactics is common
2 sense applied with a specific knowledge of the
3 issues actually involved. The subtleties of those
4 fine points of those tackle issues are what I, or
5 any expert witness in any discipline, brings to
6 the table.

7 What I'm saying here is certainly not every
8 incident will require more than 15 shots. If it
9 was, every police officer would probably carry
10 and find a way to carry a 30-shot pistol or might,
11 like in some countries, strap a submachine gun
12 onto his chest as he walks around performing his
13 duties.

14 What we're looking at here are particularly
15 dangerous high-risk situations. Some people say:
16 Oh, that won't happen. This history shows it can
17 happen. It's not about the odds, as I said
18 earlier. It's about unacceptably catastrophic
19 outcomes.

20 BY MS. MOATS:

21 Q Okay. So when you say -- in your report, when
22 you say more of a fighting chance to survive such
23 violent, armed criminal assaults, are you referring
24 to the mafia like assaults you've described on page
25 5?

1 And this in the hopes that you'll limit the
2 next mass-murdering monster to 15 victims instead of
3 20. There are better ways to interdict the next
4 mass-murdering monster.

5 Q Okay. And we'll get around -- because I
6 think you expressed some of those opinions in your
7 rebuttal report.

8 A Sure.

9 Q While you say that these types of higher
10 capacity firearms would give a citizen more of a
11 fighting chance to survive, isn't it possible that
12 they can still, though, however defend themselves
13 with 15 rounds or less?

14 A Well --

15 MR. COLIN: Form, speculation, foundation.

16 THE WITNESS: Well, what I actually said was
17 more of a fighting chance to survive such violent,
18 armed criminal assaults as the two high volume
19 gunfights I had just described.

20 Yes, it's -- you know, throughout the day,
21 I've been saying common sense and logic.
22 Hopefully everybody in that jury pool has common
23 sense. Hopefully every citizen has common sense.

24 What we're looking at here as it applies to
25 this, as it applies to anyone like me going into

1 A Correct, ma'am. That's the paragraph that
2 follows my citation of the two incidents we've just
3 been discussing.

4 Q And would you agree that the average citizen
5 does not encounter such mafia-like assaults?

6 A Yes, of course.

7 MR. COLIN: Speculation, foundation.

8 BY MS. MOATS:

9 Q I'm sorry. Go ahead.

10 A Yes, of course. The average watch
11 shop owner or jewelry store owner doesn't either;
12 but these did, and without being able to put out a
13 high degree of firepower by whatever means they
14 could, they clearly would have died.

15 The mechanism they had, the multiple loaded
16 guns staged within easy reach, not on their persons,
17 would not be reasonable, accessible or even safe for
18 the private citizen in the home or the individual
19 with the concealed carry permit walking out and
20 about.

21 Q And you go on under your Conclusion on page 6
22 Of your report, which is Section IV, "It is clear to
23 a strong degree of scientific certainty that the
24 magazine capacity limitation in Colorado will have a
25 harmful impact on the disabled/physically challenged

1 individual and on the elderly as well."
 2 A Correct.
 3 Q And just to confirm again, when you say
 4 elderly, are you, again, limiting that to elderly
 5 with limited range of movement in their hands,
 6 wrists and fingers?
 7 A Sure. I know pistol champions who are
 8 Social Security age that can out shoot most young
 9 guys. When I say the elderly, we're talking those
 10 with the impairments, if you will, that are
 11 associated with advancing age.
 12 Q Okay. And your conclusion here that it's
 13 clear to a strong degree of scientific certainty,
 14 that's based on -- again, on your memory of
 15 observing people with these types of disabilities
 16 during your training sessions?
 17 A Well, it's based on --
 18 MR. COLIN: Form, foundation.
 19 THE WITNESS: It's based on more than that.
 20 As we've discussed, it's also the institutional
 21 knowledge that I've tapped into with a great many
 22 other instructors.
 23 It's also something that we can easily
 24 quantify and perhaps should quantify as
 25 demonstrative evidence at trial using electronic

1 Like you in your profession, we cross pollinate with
 2 one another, share knowledge with one another.
 3 And insofar as quantifying statistics and
 4 studies, again, going back to the correlation of
 5 expert knowledge with common sense, it would be no
 6 trick at all to do demonstrations that would show
 7 speed of reloading of, let's say, a competitive
 8 shooter standing on the firing line waiting for the
 9 start signal versus the same person trapped in a
 10 wheelchair with arms, which would greatly mitigate
 11 arm movement, coming back for the magazine, et
 12 cetera, et cetera.
 13 We could -- I think should probably show
 14 something graphic to show what we're talking about
 15 with the breach of the fingers to the different
 16 parts of the gun to manipulate it. So that would be
 17 the element of scientific certainty, combined with
 18 the simple logic that if you run out of ammunition at
 19 shot number sixteen, you can either, a quarter second
 20 later, shoot your opponent and stop the fight with the
 21 seventeenth shot you're allowed to have in the gun, or
 22 you can wait two seconds at best to get your gun
 23 reloaded before you can continue to defend yourself.
 24 Q Okay. But when you say that those -- that type
 25 of demonstrative exhibits, if you will, can show the

1 timers to demonstrate how much faster it is to be
 2 able to sustain fire in an emergency than to
 3 reload, even if you're totally able-bodied, and
 4 compare that to the very difficult gyrations a
 5 physically-handicapped person would have to go
 6 through to reload the low-capacity gun to continue
 7 the defense of themselves and their family.
 8 BY MS. MOATS:
 9 Q Okay. But to date, when you prepared this
 10 report, you didn't do any of those types of studies
 11 or any of that type of creation of a demonstrative --
 12 A No. I have not yet been asked to do that. If
 13 I am, I will give you my word that I'll request the
 14 plaintiff's counsel to get that to you in a timely
 15 fashion.
 16 Q And in terms of institutionalized knowledge,
 17 you haven't cited necessarily anything specific about
 18 where this institutionalized knowledge came from when
 19 you drafted this report, correct?
 20 A Well, ma'am, every year I go to at least one
 21 40-hour seminar focusing on use of force and
 22 specifically in my area, use of firearms. I'm
 23 constantly dealing with cases like this. I'm
 24 constantly interacting with other instructors, and
 25 occasionally involved in training other instructors.

1 degree of scientific certainty, I'm just trying to
 2 verify that you -- at this point, though, you haven't
 3 conducted any of those types of demonstrative --
 4 A Not specifically for this, no.
 5 Q Okay. And when you say you're constantly
 6 training and every year you go to a 40-hour seminar,
 7 none of that -- it's not ever specifically focused
 8 on people with disabilities, is it?
 9 A None has ever been focused strictly on that.
 10 Often classes that I have attended, were classes I
 11 have even taught, and touched, as I've said, on the,
 12 What I would call, the wounded-officer return fire.
 13 What do you do when the bullet or the blow of
 14 a knife wound has knocked you down on your back or
 15 on your butt or on your face, one of your arms is
 16 gone and you've only got one arm left to gun fight
 17 with? Those things apply directly to the
 18 circumstances of the physically handicapped private
 19 citizen.
 20 The Wounded Warrior that returned to his
 21 country and is now attacked by a criminal in
 22 civilian life, and can apply also to anyone, police
 23 or civilian, who sustains a crippling injury or a
 24 disabling injury in the course of the given fight,
 25 even if a moment before they had been fully

1 able-bodied.

2 Q Okay. So what you're saying is the
3 training you've taken has touched on training
4 disabled people?

5 A Yeah. Essentially if -- I've been teaching
6 people how to reload a gun one handed since 1973, I
7 think. It will be 40 years now. Whether that's
8 happened because you didn't have this arm to start
9 with or because a bullet from the opponent has
10 shattered that arm, the body mechanics are the
11 same.

12 Having taught that for many years, we can
13 quantify that it takes profoundly longer to do, for
14 example, to perform a reload one handed than it does
15 two handed. There are many more movements that only
16 one hand can accomplish since the other can't help
17 and it takes longer to perform the sequence of the
18 movements.

19 Q Okay. Would it be a fair statement, though,
20 to say that you don't constantly train people with
21 disabilities on how to use a gun or reload a
22 magazine and --

23 A Well, it's not my full-time job, no.

24 Q Okay.

25 A Yeah, most of the people I teach are

1 A As many as ten percent disabled to some degree
2 if you count mobility as it relates to rapid
3 movement or extreme flexion of the body, such as
4 taking cover behind an automobile engine block or
5 something like that.

6 Q Okay. And you can't say for a fact that --
7 would you agree you can't say for a fact that 15
8 rounds is not sufficient for a disabled person to
9 protect themselves?

10 MR. COLIN: Foundation.

11 THE WITNESS: No, ma'am. What I'm saying is
12 none of us knows, able-bodied or handicapped,
13 whether it will take 15 or not or more; if it does
14 it take more, obviously it's better to have it than
15 not have it.

16 Folks, where are we piling the ones that aren't
17 exhibits?

18 MS. MOATS: Right next to -- I apologize. Right
19 here.

20 THE WITNESS: They are starting to build up.

21 MS. MOATS: Yeah. We can pile the exhibits
22 right next to you. I appreciate that, and I can
23 organize them when we're done here, so you don't
24 have to do that.

25 THE WITNESS: Okay. What's up next?

1 able-bodied.

2 Q Okay. And like we discussed earlier about,
3 of all the people that you've trained in the last
4 30 years, about five to ten percent are disabled?

5 MR. COLIN: Asked and answered, foundation.

6 THE WITNESS: Well, yeah, depending on how
7 you define -- I believe we've previously
8 discussed levels of disability, profound
9 versus --

10 BY MS. MOATS:

11 Q Technical.

12 A Yeah.

13 Q Okay. So what you said is that about -- of
14 all the people that you've trained in the last 30
15 years, about five percent have been profoundly
16 disabled and about ten percent have been
17 technically, what you term technically --

18 A No. I said less five or well under five
19 percent.

20 MR. COLIN: Asked and answered, foundation.
21 Go ahead.

22 THE WITNESS: I said well under five percent
23 would have been profoundly disabled.

24 BY MS. MOATS:

25 Q Okay.

1 (Defendant's Composite Exhibit 7 was marked
2 for identification.)

3 BY MS. MOATS:

4 Q Next is what's been marked as Deposition
5 Exhibit 7.

6 A Okay.

7 Q This is a copy of the expert rebuttal report
8 that we received. It's apparently drafted by you,
9 dated September 10th, 2013.

10 A Yes, ma'am.

11 Q Is this the rebuttal report you drafted?

12 A It appears to be.

13 Q Okay. Did you receive any instruction on what
14 to draft as part of this rebuttal report?

15 A No, ma'am. They sent me his report and said
16 write a rebuttal if you can.

17 Q Okay. By "his report," who are you referring
18 to?

19 A I'm sorry. Dr. Zax's report.

20 Q Okay. Were you asked to respond to any or
21 to rebut anything else?

22 A Not that I recall.

23 Q Okay. Let's see. On page 2, if you can turn
24 to page 2 of this report.

25 A Yes, ma'am.

1 Q And if you go to about the sixth paragraph
2 down starting with, "In at same vein..."

3 A Okay.

4 Q You say, "... only a tiny fraction of
5 law-abiding armed citizens ever have to actually
6 point their guns at other human beings, let alone
7 shoot them. But rare circumstances due occur when
8 they must and in those instances, running out of
9 ammunition will result in consequences just as
10 violent and unforgiving to them as police
11 officers."

12 A "... as to police officers," yes.

13 Q Okay. So I think we've talked about this
14 today, but you acknowledge that it's a rare
15 circumstance when a private citizen has to use a gun
16 in self-defense, correct?

17 MR. COLIN: Asked and answered.

18 THE WITNESS: Yes, ma'am.

19 MS. MOATS: Okay.

20 (Defendant's Composite Exhibit No. 8 was
21 marked for identification.)

22 THE WITNESS: Are we done with Exhibit 7,
23 Ms. Moats?

24 MS. MOATS: No. I'm going to come back to
25 that. We are not done with Exhibit 7. I will

1 Q And if you could just look -- I think it's
2 on the first page, the last paragraph.

3 A Yes, ma'am.

4 Q You say, "How many cartridges? I personally
5 like a high-capacity semiautomatic for home defense,
6 because when you grab a gun in the middle of the
7 night, there isn't always time to grab spar ammo.
8 However, the fact is that the overwhelming majority
9 of home defense applications of a gun are over in
10 less than five or six shots. The revolver has a good
11 history in defending home and hearth."

12 Do you see that?

13 A Yes, ma'am.

14 Q When you say the majority of home defense
15 applications of a gun are over in less than five to
16 six shots, where did you obtain this data?

17 A Well, it's well known in the field that the
18 vast majority of these things don't end with any
19 shots at all.

20 Q So is it your opinion that self-defense can
21 be accomplished in five to six shots?

22 A Well, as we've said throughout the day, it
23 can be depending on the circumstances. Unfortunately
24 we have limited control over the circumstances, the
25 number of intruders there might be, the level of

1 come back to that here in just a minute.
2 BY MS. MOATS:

3 Q I just want you to take a look at Deposition
4 Exhibit Number 8.

5 A Okay.

6 Q This is an article I found on the internet
7 that you had written for Backwoods Home Magazine.

8 A Yes, ma'am.

9 Q It's entitled, Answering Some Well Asked
10 Questions About Personal Defense.

11 A Yep.

12 Q Dated January/February of 2006.

13 A Yes, ma'am.

14 Q Does this document look familiar -- or I
15 should say, does this article look familiar?

16 A Yes, it does.

17 Q Okay. And you're still an editor for
18 Backwoods Home Magazine?

19 A A firearms' editor.

20 Q A firearms' editor. I apologize. And how
21 long have you been the firearms' editor for Back
22 Home -- Backwoods Home Magazine?

23 A Since the late 1990s. I don't recall the
24 exact year. It might have been '96; it might have
25 been later.

1 aggression and commitment they might have.

2 It might be a 14 year old junkie doing his
3 first burglary and he loses sphincter control and
4 runs away when he sees your gun. It might be the
5 committed stocker who has decided if he can't have
6 you, nobody will and he's bent to take you or die,
7 and the price of poker just went up.

8 Q Okay. But here you say the overwhelming
9 majority of home defense applications. So would
10 you agree that in the overwhelming majority of
11 cases, five to six shots is sufficient?

12 A Or less --

13 Q Or less.

14 A -- or no shots at all. Again, as we've said
15 throughout the day, it's not about the odds. It's
16 about the stakes.

17 Q Looking back, and I'm sorry to keep you
18 switching back and forth here between documents.

19 A That's okay. Where are we?

20 Q We're just back on Exhibit 7, which is your
21 rebuttal report.

22 A Okay. What page?

23 Q Page 2, in the second to last paragraph on
24 page 2.

25 A Yes, ma'am.

1 Q The last two sentences you indicate, "The
2 uniformed police officer in Colorado or elsewhere
3 normally carries two spare magazines on the duty
4 belt. It is a rare citizen with a carry permit who
5 carries that much ammunition. Often they will only
6 have what is in the gun."

7 Are you aware of any studies on how often a
8 private citizen with a carry permit carries more
9 than one magazine?

10 A There is no empirical data base. But I have
11 from that is the experience of talking with a great
12 many of them who've been coming to me for training
13 since the year of 1981. It would be kind of like me
14 asking you -- if I asked you when you were in
15 private practice, what's the typical profile of
16 your client. You probably don't keep actuarial
17 tables on how long they live after the verdict. You
18 probably don't keep, you know, their credit rating on
19 file once all the business is done.

20 But you would have a pretty good profile of
21 who came to you as clients. That essentially is
22 where I am with this. The great majority of private
23 citizens will carry two spare magazines when they're
24 with me on the range, because I've told them they'll
25 need them. A significant number have to buy the

1 did describe various robbery incidents to businesses
2 wherein the shop owners were confronted by armed
3 aggressors and were able to successfully defend
4 themselves with guns that had the capacity of 15
5 rounds or less, correct?

6 A Correct.

7 Q Okay. Would you agree that if there's a
8 home invasion, a homeowner is familiar enough
9 with their home in most cases to find a place to
10 flee or seek a position of safety?

11 A Well, actually they have a finite space in
12 which to do so. If there are children, elderly
13 grandparents, others in the home who need to be
14 protected and who you feel a responsibility to
15 protect, fleeing them would be essentially
16 abandoning them. Most people, I do not think,
17 would consider that a viable alternative.

18 Second, if you're facing the intruder, none
19 of us can back away from him faster than he can
20 rush forward toward us. And it would be awfully
21 foolish to turn your back to the preverbal
22 upraised knife or attempt to out run a bullet.

23 The police officer responding to the
24 situation comes in from outside. He has his
25 vehicle with the heavy engine block for cover. He

1 double magazine pumps to attend the class, because
2 normally they just carry the holstered gun.

3 Q Okay. So is it possible for a private
4 citizen, though, to -- with a carry permit to carry
5 more than one magazine?

6 A Yes.

7 MR. COLIN: Form and foundation.

8 THE WITNESS: Yes, ma'am, it is in every
9 jurisdiction I know of.

10 BY MS. MOATS:

11 Q Okay. If you could turn to page 3 of your
12 report.

13 A Page 3. I'm with you. What paragraph?

14 Q The second full paragraph there.

15 A Yes, ma'am.

16 Q It says, "An officer who is ambushed or
17 under fire will have been taught to exit the kill
18 zone, falling back to a more strategic cover
19 position. A householder cornered by home invaders
20 or a storekeeper face-to-face with armed aggressors
21 across the counter of his shop has nowhere to run
22 with any realistic hope of survival."

23 So just to confirm, when you say "a
24 storekeeper face-to-face with armed aggressors,"
25 in your initial report that we just reviewed, you

1 has instant communications at his fingertips and
2 heavy weapons. He can, if he comes under fire, he
3 has the option of putting the police cruiser in
4 reverse and quickly exiting the scene.

5 The private citizen generally does not know
6 the attack is imminent until it is underway, and by
7 that time often the offender is too close for escape
8 to be possible.

9 Q With respect to the training that you teach
10 through the Massad Ayoob Group, does any of that
11 training cover the situations of needing to fall
12 back to a cover position in the event of a
13 self-defense situation?

14 A Very strongly. What we recommend is a
15 holistic approach of good locks, solid doors, an
16 alarm system, enough early warning that you can
17 ensconce, e-n-s-e-o-n-c-e; that is, to get to a
18 position of cover, secure your family behind you
19 or behind some solid cover and be in a position
20 where you can command lanes of access and egress
21 and interdict any violent intruder before they reach
22 you, your children, the bed-ridden grandmother, to
23 get on the line immediately with the police and to
24 stay on the line with 911 and coordinate through
25 them.

1 With that said, there is the occasional home
2 invasion that begins with, you know, a member of
3 the family not expecting trouble and answering the
4 unexpected knock on the door, and as soon as they
5 open the door, the wolf is already in the hen house.

6 Q Okay. But there are some household -- there
7 are some homeowners that would know, because of
8 training and training with their firearm that would
9 know how to flee to a position of safety?

10 MR. COLIN: Foundation, speculation.

11 THE WITNESS: Flee to a position of safety
12 would cover a lot of ground. I certainly would
13 not expect someone to run out the back door of
14 their own home into what might be biting,
15 freezing cold if they're not dressed or total
16 absence of communication, and they're not --
17 they're totally unaware of who might be outside,
18 whether there's another intruder at the back door
19 outside already.

20 None of us could ever morally ask, and I would
21 hope the Colorado Attorney General's Office would
22 never ask its citizens to advocate that children --
23 run away from their children if there were home
24 invaders and throw the baby from sleigh to placate
25 the pursuing wolf.

1 I said in my report, I am deferring on that to
2 Professor Kleck.

3 BY MS. MOATS:

4 Q Okay. Did you review those studies done by
5 Professional Kleck or Professor Lott prior to
6 drafting your report?

7 A I did not for the specific purpose of
8 drafting the report. I had read them when they
9 came out and I was familiar with them.

10 Q Okay. And when were these studies done?

11 A The California AG study, I want to say,
12 goes back to the 1970s. Kleck's work, at least to
13 the 1990s. And Dr. Lott's work, as well, I believe
14 goes back to the 1990s.

15 Q Okay. When you say "defensive gun usage,"
16 do you mean a private citizen's use of a gun in
17 self-defense?

18 A Yes, ma'am.

19 Q Okay.

20 A As opposed to law enforcement, yes.

21 Q Do these studies address -- if you know, do
22 these studies address what capacity of firearms
23 were used in defensive gun situations that ended
24 without death?

25 A I do not believe that empirical data exists.

1 BY MS. MOATS:

2 Q Okay. On page 4 of your report in the second
3 paragraph.

4 A Yes, ma'am.

5 Q You state, "Numerous studies have confirmed
6 the huge majority of armed citizens, DGUs, Defensive
7 Gun Usages, have ended without death. Some of that
8 work has been done -- " well, we'll just stop there.

9 When you say "numerous studies," what studies
10 are you referring to?

11 A There are studies done, as noted here, by
12 Professor Kleck, the plaintiff's expert, in the
13 statistical area. Similar studies have been done by
14 Professor John Lott, L-o-t-t --

15 (Proceedings interrupted.)

16 THE WITNESS: And I am sorry. I forgot to
17 turn my phone off when we went out for lunch.

18 MS. MOATS: That's okay.

19 THE WITNESS: I will get that later. I
20 apologize to all.

21 There was a study done, I want to say, in the
22 1970s on this topic by the California Attorney
23 General's Office. I have seen it, but I do not
24 have a copy I can put my hands on. There is
25 considerable work, however, in the area. And as

1 Q Okay. Looking at page 4 of your report in
2 the second to last paragraph.

3 A Yes, ma'am.

4 Q The second to last sentence of that paragraph
5 says, "We will never know how many times the citizen
6 pointing a long-magazine AR15, Ruger Mini-14, or
7 semiautomatic AK47 look-alike rifle has deterred a
8 criminal from continuing his life-threatening
9 behavior without a shot being fired,"

10 Do you see that?

11 A I do.

12 Q Would you agree that it's possible to have
13 these weapons with a magazine capacity of 15 rounds
14 and still deter -- deter criminals?

15 MR. COLIN: Speculation.

16 THE WITNESS: Yes, of course, ma'am. I
17 have seen them deterred by a snubnose .38
18 revolver.

19 BY MS. MOATS:

20 Q Okay. So it doesn't -- so I guess I'm just
21 trying to understand, your opinion is it doesn't
22 really matter what capacity of firearm, the fact
23 that someone has one may be enough to deter a
24 criminal?

25 A Well, as always through this, the operative

1 term is "may be." Again, we're not looking at
2 statistics. We're looking at stakes. Taken in
3 context, the comment that you just quoted, stems
4 from my reference to Dr. Zax's source, Josh
5 Sugarmann, two n's I believe.

6 Basically, Mr. Sugarmann's contention to
7 his fellow gun control advocates was that the
8 long-magazine rifles looked scary and a clever
9 public advertising campaign would make the general
10 public associate them with machine guns, might
11 result in more sympathy for the gun prohibition
12 movement.

13 And my comment here is, well, if the media
14 has made these guns so scary and so intimidating, it
15 can't just work in one direction when you're pointing
16 it at the bad guy, to whatever extent they're
17 intimidating, it should intimidate them as well. I
18 don't feel it can be disregarded; that said, I do
19 not feel it is a pivotal issue.

20 Q Okay. Turning to page 5 of your report.

21 A Yes, ma'am.

22 Q Let's see. You quote from Dr. Zax's report in
23 the second full paragraph.

24 A Just a moment, ma'am.

25 Q Oh, sorry.

1 results are about the massacre which took place at
2 Columbine High School in Littleton, Colorado, 14
3 years ago."

4 And you state, "The 15 deaths there have
5 much greater hold on the public consciousness than
6 do any of the much more than 15 people who have
7 been spared from death or horrific trauma by the
8 judicious use of defensive firearms in Colorado over
9 the years."

10 How does Dr. Zax's opinion regarding -- or
11 the part I just cited, Dr. Zax's opinion regarding
12 mass shootings and the impact on society comparable
13 to what you were saying plaintiffs might have -- might
14 as well have written?

15 A Ma'am, I'm sorry. I did not quite hear your
16 question.

17 Q That's okay. How is -- so you basically,
18 you cite what Dr. Zax says regarding mass
19 shootings.

20 A Right.

21 Q And then you say the plaintiffs might have
22 well -- might as well have written. So I'm just
23 trying to understand how what -- what you wrote is
24 why -- how you're contrasting the two.

25 A Sure. The context is on the second line of

1 A Second full paragraph, "Dr. Zax admits in his
2 report...?"

3 Q Yes.

4 A Okay.

5 Q You quote him, Dr. Zax, stating, "Mass
6 shootings are relatively rare. However, the social
7 costs that they impose is extensive. Apart from the
8 numerous victims, their families, friends and
9 communities experience extensive and long-lasting
10 trauma, even now, a Google search for 'Columbine'
11 yields 6,890,000 results. Eight of the first twelve
12 results are about the massacre which took place at
13 Columbine High School in Littleton, Colorado, 14
14 years ago. The 15 deaths there have had a much
15 greater hold on the public conscientious than do
16 the 15 most recent deaths in Colorado from
17 motor-vehicle accidents."

18 Then you go on to write in the next paragraph,
19 "The plaintiffs might well have written defensive gun
20 usages are relatively rare. However, the social
21 value that they bring is extensive. Apart from the
22 numerous victims, their families, friends and
23 communities saved from extensive and long-lasting
24 trauma, even now, a Goggle search for 'Columbine'
25 yields 6,890,000 results, eight of the first twelve

1 the paragraph that began with, "Dr. Zax speaks to
2 the social cost of mass shootings."

3 What I speak to is in the following
4 paragraph, the social benefit of lives that have
5 been saved from citizens of Colorado and, of
6 course, elsewhere, have been able to protect
7 themselves and their families from people like
8 the monsters Harris and Kleblod, K-l-e-b-l-o-d,
9 who murdered the 13 children -- or the 13 people
10 in Columbine High School.

11 Q Okay. And when you -- at the end when you
12 conclude, you say, "... judicious use of defensive
13 firearms."

14 A Yes, ma'am.

15 Q What do you mean by "judicious use of a
16 firearm"?

17 A The proper and lawful use. In this case, in
18 defense of self or others.

19 Q Do you know of any statistics of how many
20 people in Colorado have had their lives saved by the
21 use of a firearm?

22 A As I've said, there's no empirical data base
23 and not all of them are recorded. I would repeat my
24 offer to get you the link to the NRA Website that
25 has 60 to 80 some documented cases just in the State

1 of Colorado.

2 Q And is that what you based this opinion on
3 where you say the 15 deaths there have a much
4 greater hold on the public consciousness than do
5 any of the much more than 15 people -- when you say,
6 "... more than 15 people have been spared from death
7 or horrific trauma by the judicious of defensive
8 firearms in Colorado over the years," where do you
9 get the statistics of more than 15 people?

10 MR. COLIN: Vague, compound.

11 Go ahead.

12 THE WITNESS: Okay. Well, first I didn't
13 use that out of the NRA link. I give you the
14 NRA link as a supplement. Basically history
15 shows us how commonly these things happen.

16 I don't know if you've read Dr. Kleck's report
17 -- or Professor Kleck's report, but given the huge
18 number of these incidents that occur in the United
19 States, if you assign just based on population,
20 the proportion is going to be a huge number in
21 Colorado, which will far exceed these two
22 black-swan events.

23 And I also couldn't help but notice that
24 your expert's count of the victims included the
25 two perpetrators who died by their own hands.

1 include the firing of a weapon that holds less than
2 15 rounds?

3 A Yes, of course.

4 Q Okay. So would you agree that the legislation
5 at issue, HB 1224, doesn't prevent defensive use of a
6 firearm?

7 A It limits the capacity of that firearm for
8 defensive use.

9 Q Okay. Would you agree that a firearm that
10 holds -- would you agree that a gun with a
11 high-capacity magazine such as a 30-round or a
12 40-round capacity increases the potential of injury
13 to others?

14 MR. COLIN: Foundation, speculation.

15 THE WITNESS: Within what context, ma'am?

16 BY MS. MOATS:

17 Q Within the context of a mass shooting, for
18 example.

19 MR. COLIN: Same objection.

20 THE WITNESS: Well, certainly the firepower
21 goes in both directions. That said, the impact
22 on the bad guy is minimal. The reason is you have
23 essentially slaughters inside the slaughter house.

24 In your state, Harris and Klebold knew that
25 except for the school resource officer outside,

1 BY MS. MOATS:

2 Q So just to be sure, that you don't know for a
3 fact that more than 15 people in Colorado have been
4 spared from death or the horrific trauma by the
5 judicious use of defensive firearms?

6 A Well, I would respectfully disagree with that.
7 I think the NRA web page alone will give you more
8 than that many documented cases.

9 Q Okay. And that -- does that NRA web page,
10 again, does that address -- you said it was 60 to 80
11 incidents since 1959?

12 A Sixty to eighty or more.

13 Q Eighty or more. And does it address the
14 private citizen -- in the cases that it outlines or
15 summerizes data for, are those citizens that have
16 used a firearm in self-defense?

17 A They have either drawn or fired the gun in
18 self-defense. Each of those would be either a
19 criminal suspect, one or more criminal suspects
20 taken at gun point, one or more criminal suspects
21 shot in self-defense or defense of others, and more
22 than one case of vicious animals being neutralized
23 with gunfire before they could harm or continue to
24 harm humans they were already attacking.

25 Q In your mind can judicious use of a firearm

1 there was no one in there with a gun that could
2 ward them off. All of the victims were helpless.
3 No one was able to make an attempt to disarm them.
4 No one had a weapon with which to stop either of
5 them.

6 Holmes, H-o-l-m-e-s, and the Aurora school (sic)
7 massacre, it appears that there were many theaters
8 closer to where he lived, some of them that would
9 have been open at the same hour and likely would
10 have more victims, a more victim-rich environment.

11 But he choose the one that was posted as a
12 gun-free zone, which apparently he had done his
13 homework and was quite careful to go to the one
14 place where nobody would be able to shoot back.

15 BY MS. MOATS:

16 Q How would --

17 A In a case --

18 Q Oh, go ahead.

19 A In a case like that, it's not going to matter
20 whether it takes him two seconds to reload before the
21 next victim. For the private citizen, the goods guys
22 if you will, the citizen, the cop, the security guard,
23 when they're reacting defensively and under fire, they
24 have much less time in which to save their lives.

25 So I would say, if anything, it's a more

1 disparate impact on the citizen than there is on the
2 criminal. You have mentioned previously, well, if you
3 can't get more than 15 rounds, why don't you just carry
4 another gun.

5 You saw that is what each of those mass
6 murderers in your state did. Harris and Klebold had
7 two guns a piece. Holmes had three. When the --
8 ironically when the high-capacity gun jammed, he went
9 to the low-capacity shotgun.

10 So the -- I think the extent to which it would
11 reduce harm to the innocent is far outweighed by the
12 likelihood of harm that it could cause to the private
13 citizen, to a police officer who retires to somewhere
14 in Colorado and under the Law Enforcement Officer's
15 Safety Act, he's legal to carry, but he is bound by
16 the magazine restrictions in the given state.

17 And as the Sheriffs who have brought this
18 lawsuit and pointed out, the nature of the law has
19 made dealers very leery of having them in stock at
20 all, which limits their availability to law
21 enforcement. So in essence, I think what you've
22 seen is unintended consequences and in the long run,
23 potential for it to harm the innocent more than it
24 reduces the death toll of mass murders.

25 Q Are there any circumstances under which you

1 Colorado who are physically disabled and limited in
2 their ability to reload short-count magazines or
3 move to cover or escape from deadly danger, that
4 peace-of-mind issue needs to be considered with at
5 least the same weight as any other element of
6 emotion, whether individual or collective."

7 What do you mean by short-count magazines?

8 A Basically if I was a Colorado resident who,
9 under your current law, tomorrow bought a Glock 17
10 pistol, since there is no 15-round magazine available
11 for it, I would have to buy -- the only magazine,
12 except the now forbidden 17-round it was designed
13 for, is a 10-round magazine. So essentially I would
14 be cutting my defensive capability by, what, 40
15 percent or something.

16 Q And just to confirm, you're not aware of any
17 data or studies indicating that someone who is
18 physically disabled requires more than 15 rounds to
19 defend themselves?

20 MR. COLIN: Asked and answered.

21 THE WITNESS: Yeah, as we've said many times,
22 that's going to be driven by the situation more
23 than by the nature of the defender; that is,
24 whether it's Arnold Schwarzenegger or, you know,
25 someone who lost his legs in Afghanistan.

1 think use of a high-capacity firearm -- or let me
2 ask you this, under what circumstances do you
3 believe use of a high-capacity firearm could cause
4 injury to innocent bystanders?

5 MR. COLIN: Can we define high-capacity
6 firearm?

7 MS. MOATS: Sure.

8 BY MS. MOATS:

9 Q What you've defined as a high-capacity
10 firearm in today's testimony.

11 A Well, it would be the same as any stray bullet
12 that struck an innocent party, whether it was
13 recklessness on the part of the shooter or whether
14 the totality of the circumstances was such that the
15 shooter could not see what was behind the offender he
16 aimed at.

17 Perhaps the offender's body physically blocks
18 his view. Perhaps behind -- he can see the offender,
19 but behind him is total darkness. Whether it's a
20 20-shot pistol or a five-shot revolver, if the bullet
21 misses, it will strike wherever its trajectory took
22 it.

23 Q Okay. On page -- turning to page 6 of your
24 rebuttal report, the top paragraph you say, "In the
25 instant case, particularly for those citizens of

1 The fact that, as we've said, that the various
2 handicaps may make it take much longer for the
3 disabled person to reload or may make it
4 impossible for them to run and be a more difficult
5 target and live long enough to escape or to run to
6 cover or even escape the scene. Those options will
7 be off the table for the lower-extremity amputee or
8 for the person who is in a wheelchair.

9 BY MS. MOATS:

10 Q Okay. And you're basing that off of your
11 personal experience working with people with
12 disabilities?

13 A Personal experience, collective experience,
14 logic and common sense applied with the specific
15 knowledge of the disciplines involved, yes, ma'am.

16 Q Okay. And what do you mean by discipline
17 involved?

18 A Disciplines involved, the physical mechanics
19 of reloading a firearm, speed of firing the firearm,
20 noted speed of accessing a second gun, if that's an
21 option, and things of that nature.

22 MS. MOATS: Okay. Let's see. I think -- can
23 we take maybe like a quick ten-minute break and
24 then we'll come back? I still have probably about
25 45 minutes more.

1 MR. COLIN: Sure.
 2 THE WITNESS: No problem.
 3 (Brief recess taken.)
 4 BY MS. MOATS:
 5 Q Okay. Mr. Ayoob, we're back on the record
 6 after taking a short afternoon break. And I'm going
 7 to refer you to your rebuttal report --
 8 A Yes, ma'am.
 9 Q -- on page six.
 10 A Page six?
 11 Q Yes.
 12 A Okay.
 13 Q In paragraph three of that report you state,
 14 "The reason American society arms its police in
 15 every state, including Colorado, and has some
 16 provision for law-abiding private citizens to keep
 17 loaded firearms in their home and to be permitted to
 18 carry them in public is the assumption that when
 19 armed criminals murder or credibly threaten to
 20 murder innocent victims, it is to society's benefit
 21 for those potential victims or their designated
 22 protectors to be able to fight fire with fire."
 23 Do you see that?
 24 A I do.
 25 Q And would you agree that nothing in the

1 old five-shot revolver to officers who will carry
 2 their 18-shot Glock 17 in an off-duty concealment
 3 holster and wear the same gun that they carry on
 4 duty.
 5 Q And you know that based on your experience
 6 in training them?
 7 A Collective experience, yes, ma'am.
 8 Q Okay. What if the Trolley Square off-duty
 9 police officer had spare magazines to accompany his
 10 seven-shot off-duty pistol?
 11 A He would have been in a better position.
 12 MR. COLIN: Vague, speculative.
 13 Go ahead.
 14 BY MS. MOATS:
 15 Q I'm sorry?
 16 A I don't think it's arguable that he would
 17 have been in a better position to continue to
 18 contain the threat. Fortuitously he was joined by
 19 another officer who did have loaded guns and that
 20 officer's gunfire was able to keep the murderer
 21 pinned in position until the SWAT team basically
 22 took the guy out.
 23 Q Okay. So what you're saying is it wouldn't
 24 have mattered if he had extra magazines?
 25 A No. I'm saying he probably, if things had

1 subject legislation, House Bill 1224, prevents any
 2 citizen of Colorado from using their gun or
 3 fighting fire with fire?
 4 A Well, it limits their fire fighting
 5 capacity.
 6 Q Right. But it doesn't -- it doesn't limit
 7 their ability to use their gun and to fire?
 8 A It doesn't say they cannot use guns, no.
 9 Q Okay. And then on page 6 also you reference
 10 an incident, the Trolley Square Mall shooting.
 11 A Yes, ma'am.
 12 Q And there you say in the last paragraph,
 13 "The murders stopped when the killer came under
 14 fire from an off-duty police officer who pinned him
 15 into one spot with return gunfire. That officer was
 16 armed with a seven-shot off-duty pistol and had no
 17 spare ammunition. By the time responding police
 18 officers arrived to take over, finishing the fight
 19 and killing the perpetrator, that officer had
 20 profound reason to wish he had been carrying a gun
 21 with more ammunition."
 22 A Yes, ma'am.
 23 Q Do you know what capacity firearm off-duty
 24 police officers normally carry?
 25 A It varies widely. I see everything from the

1 gone differently, would have been unable to continue
 2 containing the threat if the other officer had not
 3 arrived. A spare magazine certainly would have
 4 helped, a higher-capacity pistol certainly would
 5 have helped. It's the classic example of it's
 6 better to have more and not need it than to need
 7 more and to not have it.
 8 Q Okay. Turning to page 7 of your rebuttal
 9 report.
 10 A Yes, ma'am.
 11 Q The first full paragraph you say --
 12 A I'm sorry. The first full --
 13 MR. COLIN: I'm sorry. What did you say?
 14 MS. MOATS: The first full paragraph.
 15 MR. COLIN: Thank you.
 16 MS. MOATS: I'm sorry.
 17 MS. COLIN: Sorry.
 18 THE WITNESS: It's been a long day.
 19 MS. MOATS: Yes.
 20 BY MS. MOATS:
 21 Q "Returning to the Aurora atrocity," you say,
 22 "we now know that the killer surrendered meekly as
 23 soon as he realized he was facing armed men." I just
 24 wondered how you know for a fact that Mr. Holmes,
 25 James Holmes -- I assume that's who you're referring

1 to with respect to the Aurora atrocity, correct?
 2 A It is.
 3 Q How do you know for a fact that James Holmes
 4 surrendered because he knew he was facing armed men?
 5 A Because he did when he was confronted by the
 6 officers.
 7 Q But do you know it was because they were
 8 armed or do you know if perhaps there was another
 9 reason, correct?
 10 A You mean he was suddenly overcome by guilty
 11 conscience?
 12 Q I don't know. I think it's speculation.
 13 Nobody knows, correct?
 14 A No. I think it is a very logical, indeed,
 15 and an inescapably logical conclusion that had
 16 those been unarmed British Bobbies, they might
 17 have just padded the death count.
 18 Q Okay. And is that speculation on your
 19 part?
 20 A I think that's common sense applied with a
 21 specific knowledge of human nature and armed
 22 encounters gathered over 40 some years. Will it
 23 be the position of the Colorado Attorney General's
 24 Office that he surrendered because he wanted to go
 25 to jail?

1 in his direction, I'm sorry, whether it was from a
 2 15-round capacity firearm or a 30-round capacity
 3 firearm?
 4 A Yes, of course.
 5 Q Okay. And then looking --
 6 A The point --
 7 Q Oh, go ahead.
 8 A No. The point I was making was simply that
 9 since the conditions were dark, he had let go a
 10 chemical agent inside that impaired visibility, and
 11 he was wearing body armor, and it probably would have
 12 taken much more than the usual number of shots to
 13 stop him, as compared to say if someone had taken the
 14 non-armored Dylan Klebold or Eric Harris under fire
 15 in the Columbine incident.
 16 Q Okay. And when you -- when you note that,
 17 do you have any idea with respect to Dylan Klebold
 18 and Dylan (sic) Harris in the Columbine incident,
 19 how many -- in your opinion how many shots it
 20 would have taken to -- if someone had a gun, to
 21 take those two, one of those two, or both of those
 22 perpetrators down?
 23 A It would have depended on who had the shot,
 24 who was within range, and would have had the
 25 opportunity to engage them.

1 Q I'm just saying I don't think anyone knows
 2 why Mr. Holmes surrendered. It could have been part
 3 of his -- for example, if he does have a psychological
 4 impairment of some type, it could have been related to
 5 that.
 6 What I'm saying is that we don't know and he
 7 hasn't ever testified himself or sworn under oath
 8 regarding what he -- why he did what.
 9 A Well, if he ever does and people take a poll
 10 as to what he says was the reason he surrendered, I
 11 will be betting on the fact that several police
 12 officers were pointing high-powered high-capacity
 13 automatic rifles at him.
 14 Q Okay. But you've never spoken with him,
 15 correct?
 16 A No, ma'am, I did not. I am not one of his
 17 voices.
 18 Q As to the rest of that paragraph, you do know
 19 that gun -- you note, I'm sorry, that gunfire could
 20 have been safely sent in his direction by any armed
 21 person who was in a position to angle his or her
 22 shots upward safely over the heads of anyone between
 23 the rescuer and the murderer.
 24 Would you agree that gunfire would have been
 25 sent in his direction whether -- could have been sent

1 Q Okay. And then looking back at the rebuttal
 2 report on page 7.
 3 A Yes, ma'am.
 4 Q You also address the shooting in Tucson.
 5 A Yes, ma'am.
 6 Q And in the second to last full paragraph --
 7 A Yes, ma'am.
 8 Q -- you say: While plausible on the surface,
 9 this argument overlooks the fact that it was 61 year
 10 old woman who tore the fresh 30-round -- 33-round
 11 magazine from Loughner's, L-o-u-g-h-n-e-r, apostrophe,
 12 s, hand before he could reload it into his Glock 19
 13 pistol.
 14 How was a female senior citizen able to
 15 wrench that object out of the hand of a much younger,
 16 much stronger male? The most obvious answer is
 17 leverage.
 18 And then you go on to cite a blog, it appears
 19 like, from the Phoenix New Times article by -- a blog
 20 James King. Second Suspected -- Suspect loaded --
 21 Located and Cleared, dated January 9th, 2011.
 22 Do you see that?
 23 A Yes, ma'am.
 24 Q Okay. Why did you --
 25 A Wait a second. Did you say -- say that again.

1 Q I'm sorry.
 2 A Did you say second suspect?
 3 Q Second Suspect Located and Cleared.
 4 A I do not have that on my copy, I don't think.
 5 Can you show me where that is?
 6 Q I'm just reading where it says source, James
 7 King.
 8 MR. COLIN: Here.
 9 THE WITNESS: Oh, I see. I'm sorry.
 10 MS. MOATS: No. I probably confused you.
 11 THE WITNESS: I was looking below that. I do
 12 have that, and I was looking in the wrong place.
 13 I apologize.
 14 MS. MOATS: Okay, no, that's no problem.
 15 BY MS. MOATS:
 16 Q So you have cited a blog there, correct?
 17 A Yes, ma'am.
 18 Q Okay. Did you search for any other
 19 information regarding -- or did you search for
 20 information regarding the Tucson incident from
 21 anywhere else?
 22 A Not specifically for this. I followed it
 23 in detail as it was unfolding, and I interviewed at
 24 length Joe Zamudio, Z-a-m-u-d-i-o, who was one of
 25 the people who contained Loughner.

1 Q Okay. And when did you interview -- for
 2 what purposes did you interview Mr. Zamudio?
 3 A For my personal knowledge. It was quite some
 4 time before I became involved in this case.
 5 Q Okay.
 6 (Defendant's Composite No. 9 was marked for
 7 identification.)
 8 BY MS. MOATS:
 9 Q Okay. Mr. Ayoob, you've just been handed
 10 what's been marked as Deposition Exhibit --
 11 THE COURT REPORTER: Let me make sure I have
 12 the right --
 13 MR. COLIN: Nine?
 14 THE COURT REPORTER: Nine.
 15 MS. MOATS: I'm sorry.
 16 THE COURT REPORTER: That's okay. No. I'm
 17 sorry.
 18 MS. MOATS: I apologize.
 19 THE COURT REPORTER: That's all right.
 20 THE WITNESS: Exhibit 9, yes, ma'am.
 21 BY MS. MOATS:
 22 Q Exhibit 9, yep. And this is an article from
 23 CNN that I printed out. It's entitled, Congresswoman's
 24 Responses after Arizona Shooting Called Encouraging.
 25 A Yes, ma'am.

1 Q And it's by the CNN Wire Staff, dated January
 2 10th, 2011. And if you turn to the second page of
 3 this article, about the fourth -- starting with the
 4 fourth paragraph down, it says: Authorities said the
 5 suspect, 22-year-old Jared Lee Loughner, was tackled
 6 by two men when he tried to reload his pistol, while
 7 a woman in the crowd, Patricia Maisch, took away the
 8 fresh magazine Loughner had dropped.
 9 He pulled the magazine out of his pants pocket
 10 and it dropped onto the sidewalk and before he could
 11 reach it, "I got it," Maisch told CNN. "I just
 12 reacted. I didn't have an opportunity to think."
 13 Asked about people -- asked about people calling
 14 her a hero, she said, "The two men that
 15 secured him were the heroes. I was just an assistant
 16 in me being able to get that magazine or clip."
 17 So according to this CNN article, it appears
 18 that Loughner actually was tackled prior, contrary
 19 to what the blog you've cited in your rebuttal
 20 report states, it indicates -- this article from CNN
 21 indicates that Loughner was actually tackled prior
 22 to Maisch grabbing the magazine. Were you aware of
 23 that?
 24 A No, ma'am. This is the first I had seen it.
 25 Every other account I've seen of the incident had

1 Maisch, M-a-i-s-c-h, ripping it out of Loughner's
 2 hand.
 3 MS. MOATS: Okay. Please mark that one.
 4 THE COURT REPORTER: Okay.
 5 (Defendant's Composite Exhibit No. 10 was marked
 6 for identification.)
 7 THE WITNESS: You wouldn't happen to have an
 8 extra copy of this, would you, Ms. Moats?
 9 MS. MOATS: I do. I will look for it.
 10 THE WITNESS: Thank you.
 11 BY MS. MOATS:
 12 Q Okay. Now you've been handed what's been
 13 marked as Deposition Exhibit 10.
 14 A Yes, ma'am.
 15 Q And this is another article I printed online
 16 regarding Gabrielle -- it's entitled, Gabrielle
 17 Gifford's Shooting: Four People in Disarming Suspect
 18 (as spoken).
 19 A Yes, ma'am.
 20 Q I printed it from the Arizona Central.com.
 21 And it's specifically an article by John Faherty,
 22 F-a-h-e-r-t-y, and Dennis Wagner, W-a-g-n-e-r, of
 23 The Arizona Republic, and it's dated January 9th,
 24 2011. And if you turn to the second page of that
 25 article.

1 A Wait just one second, ma'am, so I can write
2 down the citation.

3 Q No problem.

4 A I'm sorry, ma'am. Go ahead.

5 Q Okay. Again, this article is entitled,
6 Gabrielle Gifford's Shooting: Four People Key in
7 Disarming Suspect.

8 A Yes, ma'am.

9 Q Can you turn to the second page of that
10 article under, So Recklessly, about the seventh
11 paragraph down. It says: Maisch had been about
12 ten feet away when the shots began. She knew exactly
13 what she was hearing and she knew she had two
14 atrocious options. She decided not to run for fear
15 of making herself a target. She got down on the
16 ground and hoped.

17 Then the gunman shot the woman lying next to
18 her, and Maisch began to think she had made a bad
19 decision. She should have run. I thought, "I'm
20 next." Maisch said, "I was waiting to be shot. I
21 was wondering what it was going to feel like."

22 But when she -- but what she heard next was
23 not a gunshot. It was the sound of the gunman being
24 tackled. His body hit the pavement hard. She could
25 hear the air leaving him. "The next thing, the gunman

1 quote from Maisch. That is the writer's
2 interpretation of what happened.

3 Let's see where that was. He says, quote:
4 Maisch grabbed for it, and he held firm. But it fell
5 from his hand, as she snatched it up.

6 That would indicate to me that what he might
7 have been trying to say was that it was her hand
8 grabbing for it that caused it to fall from his hand
9 and she snatched it up. The other accounts describe
10 her as having ripped it from his hand.

11 Q Okay. But to the extent these two accounts
12 I've handed -- and by the other accounts, you're
13 referring to the blog article that you said was --

14 A The blog article and the other articles from
15 the beginning of the reports, my understanding was
16 that she was the one who had taken the magazine away
17 from him, not that she picked it up off the ground.

18 Q Okay. But both -- in both the articles I
19 handed you, the CNN and the Arizona Republic
20 Article, they both indicate that she -- that the
21 magazine actually fell to the ground at which point
22 she grabbed it, correct?

23 A They do, yes.

24 Q Okay. To the extent that the magazine did
25 fall to the ground and she grabbed it, does this

1 is lying on the ground next to me," she said. Maisch
2 remembers the next thing she heard, somebody was
3 yelling, "Get the gun."

4 And then it goes on to say: Zamudio, running
5 from inside the store, emerged as the gunman went
6 down. "I rounded the corner and ran right into them,"
7 he said. He said, "The two men and a woman were taking
8 the shooter down. Maisch was on the shooter's left
9 side and couldn't reach the gun in his right hand.

10 But then he started reaching into his pocket.
11 There he had the clip he needed to reload. Maisch
12 grabbed for it, and he held firm. But it fell from
13 his hand, and she snatched it up."

14 So just based on this article and the CNN
15 article I previously gave you, were you aware that
16 Loughner had tackled -- was actually tackled prior
17 to Maisch grabbing the magazine?

18 A I was aware that he had been tackled.

19 MR. COLIN: Foundation.

20 BY MS. MOATS:

21 Q I'm sorry. You were what?

22 A I was aware that he had been tackled. This
23 second one, Exhibit 10, it's dated the same day as
24 the incident. So apparently they were still
25 gathering details. And I noticed that it was not a

1 change your opinion that Maisch was able to grab
2 the magazine because of leverage?

3 A Well, it would depend. If the accounts that
4 I have read that she grabbed it from his hand are
5 true -- let me go back to my exact words in the
6 rebuttal report, "How was a female senior citizen
7 able to wrench that object out of the hand of a much
8 younger, much stronger male? The most obvious answer
9 is leverage." And we explain why the long extended
10 magazine would give the disarmer actually more
11 leverage than the person holding it.

12 I based that on having been an instructor
13 and disarming and weapon retention -- that is, the
14 defeating of a disarming attempt on you -- since
15 1980. And 1990, I became what's called master
16 instructor or instructor trainer; that is, a
17 trainer of others who would teach this.

18 I have, in the training environment, disarmed
19 literally thousands of people. Leverage is the key
20 element. The longer the object is, the more easy it
21 is for another person to rip it out of your hand.
22 I've often said that if there was a national
23 championships of disarming, I would have a gun with
24 about a ten-inch barrel and slick pearl handles to
25 give to my opponent to make it easier for me to take.

1 And if there was a national championships of
2 disarming where I had to retain the gun, I'd want
3 something with a two-inch barrel and rough textured
4 grips.

5 I believe we can clearly demonstrate -- in
6 fact, I can show you now if you'd like. I have
7 exemplars in my car -- that the longer magazine is
8 much easier to rip out of someone's hand than the
9 shorter one.

10 Q Okay. But assuming to the extent these
11 articles are correct and that, you know, he did drop
12 the magazine clip, would that change your opinion as
13 to leverage?

14 A Well, no, ma'am, because the leverage is an
15 immutable law. Whatever happened in this case, and
16 as I said, the -- what I've seen indicates she took
17 it from his hand. I will have to do more research on
18 that and that's why I took the time to write down the
19 citations you were kind enough to provide.

20 That said, one of the arguments here is, since
21 none of us can go back in a time machine to January 9,
22 2011, to save Ms. Gifford and the many other people who
23 were shot, it obviously goes toward the future. One of
24 the arguments that's come up throughout the promotion
25 of this legislation was that the individual could be

1 Q Would you agree that while Loughner was
2 attempting to reload the 33-round magazine, there
3 was a pause in his shooting which enabled action on
4 the part of the citizens standing by?

5 A Yes, I believe that's true.

6 Q Earlier in your testimony you mentioned that
7 a great many private citizens carry only one gun. I
8 couldn't tell you at what point today we discussed
9 that little fact or opinion.

10 A It's been a long day. But, yes, I did make
11 that comment and it is still true.

12 Q And when you say that, what -- to your
13 knowledge, what type of -- what type of -- what
14 capacity firearms do private citizens typically
15 carry?

16 A As we said earlier, it's much like the
17 off-duty police officers. There are people out
18 there carrying two-shot Derringers. There are --
19 one of the most popular handguns out there is the
20 five-shot short-barrel revolver.

21 There are many people who carry single-stack
22 pistols, because they're more compact, easier to
23 conceal; and if they're holstered inside the
24 waistband, being thinner, they're more comfortable.
25 There are a number of people who prefer the

1 pounced and disarmed during the vulnerable moment while
2 he was reloading in the midst of his mass murder
3 attempt.

4 The point that I made in the rebuttal was that
5 it was ironic that they would cite that -- it's in
6 Dr. Zax's report -- the disarming of Loughner after
7 he's fired 30 some shots. When, in fact, the ripping
8 -- had the magazine been ripped out of his hand or if
9 it needs to be ripped out of the hand of the next
10 killer, the longer magazine will demonstrably be easier
11 to take away from him than the shorter magazine.

12 Q Okay. But assuming, according to these
13 articles, that the magazine was not in his hand, he
14 had actually dropped it on to the ground, would you
15 agree that it doesn't matter what size, Ms. Maisch
16 still would have been able to grab it because it was
17 no longer in his hands?

18 A If it's laying --

19 MR. COLIN: Foundation, speculation.

20 BY MS. MOATS:

21 Q Pardon?

22 A If it's laying on the ground, in theory,
23 that would be correct. In practice, the larger
24 object is obviously easier to find under stress
25 than the smaller object.

1 double-action revolver, because they trust it more
2 than they do a semiautomatic pistol. And those will
3 range from five- to eight-shot capacity in a defense
4 type gun.

5 There are many people who prefer the old 1911
6 style .45 automatic, the old Army automatic,
7 colloquial. An increasing number do go to the
8 higher-capacity guns. But again, there is no
9 empirical data base where we can get the average.

10 We know the higher-capacity guns are
11 probably the best sellers, because that is tracked
12 by the Federal Bureau of Alcohol, Tobacco and
13 Firearms. But those manufacturing figures also
14 encompass guns that are ultimately sold to law
15 enforcement.

16 Q And do you know if that analysis, in terms of
17 what types of guns private citizens carry, do you
18 know if that is any different for disabled citizens
19 in terms of what guns they might carry?

20 A Well, I can tell you, as I have throughout the
21 day, I think the higher-capacity gun for them is a
22 better choice. But again, I'm not aware of any
23 survey that has even been taken or any empirical data
24 base on that.

25 Q And earlier in the day, you testified -- or

1 earlier in the day I had asked you a question about
2 whether use of a high-capacity magazine -- excuse me
3 -- whether use of a high-capacity magazine might
4 increase potential injury to innocent bystanders. Do
5 you remember that question?

6 A I do.

7 Q Okay. And I think your answer -- I mean you
8 had -- part of your answer, I should say, was that
9 it wouldn't matter if someone had a five-shot
10 revolver or -- I don't know -- like a 30-round rifle,
11 there's still the potential for someone to be
12 injured.

13 A Sure. The potential would increase with the
14 number of shots being fired, assuming that those shots
15 were missing and going into an unsafe backstop; that
16 is, going in a direction where the projectiles could
17 not be safely contained.

18 Q Okay. Is it your belief that in most
19 circumstances, the mere presence of a gun is enough
20 to ward off a criminal threat?

21 A I believe historically that has proven true.
22 It is collective experience of the armed citizen and
23 law enforcement.

24 Q Okay. And today we've looked through your
25 initial expert report and your rebuttal report and

1 A Yes, ma'am.

2 Q Okay. And did you -- as you sit here today,
3 did you have any thoughts about any of his
4 opinions?

5 A I disagreed with some, agreed with some. I
6 do not believe I've ever met Chief Fuchs.
7 Certainly his resume is impressive. I respect his
8 accomplishments. I would have to look at the report
9 briefly to refresh to see what disagreements that I
10 may have.

11 Q Okay. And how about Mr. Cerar's report, did
12 you have an opportunity to review that?

13 A I did, ma'am.

14 Q Did you any -- any part of that that you
15 recall disagreeing with?

16 A There are parts of it I disagreed with, yes,
17 ma'am.

18 Q Do you recall what those are?

19 A The contention that no one would ever need a
20 -- I forget -- again, I forget the exact words,
21 either would never need or was most unlikely to ever
22 need more than 15 rounds. There were some other
23 points in which I would respectfully disagree, but I
24 would need to see the report.

25 Q Okay. And when you say again that you

1 talked about various opinions. Are there any -- is
2 there anything we did not discuss today that you
3 intend to opine about at trial?

4 A No, ma'am, not that I can think of. I
5 think I should probably ask Mr. Colin the same
6 question.

7 MS. MOATS: Do you guys want to take a five
8 minute break or do you want to --

9 THE WITNESS: At my age we never say no to five
10 minute breaks. My brother and I will have to debate
11 that.

12 MR. COLIN: If you need a break, sure.

13 MS. MOATS: Why don't we take five minutes and
14 then I think we're almost done and we'll wrap it
15 up.

16 THE WITNESS: Sure.

17 (Brief recess taken.)

18 BY MS. MOATS:

19 Q Okay. Mr. Ayoob, we are back on the record
20 after taking another short afternoon break. And I
21 just wanted to -- at the beginning of your
22 deposition, you had indicated that in terms of
23 documents you've reviewed in this case, that you've
24 had the opportunity to review the expert report of
25 Doug Fuchs; is that correct?

1 disagree with his contention that no one would ever
2 need more than 15 rounds, is that, again, based on
3 your testimony today that there are those rare
4 circumstances that might in which -- that which
5 might necessitate more than 15 rounds of
6 ammunition?

7 A It would.

8 MS. MOATS: Okay. I think that concludes my
9 questioning for today. Thank you.

10 THE WITNESS: Very good, ma'am.

11 Refresh me, do I send the invoice to you or
12 through Mr. Colin?

13 MS. MOATS: Send it through Mr. Colin, and he
14 can send it to me.

15 MR. COLIN: There you go.

16 THE WITNESS: Let me just confirm what
17 you're going to need. You wanted an article
18 from Guns Magazine, one from Shooting Industry
19 and one from Glock Annual and Wounded
20 Warriors?

21 MS. MOATS: Yes.

22 THE WITNESS: And did you want me to find
23 and send it to Mr. Colin that link, that NRA
24 collection, as well?

25 MS. MOATS: Yes, please.

1 THE WITNESS: And we are agreed we are closing
 2 at 3:17?
 3 MS. MOATS: Yes.
 4 THE WITNESS: Okay. Ms. Minnich, I will not
 5 waive. I will read.
 6 THE COURT REPORTER: Okay.
 7 (Deposition concluded at 3:17 p.m.)
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1 CERTIFICATE
 2
 3 STATE OF FLORIDA
 4 COUNTY OF COLUMBIA
 5
 6 I, Cassie Minnich, FPR, Court Reporter and
 7 Notary Public, certify that I was authorized to and did
 8 stenographically report the deposition of MASSAD AYOOB;
 9 that a review of the transcript was requested; and that
 10 the transcript is a true and complete record of my
 11 stenographic notes.
 12 I further certify that I am not a relative,
 13 employee, or counsel of any of the parties, nor am I a
 14 relative or employee of any of the parties' attorney or
 15 counsel connected with the action, nor am I financially
 16 interested in the action.
 17 The foregoing certification of this
 18 transcript does not apply to any reproduction of the
 19 same by any means unless under the direct control
 20 and/or direction of the certifying court reporter.
 21
 22 DATED this ____ of _____, 2013.
 23
 24 _____
 25 Cassie Minnich, FPR, Court Reporter

1 STATE OF FLORIDA)
 2 COUNTY OF COLUMBIA)
 3
 4 I, the undersigned authority, certify that
 5 the witness, MASSAD AYOOB, personally appeared
 6 before me on the 29th of October, 2013, and was
 7 duly sworn.
 8
 9
 10 Signed this ____ day _____,
 11 2013.
 12
 13 _____
 14 Cassie Minnich, FPR, Court Reporter
 15 and Notary Public-State of Florida
 16 My commission No. EE 055595
 17 Expires: 04/30/2015
 18
 19
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 21
 22
 23
 24
 25

1 IN THE UNITED STATES DISTRICT COURT
 2 FOR THE DISTRICT OF COLORADO
 3 Civil Action No. 13-cv-01300-MSK-MJW
 4 IN RE: JOHN B. COOKE, Sheriff of Weld County,
 5 Colorado, et al.
 6 Plaintiffs,
 7 v.
 8 JOHN W. HICKENLOOPER, Governor of the
 9 State of Colorado,
 10 Defendant.
 11
 12 I, MASSAD AYOOB, have read the foregoing
 13 pages of my deposition given on the 29th of October,
 14 2013, and wish to make the following amendments,
 15 additions, deletions or corrections:
 16 PAGE NO. LINE CHANGE AND REASON FOR CHANGE
 17 _____
 18 _____
 19 _____
 20 _____
 21 _____
 22 _____
 23 _____
 24 _____
 25 _____
 In all other respects the transcript is true and
 correct.
 Under penalties of perjury, I declare that I have
 read my deposition and that it is true and correct
 subject to any changes in form or substance entered
 here.

 MASSAD AYOOB

 DATE: _____