

the rifle could  
ing the bolt, with  
ecting the shells.  
rst ejected three  
he rifle--empty,  
nd began to turn  
e locked position,  
bullet ricocheted

e rifle was unreas-  
se the bolt-action  
rifle be placed in  
e safety-off posi-  
nloaded. A few  
accident, Reming-  
for its Model 700  
s the working of  
weapon with the  
necessary to put  
-fire position in

nce of the rifle's  
e court excluded  
sign. By an in-  
secured this ex-  
Fed.R.Evid. 407.<sup>1</sup>  
exclusion.

safety features of  
rifle constituted

In the opening  
sel informed the  
use, stating: "We  
e that we expect  
ington Model 700  
it popular, best,  
it has been manu-  
Remington of-  
two-position, bolt-  
safety available--  
st and the safest  
this evidence was  
nsel for Muzyka  
nce of the subse-  
peach the asser-

red for another pur-  
nership, control, or  
y measures, if con-  
t.

le applies in strict  
el Industries v. Ala-  
883 (5th Cir.1983).

tions of the bolt-action's superior safety characteristics. The trial court excluded this evidence when offered for impeachment purposes.

In an effort to capture the importance attached to this evidence of excellence, and to reflect plaintiff counsel's repeated attempts to introduce evidence of design change, we set forth, at some length, extracts from the trial transcript:

Q MR. HOWELL [defense counsel]:  
Let me ask you, please, sir, if you have an opinion as to whether or not the presence of the bolt-lock as a feature on the Remington Model 700 Rifle so that the safety had to be moved to the off position to unload it, represented a danger to the user? Do you have an opinion?

A [defense witness]: I do not think it is a danger, no.

MR. LONGLEY [plaintiff's counsel]:  
May we approach the bench, Your Honor?

THE COURT: Yes, sir.  
(At-the-bench discussion.)

MR. LONGLEY: ... Your Honor, where it says on page 37 he did not think it was a danger. We can show the subsequent design for improvement purposes, that they went to a new design for purposes of making a safer gun and that this new design without the bolt-lock. And we have a case directly on point on that, as far as impeachment purposes.... This is the only way I can impeach the man, what he is going into, what he did and when he did it.

MR. HOWELL: I don't believe that is impeachment. I left out, followed the Court's ruling.

MR. LONGLEY: 406, Your Honor.

THE COURT: Allows for impeachment. I know what it does. For the purpose of the record, proffer it outside the presence of the jury.

(End of at-the-bench discussion.)

Q [defense counsel]: And by 1981, had it become the biggest selling and most popular rifle in the world?

A [defense witness]: Yes. Very definitely. It sold in greater numbers by far than any of its competition. And it really is the rifle that all other rifle manufacturers measure their products in comparison.

Q Would you explain that?

A Well, in quality, in sales, in safety, every facet the Remington is the premier rifle, bolt-action rifle in the country today. It has the highest sales.

Q Was that true in the period from 1965 through 1981?

A Absolutely.

MR. LONGLEY: May we approach the bench, Your Honor?

(At-the-bench discussion.)

MR. LONGLEY: I'm going to try again, Judge.

THE COURT: I know that.

MR. LONGLEY: The testimony has been from this witness that the Model 700 without, with the bolt-lock device is the most popular bolt-action rifle through today, in order to quote from the record. Then he called the three-position bolt-lock a highly undesirable feature. Having made the other statement, and then he stated in reference to response to these articles that Mr. Howell has read from that, and these were all pre-1981 articles he read from, and that those are all authoritative about, this being such a wonderful model, and that a model with that kind of bolt-lock is no longer available on the market. And for impeachment purposes, Your Honor, I wish to go into the design change that has been made by Remington so that we can show the jury what is going on here with regard to changes being made, that this particular model is no longer available. And if it was so undesirable, why did they go to it in the first place. And if it is popular as always right through today, there has been no change in popularity, the public accepted this as well as the